

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

INTERLOCAL COOPERATION AGREEMENT

This **INTERLOCAL AGREEMENT** (the “Agreement”) is made and entered into and deemed effective as of the 1st day of January, 2019, by and between the Mecklenburg County (referred to herein as “County”), a political subdivision of the State of North Carolina, and the City of Charlotte (referred to herein as “City”), a municipal corporation organized under the law of the State of North Carolina, each a “Party,” (or collectively the “Parties”).

WITNESSETH:

WHEREAS, the City and the County have the authority pursuant to General Statute § 153A-445(a)(1) and Article 20 of Chapter 160A of the North Carolina General Statutes to enter into Agreements with each other for the exercise of any governmental function which either has been granted the authority to exercise and to enter into Interlocal cooperation agreements to specify the details of these undertakings; and

WHEREAS, the Mecklenburg County Board of Commissioners and the Charlotte City Council have adopted resolutions authorizing execution of this Agreement; and

WHEREAS, pursuant to the authority under Article 20 of Chapter 160A of North Carolina General Statutes related to Interlocal Cooperation and North Carolina General Statutes § 153A-445, the Parties desire to enter into this Interlocal Agreement; and

WHEREAS, the purpose of this Agreement is to set forth the terms and conditions under which Mecklenburg County Storm water services will provide services to the City of Charlotte in assessing the water quality conditions in Charlotte-Mecklenburg drinking water supply reservoirs located on Lake Norman and Mountain Island Lake;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants of the parties as set forth herein, the City and County agree as follows:

AGREEMENT

1. PURPOSE.

- 1.1. County shall assess water quality conditions in Lake Norman and Mountain Island Lake.
- 1.2. County shall collect and analyze data for the protection of the quality of drinking water supply for the protection of human and ecological health at Lake Norman and Mountain Island Lake. This data will be utilized to analyze and potentially identify any short-term and long-term impairments.
- 1.3. Any services or activities in furtherance of this Agreement shall be set forth in an annual Work Plan agreed upon by both parties. Emergency services for monitoring and analysis at Lake Norman and Mountain Island Lake shall be developed and agreed upon by both parties at the time of service.
- 1.4. The annual Work Plan and rates set forth shall include, but are not limited to the following services:
 - 1.4.1. Water Quality Monitoring

- 1.4.2. Surface Water Analytical Monitoring
- 1.4.3. Phytoplankton Monitoring
- 1.4.4. Coal Ash
- 1.4.5. Sediment Monitoring
- 1.4.6. Bromide Sampling & Analysis
- 1.4.7. Aquatic Invasive Plant Assessment

2. DURATION OF THE AGREEMENT.

- 2.1. This Agreement shall remain in force until June 30, 2024.
- 2.2. The parties may renew this Agreement for two (2) consecutive two (2) year terms.

3. ESTABLISHMENT OF JOINT AGENCY. Nothing in this Agreement shall establish a joint agency between the parties, and nothing contained in this Agreement shall be construed to (i) give any Party the power to direct or control the day-to-day administrative activities of the other; or (ii) constitute such Parties as partners, joint ventures, co-owners or otherwise as participants in a joint ventures or common undertaking; or (iii) make either Party an agent or employee of the other, for any purpose whatsoever. Neither Party nor its agents or employees is the representative of the other for any purpose, and neither has power or authority to act as agent or employee to represent, to act for, bind, or otherwise create or assume any obligation on behalf of the other.

4. APPOINTMENT OF PERSONNEL.

- 4.1. The City shall have the power to hire, fire, and supervise all its employees necessary for the operation of this Agreement.
- 4.2. The County shall have the power to hire, fire, and supervise all its employees necessary for the operation of this Agreement.

5. METHOD OF FINANCING.

- 5.1. County shall invoice the City on a quarterly basis for all services rendered or to be rendered as set forth in the annual Work Plan.
- 5.2. By March 31st of every year, Mecklenburg County shall provide the City of Charlotte with a Work Plan that will include specific activities with targeted completion dates during the following fiscal year (July 1st-June 30th) as well as associated billing rates and costs which shall be agreed upon by City of Charlotte and Mecklenburg County.

6. PROPERTY OWNERSHIP. No property shall be involved in the undertaking of this Agreement. To the extent any real property is acquired by either of the parties for the operation of this Agreement, such property shall be owned solely by the party acquiring the property and shall remain with that party after termination of the Agreement.

7. AMENDMENT OF AGREEMENT.

- 7.1. The City Manager and County Manager, or their designees, are authorized to amend any of the existing Exhibits without further authorization of the Charlotte City Council or the Mecklenburg County Board of Commissioners.
- 7.2. Except as provided herein, this Agreement may not be modified or amended except by subsequent written agreement authorized by the governing bodies of each party and signed by the authorized representative.

8. TERMINATION OF AGREEMENT.

- 8.1. This Agreement may be terminated upon mutual consent of the parties, or by any court of competent jurisdiction upon the finding that there has been such a substantial breach of this Agreement by the non-complaining party so as to entitle the complaining party to be relieved of its obligations under this Agreement.
- 8.2. **TERMINATION BY THE CITY.** The City may terminate this Agreement at any time without cause by giving thirty (30) days prior written notice to the County. As soon as practicable after receipt of a written notice of termination without cause, the County shall submit a statement to the City showing in detail the Services performed under this Agreement through the date of termination. The foregoing payment obligation is contingent upon: (i) the County having fully complied with Section 9.7; and (ii) the County having provided the City with written documentation reasonably adequate to verify the number of hours of Services rendered by each County employee through the termination date and the percentage of completion of each task.
- 8.3. **TERMINATION FOR DEFAULT BY EITHER PARTY.** By giving written notice to the other party, either party may terminate this Agreement upon the occurrence of one or more of the following events:
- a. The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Agreement, provided that, unless otherwise stated in this Agreement, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or
 - b. The other party attempts to assign, terminate or cancel this Agreement contrary to the terms hereof.
- Any notice of default shall identify this Section of this Agreement and shall state the party's intent to terminate this Agreement if the default is not cured within the specified period.
- Notwithstanding anything contained herein to the contrary, upon termination of this Agreement by the County for default, the County shall continue to perform the Services required by this Agreement for the lesser of: (i) six (6) months after the date the City receives the County's written termination notice; or (ii) the date on which the City completes its transition to a new service provider.
- 8.4. **ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE CITY.** By giving written notice to the County, the City may also terminate this Agreement upon the occurrence of one or more of the following events (which shall each constitute separate grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):
- a. Failure of the County to complete a particular task by the completion date set forth in the annual Work Plan;
 - b. The County takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Agreement, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Agreement, or failure to provide the proof of insurance as required by this Agreement.
- 8.5. **CITY AUTHORITY TO TERMINATE.** The following persons are authorized, consistent with this Agreement, to terminate this Agreement on behalf of the City: (a) the City Manager, or any designee of the City Manager.

- 8.6. **COUNTY AUTHORITY TO TERMINATE.** The following persons are authorized, consistent with this Agreement, to terminate this Agreement on behalf of the County: (a) the County Manager, or any designee of the County Manager.
- 8.7. **OBLIGATIONS UPON EXPIRATION OR TERMINATION.** Upon expiration or termination of this Agreement, the County shall promptly return to the City (i) all computer programs, files, documentation, media, related material and any other material and equipment that is owned by the City. The expiration or termination of this Contract shall not relieve either party of its obligations regarding "Confidential Information", as defined in this Contract.
9. **ENFORCEMENT OF AGREEMENT.** The parties agree that the remedy of specific performance would be an appropriate remedy, among others, for the enforcement of this Agreement.
10. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the parties with the respect to its subject matter, and there are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral.

[Signature Page Follows]

IN WITNESS WHEREOF, and in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have caused this Agreement to be executed

CITY OF CHARLOTTE

MECKLENBURG COUNTY

By:

City Manager

By:

County Manager

SEAL

SEAL

By:

City Clerk

By:

County Clerk

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

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

By:

Finance Officer

By:

Finance Officer

Approved as to form:

By:

County Attorney