

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG
CITY OF CHARLOTTE**

**INTERLOCAL AGREEMENT FOR
FUNDING OF THE STEVENS CREEK AND
GRAVITY SEWER PROJECT**

This Interlocal Agreement for Funding of the Stevens Creek and Gravity Sewer Project is entered into and agreed upon as of _____, 2018 (the “Effective Date”), by and between the **CITY OF CHARLOTTE** (the “City”), a municipal corporation organized under the laws of the State of North Carolina and the **COUNTY OF MECKLENBURG** (the “County”), a political subdivision of the State of North Carolina (hereinafter the “Parties”).

WITNESSETH:

WHEREAS, the Parties operate the Charlotte-Mecklenburg Storm Water Services utility pursuant to an interlocal agreement entered into between the Parties in 1993, which identifies their respective rights and responsibilities for operation and management of storm water throughout Mecklenburg County;

WHEREAS, the City of Charlotte and the County own properties or hold easements along Stevens Creek and tributary, located between Thompson Road and I-485 in Mint Hill, North Carolina as shown in Exhibit “A” (hereinafter the “Property”). The County intends to make certain improvements to the water resources on said Property along Stevens Creek and Tributary, which may include the restoration of streams, Best Management Practices (“BMPs”) and provisions for subsequent maintenance and monitoring of the improvements (hereinafter the “County Project”);

WHEREAS, the City is currently interested in the installation of a gravity sewer along, in combination with the restoration of, the major stream known as Stevens Creek and Tributary, and provisions for subsequent maintenance and monitoring of the sewer improvements (hereinafter the “City Project”);

WHEREAS, it is in the Parties’ mutual best interest to make County Project and City Project improvements concurrently by developing feasibility and design plans for constructing both the County Project area and the City Project area (hereinafter the “Combined Project”);

WHEREAS, the Parties desire to enter into a funding and development agreement that sets out their respective rights and responsibilities with respect to the Combined Project;

NOW, THEREFORE, in consideration of the premises and the fulfillment of the terms of this agreement, the County and the City agree as follows:

1. Combined Project Description. The Combined Project includes a combination of the following: gravity sewer, stream restoration; stream enhancement; stream stabilization; habitat structure placement; buffer enhancements; and implementation of structural BMPs.

2. Exhibit List

The following Exhibits are attached to this agreement and incorporated into and made hereof by reference:

Exhibit A: Map of the Property.

Exhibit B: Combined Project Funding.

Exhibit C: Project Schedule

Each reference to the agreement shall be deemed to include all Exhibits.

3. Consultant Selection. The County, after complying with all applicable statutory procedures, has selected a consulting engineering firm, Stantec Consulting Service, Inc (the “Engineer”), which has expertise in the field of engineering, design and construction contract services with projects similar in size and scope to the Combined Project, to provide engineering services with respect to the County Project. The City, after complying with all applicable statutory procedures, has selected GHD Engineering firm, (the “Engineer”), which has expertise in the field of engineering design and construction contract services with projects similar in size and scope to the Combined Project, to provide engineering services with respect to the City Project.

4. Planning and Design. The County and City shall be responsible, through the Engineer, for design of their respected Projects. The design plans will consist of major system improvements (County portion of design plans) and gravity sewer (City portion of design plans).

5. Permits. The City and County shall, through the Engineer, obtain all Federal, State and local permits necessary to construct their specific portion of the Combined Project. The County will submit to the City a copy of all permit authorizations related to the County’s portion of the Combined Project.

6. Construction Contract. The City shall solicit and obtain bids for the construction of the Combined Project, including all labor, materials and services necessary to execute the work associated with the approved design plans and construction documents and award the contract for such Combined Project to a qualified contractor (hereinafter the “Contractor”) in accordance with applicable law. Before awarding any contract, the City must notify the County of all bidders for the Combined Project and their bid amounts. County Staff will be included in invitations to periodic and/or monthly construction meetings and punch list, as-built and/or final walkthroughs for the purpose of construction QC/QA of the County Project. The City will not award a contract for construction of the County Project without express written authorization by the County (the “Approved Contract”), and any subsequent proposed change orders to the Approved Contract shall also be subject to County’s prior review and written approval.

7. Maintenance. Maintenance of the facility will be performed according to the terms below:

The County will be responsible for:

- maintenance of the Stream portion of the project, Stream vegetation, erosion, stream structures;

- removal, at the discretion of the County, of trash, algae, mosquito control, and dead fish removal; and
- reporting blockages and nuisance animal activities such as burrowing animals.

The City will be responsible for:

- maintenance of the gravity sewer and associated right of way;
- sewer inspection to address structural and functional maintenance items; and
- non-routine maintenance including maintenance related to right of way clearing.

8. Payment Responsibilities of the County. The County shall provide full funding to the City for construction of the County Project as outlined in Exhibit B after bids are opened and City Council has recommended award. The City shall provide the County a copy of the monthly Combined Project invoices, completed with actual cost documentation supporting the invoice. The County shall provide written approval of the County’s costs included in every monthly payment application. At the conclusion of the Combined Project, any of the County’s funding not completely utilized on the County Project shall be promptly returned to the County.

9. Funding Administration. The City shall be responsible for contract administration for the construction contract and the funding agreement with the County as specified in Exhibit B. The City, with assistance from the Engineer, will be responsible for separating all costs associated with the Combined Project.

10. Notices. All notices required or permitted to be given hereunder shall be deemed given if emailed, hand delivered, or faxed with a mailed copy to follow, or mailed in a sealed wrapper and deposited in the United States Mail, registered or certified, return receipt requested, postage prepaid, properly addressed as follows:

If to the County: Mecklenburg County Storm Water Services
 2145 Suttle Ave
 Charlotte NC, 28208
 Attention: David Woodie, PE

If to the City: City of Charlotte
 Charlotte Water
 5100 Brookshire Blvd.
 Charlotte, NC 28216
 Attention: Nicole Bartlett, PE

Either party may change its notice address by giving written notice of the change to the other party in the manner specified above ten (10) days prior to the effective date of such change.

11. Applicable Law. This agreement shall be enforced, interpreted and construed by and under the laws of the State of North Carolina.

12. Dispute Resolution. The Parties agree that any disputes which cannot be resolved by the City and County Managers or their designees will first be attempted to be resolved by mediation and if not resolved by mediation, then by binding arbitration. If the Parties cannot agree upon selection of an

arbitrator and a process for arbitration, disputes between the parties arising out of or in connection with this agreement or the performance or breach thereof shall be resolved by binding arbitration in accordance with the then-applicable Commercial Arbitration Rules (the "Rules") of the American Arbitration Association. The Rules will apply except as specified in this paragraph. All arbitration proceedings will be held in Charlotte, North Carolina before a single arbitrator. The parties hereto agree to submit to the enforcement of any award resulting therefrom by any court of competent jurisdiction. Judgment upon the award rendered in any such arbitration proceeding may be entered into any court having competent jurisdiction thereof, or application may be made to such court for a judicial acceptance of the award and an order of enforcement as the case may be.

13. Term of Agreement. The term of this agreement shall commence on the Effective Date and shall expire at the conclusion of the one year construction warranty period unless sooner terminated or extended in accordance with the provisions of this agreement.

14. Schedule: City and County staff have reviewed and agreed upon the proposed Project Schedule (Exhibit C). All due diligence will be undertaken by both parties to ensure adherence to the Schedule.

15. Amendments. This Agreement may be amended by written agreement authorized by the governing bodies of each party and signed by authorized representatives of both parties.

16. Termination. The City and County may terminate this agreement at any time by mutual consent under such terms as may be agreed to in writing by the Board of County Commissioners and the City Council. The City and County further acknowledge that either party may terminate this agreement if all bids received for that party's portion of the Combined Project exceed that party's budgeted ability to fund such portion of the Combined Project.

[Signatures are on following pages]

IN WITNESS WHEREOF, the Parties hereto have caused this agreement to be executed as of the day and year first above written by the authority duly granted by their respective governing bodies.

CITY OF CHARLOTTE

By: _____
 Marcus D. Jones, City Manager

ATTEST:

ATTEST:

MECKLENBURG COUNTY

By: _____
Dena R. Diorio, County Manager

Attest:

Clerk to the Board

APPROVED AS TO FORM

County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

BY: _____
Mecklenburg County Director of Finance

Exhibit "A"

PROJECT MAP



Exhibit “B”

COMBINED PROJECT FUNDING

Feasibility Planning and Design

- City agrees to fund 100% of the planning and design of the City Project, *i.e.*, the gravity sewer.
- County agrees to fund 100% of the planning and design, of the County Project, *i.e.*, the Stevens Creek improvements.

Construction

- County agrees to fund 100% of the construction of the County Project.
- City agrees to fund 100% of the construction of the City Project.
- County and City agree that construction administration by the Engineer, or a third party, is a cost of construction and that the City shall fund 100% of said cost associated with the City Project and County will fund 100% of said cost associated with the County Project.
- The City and County agree to allocate bid items that are mutual to both projects based on the table and percentages below. Actual costs will be determined after the bid.

Item	County	City
Mobilization/Demobilization	37.5%	62.5%
Clearing	60%	40%
Haul Road	50%	50%
Haul off Site Disposal –doesn’t include unsuitable	67%	33%
Permanent Grassing	10%	90%
Construction Entrances	50%	50%
Silt Fence	60%	40%
Temporary Creek Crossings	50%	50%
Maintenance of E&SC	33%	67%
Tree and Shrub Planting	96%	4%
Fence (Cheval)	50%	50%
Fence (Wiggins)	50%	50%
Orange Construction Fence	50%	50%

- The City and County will maintain separate contingency funds. City shall not use any County contingency funding without the prior written authorization of County. Utilization of contingency funds for shared items will follow the cost allocations set forth above. In the event that unexpected items arise, in which costs should be allocated between the City and County, both parties agree to work amicably to arrive upon a reasonable allocation.

Miscellaneous

- All miscellaneous costs associated with the County Project areas (*e.g.*, educational, signs, administrative, etc.) will be paid by the County.
- All miscellaneous costs associated with the City Project areas will be paid by the City.

Exhibit “C”

PROJECT SCHEDULE

Task	Early Finish Date	Late Finish Date
Real Estate and Interlocal Phase	6/17/2018	9/2/2018
Design and Permitting	6/1/2018	7/16/2018
Bid Phase (4 month bid phase)	7/23/2018	8/27/2018
Construction Phase	8/1/2019	12/31/2019