

STATE OF NORTH CAROLINA
COUNTY OF WAKE

INTERLOCAL AGREEMENT
BETWEEN
THE TOWN OF WENDELL AND WAKE COUNTY
REGARDING ADMINISTRATION OF WENDELL'S
STORMWATER ORDINANCE AND EROSION AND
SEDIMENTATION CONTROL ORDINANCE

This Interlocal Agreement (the "Agreement") entered into this the _____ day of _____, 2018, by and between the TOWN OF WENDELL, NORTH CAROLINA, being a municipal corporation and public body politic of the State of North Carolina (hereinafter "Wendell") and WAKE COUNTY, NORTH CAROLINA, a public body politic and corporate of the State of North Carolina (hereinafter "Wake"); collectively referred to herein as "the Parties",

WITNESSETH:

WHEREAS, Wake in collaboration with its municipalities often forms citizen task forces to study and make recommendations on critical issues; and

WHEREAS, on February 17, 2006 Wake and its municipalities convened such a task force to study and make recommendations on stormwater management; and

WHEREAS, on November 19, 2007 the task force presented to Wake Commissioners its recommendations including a five-year implementation plan; and

WHEREAS, the County Commissioners appropriated funds to implement the plan's first-year recommendations and directed staff to work with interested municipalities to pursue implementation; and

WHEREAS, a key recommendation indicated that municipalities without stormwater ordinances should: (1) draft and adopt a similar stormwater ordinance and (2) consider an interlocal agreement for Wake to administer the ordinance; and,

WHEREAS, Wendell has worked with neighboring municipalities, diverse business and citizen interests, County staff, State regulators, and others to draft such a similar stormwater ordinance to be County administered within the planning jurisdictions of the towns of Wendell, Rolesville and Zebulon; and

WHEREAS, Wake and Wendell recognize benefits to this agreement including establishing across jurisdictions greater consistency in requirements and review procedures for managing stormwater impacts including flooding, sedimentation and erosion control, water pollution, and degradation of aquatic habitat; and,

WHEREAS, Wake and Wendell entered into an interlocal agreement on January 13, 2010 which expires on June 30, 2018 and both parties desire to execute a new agreement for the continued provision of services; and,

WHEREAS, both parties believe that Wake should continue to administer in Wendell's jurisdiction, with assistance from Wendell as set forth in Section 1.2(B)2 of this Agreement, Wendell's current erosion

and sedimentation control ordinance that is similar to that administered in Wake's jurisdiction; and Wendell's current stormwater ordinance that is similar to the ordinance the County administers in the planning jurisdictions of the Town of Rolesville and the Town of Zebulon; and that consistency of these municipal stormwater ordinances is fundamental to Wake's ability to administer the ordinances with efficiency and practicality; and,

WHEREAS, the parties pursuant to the authority of Chapter 160A-461 *et seq.* of the North Carolina General Statutes are authorized to enter into this interlocal agreement in order to pursue the above stated goals.

NOW THEREFORE, for and in consideration of the premises and covenants contained in the Agreement and the mutual benefits derived therefrom, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I Purpose, Roles, & Responsibilities

1.1. Purpose: This Agreement shall define the terms under which the County shall administer and enforce the Wendell stormwater management ordinance and the Wendell erosion and sedimentation control ordinance.

1.2. Roles and Responsibilities of the Parties: From the "Effective Date" of this Agreement (See Section 3. 8)

A. Wake shall:

1. Provide the personnel, equipment, space, and resources needed to administer the Ordinances.
2. Administer the Ordinances with assistance from Wendell as set forth in Section 1.2(B)2 of this Agreement, including establishing and assigning all duties of Wake employees necessary to administer the Ordinances, and do so in a way that assures a common level of service for Wendell and the County.
3. Collect development and administrative fees from developers applying for stormwater management and erosion and sedimentation control approval within Wendell's jurisdiction. Such fees shall be assessed in accordance with the then current fee schedule adopted by the Wake County Board of Commissioners and shall be retained by Wake to pay for the costs of personnel, equipment, space, and resources needed to administer the Ordinances.
4. Assess and collect in their discretion any civil penalties authorized by the Wendell Ordinances. Any stormwater penalties collected shall be retained by Wake. Erosion and sedimentation control penalties collected by Wake shall be remitted to the N. C. Civil Penalty and Forfeiture Fund in accordance with State law.
5. Communicate regularly with Wendell to foster efficient and effective administrative processes.
6. Determine if Wendell's ordinances meet the requirements set forth in Section 1.2(B)1 of this Agreement for the purpose of Wake's continued administration and enforcement of Wendell's Ordinances under the terms of this Agreement.

B. Wendell shall:

1. Enact and abide by an Erosion and Sedimentation Control Ordinance similar in

content and form to the Wake County Erosion and Sedimentation Control Ordinance in its current form and as it may be amended from time to time; and enact and abide by a Stormwater Management Ordinance similar in content and form to the stormwater ordinance the County administers in the planning jurisdictions of the Town of Rolesville and the Town of Zebulon; in its current form and as it may be amended from time to time.

2. Abide by and perform any functions that may be required by the Stormwater Management Ordinance and Sedimentation and Erosion Control Ordinances as adopted except as otherwise delegated in this Agreement. Specifically, Wendell shall be responsible for: (i) administering the variance procedure dictated by the Stormwater Ordinance including granting or denying petitions thereunder; (ii) administering the Stormwater Ordinance appeal procedure through its Appeal Board, including deciding any appeals thereunder; and (iii) assisting, through Wendell's inspections staff, Wake with the inspection and enforcement of erosion control on residential lots, and illicit discharge.
3. Consider in accordance with legal process any future amendments necessary to keep the Ordinances up to date. Wendell is required to notify Wake's Stormwater Ordinance Administrator in writing of any proposed amendments to the Erosion and Sedimentation Control Ordinance and/or the Stormwater Management Ordinance as soon as practicable but in no event later than thirty (30) business days before such item appears on the Commissioner's agenda.
4. Communicate regularly with Wake to foster efficient and effective administrative processes.
5. Nothing herein regarding the creation of same or similar ordinances shall be construed to divest Wendell of the discretion and powers of its governing bodies; rather this Interlocal Agreement defines the terms under which Wake's administration and enforcement of Wendell's Ordinances shall be practical and efficient.

ARTICLE II

Term

2.1 The term of this Agreement shall be for the period from the date of the last signature hereto through June 30, 2028. Thereafter, this Agreement may be renewed by the parties as set forth herein.

2.2 The parties may renew this Agreement for successive periods of ten (10) years by the written consent of both parties executed with the same formality herein.

2.3 Appropriations for the purposes established herein shall be established through the normal budget and appropriations processes of Wake. Failure of the governing body to adopt the budget ordinance or any capital project funding related to provision of services hereunder prior to the commencement of a new fiscal year shall result in termination of this agreement upon thirty (30) days' notice provided that Wake has first given notice to the Town at the same time that the subject of non-appropriation is to be discussed at any County Manager's meeting, or County Board of Commissioners' meeting. In the event of termination under this Section, Wake will fully cooperate with the Town to ensure the effective transition of administrative responsibilities back to the Town.

2.4 In the event that the Town seeks to amend or revise its Erosion and Sedimentation Control Ordinance or its Stormwater Management Ordinance, then the Town will notify Wake 30 days before, the subject of such amendment to be discussed at any Town Manager's meeting, or Town Board of Commissioners' meeting. In the event that Wake in its sole discretion determines that the Wendell Ordinances no longer conform with Section 1.2(B)1, herein, and determines that as a result,

administration and enforcement of the Wendell Ordinances is no longer feasible, then Wake may terminate this Agreement within one hundred eighty (180) days by giving notice as prescribed by Section 2.5 hereunder.

2.5 Wake and Wendell shall each have the right to withdraw from this Agreement in its entirety for any reason upon giving one hundred eighty (180) days notice to the other party in writing and delivered to the other party as follows:

For the County: Director of Environmental Services
Wake County Government
336 Fayetteville Street
Raleigh, N.C. 27602

For Wendell: Town Clerk
15 East Fourth Street
Wendell, North Carolina 27591-0828

The roles and responsibilities of each party shall terminate 180 days after notice is given by withdrawing party in accordance with this Agreement unless otherwise agreed by the written consent of the parties executed with the same formality as the foregoing document. Furthermore, such right to withdraw and terminate may be invoked as to either the Erosion and Sedimentation Control Ordinance or the Stormwater Management Ordinance without withdrawing from or terminating this Agreement as to the other ordinance.

ARTICLE III Miscellaneous

3.1 Governing Law: The Parties agree that North Carolina law shall govern this Agreement.

3.2 Severability: If any provision of this Agreement shall be determined to be unenforceable by a court of competent jurisdiction, such determination will not affect any other provision of this Agreement.

3.3 Entire Agreement, Amendments: This Agreement constitutes the entire Agreement between the Parties. This Agreement shall not be modified or amended except in a writing signed by all the Parties and executed with the same formality as the foregoing document.

3.4 Liability of Officers and Agents: No officer, agent or employee of any Party shall be subject to any personal liability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute this Agreement in their official capacities only, and not in their individual capacities. Except as delegated by the terms of this Agreement, this section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

3.5 Counterparts: This Agreement may be executed in several counterparts, each of which shall be an original. Alternatively, each Party may execute an original of this Agreement and all individually executed originals shall constitute a single Interlocal Agreement.


3.6 Assignment: No Party shall sell, transfer, assign, or subcontract any interest in or obligation under this Agreement without the prior written consent of all of the Parties.

3.7 No Creation of Agency: Wake and Wendell agree that nothing herein shall be

construed to create an agency relationship between Wake and Wendell or to mandate purchase of insurance by Wake pursuant to N.C.G.S. 153A-435; or to waive Wake's defense of governmental immunity from any cause of action alleged or brought by others against Wake for any reason if otherwise available as a matter of law.

3.8 Effective Date of Agreement: The effective date of this Agreement shall be the date upon which the Wake County Manager executes this agreement and the Wake County Clerk attests to such execution. This date shall be reflected in the first paragraph of this Interlocal Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

<p>TOWN OF WENDELL, NORTH CAROLINA</p> <p>By: <u>Virginia R Gray</u> Virginia Gray, Mayor</p>	<p>This instrument is approved as to form and legal sufficiency.</p> <p><u>James P. Cauley, III</u> James P. Cauley, III, Town Attorney</p>
<p>ATTEST: [SEAL]</p> <p>By: <u>Sherry L Scaggins</u> Sherry L Scaggins, Town Clerk Scaggins</p>	
<p>WAKE COUNTY, NORTH CAROLINA</p> <p>By: <u>David Ellis, County Manager</u></p>	<p>This instrument is approved as to form and legal sufficiency.</p> <p><u>Scott Warren, County Attorney</u></p>

<p>ATTEST: [SEAL]</p> <p>By:</p> <hr/> <p>Denise Hogan, County Clerk</p>	
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