

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

**INTERLOCAL AGREEMENT
BETWEEN
THE TOWN OF MORRISVILLE AND WAKE COUNTY
REGARDING ADMINISTRATION OF
EROSION AND SEDIMENTATION CONTROL ORDINANCE**

This Interlocal Agreement (the "Agreement"), entered into this the ____ day of _____, 2019, by and between the TOWN OF **MORRISVILLE, NORTH CAROLINA**, being a municipal corporation organized under the laws of North Carolina (hereinafter "Morrisville") 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, construction site runoff controls is a minimum measure required by Morrisville's National Pollutant Discharge Elimination System (NPDES) Phase II Stormwater Discharge Permit issued by the North Carolina Department of Environment and Natural Resources; and

WHEREAS, the Wake County Erosion and Sedimentation Control Program complies with the construction site runoff controls minimum measure; and

WHEREAS, Wake has long administered for Morrisville the provisions of Article 10. "Erosion and Sedimentation Control" of the Wake County Unified Development Code ("E&S Ordinance" or "Ordinance"); and

WHEREAS, Wake shall continue to administer in Morrisville's jurisdiction the E&S Ordinance; and

WHEREAS, the parties pursuant to the authority of Chapter 160A-461 *et seq.* of the North Carolina General Statutes and proper resolution by the governing body of Morrisville and the Wake County Board of Commissioners are authorized to enter into this 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

1.01. Purpose: This Agreement shall define the terms under which Wake shall administer and enforce in Morrisville's jurisdiction the E&S Ordinance (the "Wake Ordinance that is the same as the E&S Ordinance administered and enforced in Wake's jurisdiction).

1.02. Roles and Responsibilities of the Parties: From the "Effective Date" of this Agreement (See Section 3.08)

(A) Wake shall:

1. Provide personnel, equipment, space, and resources needed to administer the E&S Ordinance.
2. Administer the E&S Ordinance, including establishing and assigning all duties of Wake employees necessary to administer the Ordinance, and do so in a way that assures a common level of service for Morrisville and Wake.
3. Collect development and administrative fees from developers applying for erosion and sediment control approval within Morrisville'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 Ordinance.
4. Assess and collect in their discretion any civil penalties authorized by the local Ordinance established in accordance with G.S. 143-214.5. . Any penalties collected by authority of the State Agency shall be remitted to the N. C. Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2 or as state law may require.
5. Communicate regularly with Morrisville to foster efficient and effective administrative processes.
6. Develop with Morrisville a Work Plan that details the standard operating procedures for communication, coordination, and implementation of the erosion and sedimentation control program. The Work Plan shall be reviewed and updated at least bi-annually.
7. Determine if the Ordinance meets the requirements set forth in (B)1 hereunder for the purpose of Wake's continued administration and enforcement of the Ordinance under the terms of this Agreement.

(B) Morrisville shall:

1. So long as administration of this Ordinance by Wake is desired, enact and abide by the Ordinance in its current form, or adopt by reference the Ordinance in its current form and as it may be subsequently amended. Nothing herein shall be construed to divest Morrisville of the discretion and powers of its governing bodies; rather this provision defines the terms under which Wake's administration of the Ordinance shall be practical and efficient.

2. Consider in accordance with legal process any future amendments necessary to keep the Ordinance up to date for the jurisdiction of Morrisville. Morrisville is required to notify Wake's Environmental Services Director in writing of any proposed or approved amendments to the Ordinance specific to Morrisville as soon as practicable but in no event later than thirty (30) days before the date such item appears on the Morrisville Town Council's agenda.
3. Communicate regularly with Wake to foster efficient and effective administrative processes.
4. Develop with Wake a Work Plan that details the standard operating procedures for communication, coordination, and implementation of the erosion and sedimentation control program. The Work Plan shall be reviewed and updated at least bi-annually.

ARTICLE II

Term

- 2.01. The term of this Agreement shall be for a period of five(5) fiscal years. The first year hereunder shall commence on the first day of July 2019 and shall run through the end of the then current fiscal year, with successive years hereunder to begin July 1 and end June 30. The agreement will terminate on June 30, 2024 unless renewed by the parties as set forth herein.
- 2.02. The parties may renew this Agreement for successive periods of five(5) years by the written consent of both parties executed with the same formality herein.
- 2.03. 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 effective for the next fiscal year with no requirement of compliance with the notice provisions of Section 2.04.
- 2.04. In the event that either party in its sole discretion determines that the Morrisville Ordinance no longer conforms with Section 1.02(B)1, herein, and either party determines that as a result, administration and enforcement of the Morrisville Ordinance is no longer feasible, then either party may terminate this Agreement within ninety (90) days by giving notice as prescribed by Section 2.05 hereunder, notwithstanding that the shorter time provision shall apply. At the execution of this Agreement, the parties agree that the Morrisville Ordinance as written conforms with Section 1.02(B)1. This section shall apply to changes or amendments to the ordinance(s) made after the execution of this Agreement which either party may deem non-conforming.
- 2.05. Wake and Morrisville 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 Wake: Joseph Threadcraft, Ph.D., P.E., Environmental Services Director
PO Box 550
Raleigh, NC 27602

For Morrisville: Kent Jackson, P.E., Town Engineer
100 Town Hall Dr
Morrisville, NC 27560

The roles and responsibilities of each party shall terminate 180 days after notice is given by the 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.

ARTICLE III Miscellaneous


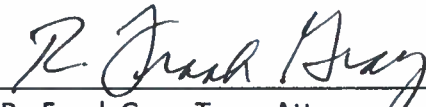

- 3.01. Governing Law:** The Parties agree that North Carolina law shall govern this Agreement.
- 3.02. Severability:** If any provision of this Agreement shall be determined to be unenforceable by a court of competent jurisdiction, such determination will not affect any other provision of this Agreement.
- 3.03. 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 Parties and executed with the same formality as the foregoing document.
- 3.04. 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. This section shall not relieve any such officer, agent, or employee from the performance of any official duty provided by law.
- 3.05. 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.

3.06. 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.

3.07. No Creation of Agency: Wake and Morrisville agree that nothing herein shall be construed to create an agency relationship between Wake and Morrisville 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 against Wake for any reason if otherwise available as a matter of law.

3.08. 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.

TOWN OF MORRISVILLE, NORTH CAROLINA By: <u></u> Martha Paige, Town Manager	This instrument is approved as to form and legal sufficiency. <u></u> R. Frank Gray, Town Attorney
ATTEST: By: <u></u> Eric Smith, Town Clerk	<div data-bbox="565 777 880 1087" data-label="Image"></div>
WAKE COUNTY, NORTH CAROLINA By: _____ David Ellis, County Manager	This instrument is approved as to form and legal sufficiency. _____ Scott Warren, County Attorney
ATTEST: By: _____ Denise Hogan, County Clerk	<div data-bbox="657 1438 743 1470" data-label="Text"><p>[SEAL]</p></div>