



CONTRACT NO: _____

PROJECT NAME: _____

This CONTRACT, made and entered into this date _____ (“Effective Date”) by _____, hereinafter referred to as the “Applicant” and the CITY OF CHARLOTTE, a municipal corporation of Mecklenburg County, North Carolina, hereinafter referred to as the “City.”

WITNESSETH

WHEREAS, Applicant desires to construct and install potable water and/or sanitary sewer infrastructure including any appurtenant structures and equipment, to serve property and desires to construct the water and/or sewer infrastructure at Applicant’s own cost and expense (“Applicant’s Infrastructure”).

WHEREAS, Applicant has requested permission from the City to connect Applicant’s Infrastructure to the existing water and/or sewer system operated by Charlotte Water, a department of the City.

WHEREAS, Applicant also desires to donate Applicant’s Infrastructure to the City.

WHEREAS, the City is willing to accept the Applicant’s donation of Applicant’s Infrastructure (“Donated Facilities”) in accordance with the agreement of the parties to the terms and conditions set forth below.

THEREFORE, the parties hereby agree as follows.

WITNESSETH

1. *Project Description*. The Applicant’s Infrastructure shall be described on Exhibit 1 which is incorporated into this Contract.
2. *Modification of Project*. If the Applicant’s Infrastructure is modified after the Effective Date of this Contract, then Exhibit 1 or any subsequent exhibit may be modified without written agreement of the City and Applicant. Any modification by Applicant to Exhibit 1 or any subsequent exhibit shall be submitted through a Revision to Approved Plans (RTAP) and shall be reviewed by the City through the RTAP for approval. The City’s approval constitutes a Modification of Project for purposes of this Paragraph.

3. Construction of Project. Applicant's Infrastructure must commence construction within six (6) months of the Effective Date and must be completed within twenty-four (24) months of the Effective Date.

4. Warranties for Applicant & City.

- a. Each party represents that it is a legal entity and if incorporated, duly incorporated, validly existing and in good standing under the laws of the state of its incorporation or licensing and is qualified to do business in North Carolina;
- b. Each party represents that it has all the requisite power and authority to execute, deliver and perform its obligations under this Contract;
- c. Each party represents that its execution, delivery, and performance of this Contract have been duly authorized;
- d. Each party represents that no approval, authorization or consent of any other governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Contract;
- e. In connection with its obligations under this Contract, each party shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and
- f. Each party represents that its performance of this Contract will not violate any of its contracts or agreements with third parties or any third party rights (including but not limited to non-compete agreements, non-disclosure agreements, patents, trademarks or intellectual property rights).

5. Warranties & Covenants of Applicant.

- a. Applicant acknowledges and agrees that it remains liable for any and all costs incurred to furnish and construct the Applicant's Infrastructure. No cost or liability shall be incurred by the City.
- b. Applicant shall employ a Professional Engineer registered in North Carolina at Applicant's own cost and expense. Applicant's Professional Engineer shall design, lay out, and supervise the construction of the Applicant's Infrastructure. Applicant's Professional Engineer shall be responsible for the accuracy and completeness of the Applicant's Infrastructure as shown on the original edition and final edition of the construction plans.
- c. Complete plans and profiles detailing all proposed construction and equipment must be approved by Charlotte Water's Chief Engineer prior to beginning any construction. Said construction plans shall be prepared on City standard plan and profile paper as provided to the Applicant by Charlotte Water and have met the plans, specifications, and standards of Charlotte Water.

- d. All construction pertaining to Applicant's Infrastructure shall be performed by a licensed utility contractor. The Applicant agrees to furnish Charlotte Water with the name and license number, as listed with the appropriate North Carolina licensing board, of the utility contractor who has been retained to construct the before-described Applicant's Infrastructure.
- e. Applicant shall construct the Applicant's Infrastructure according to the Plans and Profiles as approved by the Charlotte Water's Chief Engineer and in strict accordance with the current specifications and design criteria of the Charlotte Water.
- f. Applicant agrees to furnish prior written notice to the Charlotte Water's Chief Engineer as to the exact date construction will begin, and further agrees to furnish the Chief Engineer every reasonable facility to ascertain whether or not the work as performed is in accordance with the specifications.
- g. It is further understood and agreed that the Applicant shall remove any work or materials deemed to be unsatisfactory by the Charlotte Water's Chief Engineer and shall rebuild and replace same to the standard required by the specifications, all at Applicant's own expense.
- h. Upon completion of Applicant's Infrastructure, Applicant shall provide written notice to Charlotte Water's Chief Engineer for a final inspection to be scheduled.

6. City Inspectors.

- a. It is understood and agreed that inspectors employed by the City shall be stationed at the work to report the progress and performance of the work, and shall be authorized to inspect any part of the work done and any material furnished, including its preparation or manufacture. Such inspectors, however, shall not relieve the Applicant from any obligation to perform all of the work strictly in accordance with the Specifications.
- b. Applicant's Infrastructure shall be constructed in the presence of the Charlotte Water's Chief Engineer or authorized inspectors. Charlotte Water's Chief Engineer may waive this requirement in writing to Applicant.
- c. In case of any disputes arising as to the materials furnished or the manner of performing the work, Charlotte Water's Chief Engineer shall have authority to reject materials or suspend work until the questions at issue can be referred to and decided by the Charlotte Water Director or designee.

7. Indemnity. To the fullest extent permitted by law, Applicant, Applicant's licensed utility contractor and/or any subcontractor, Applicant's Professional Engineer, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable ("Indemnifying Party"), agrees to defend, indemnify and hold harmless the City, its officers, agents and employees ("Indemnified Party") from and against any and all claims, damages, costs, expenses and liabilities (including attorneys' fees, expert witness fees, court costs, and similar costs), arising out of or related to the Applicant's Infrastructure caused by Indemnifying Party or occurring before acceptance of the Donated Facilities in accordance with Paragraph 9. Without limiting the foregoing, all of the provisions of Paragraph 7 shall apply without limitation to any claim or action in the nature of: (i) trespass; (ii) inverse condemnation; (iii) nuisance or similar claim or action for damage to real and/or personal property; and/or (iv) the amount or type of damages, compensation or benefits payable by or for the Indemnifying Party under Workman's Compensation Acts, Disability Benefits Acts or other employee benefits acts.
8. Applicant's Infrastructure Requires Connection to Another Infrastructure Project.
 - a. Applicant's Infrastructure may require a connection to another project constructing and installing potable water and/or sanitary sewer infrastructure, including any appurtenant structures and equipment ("Other Project"). The Other Project may be constructed by the City or a third party.
 - b. Applicant expressly acknowledges that completion of the Other Project must occur before Applicant's Infrastructure could be subject to all of the provisions of Paragraph 10.
 - c. In such an event, Applicant expressly assumes any and all risk associated with the Applicant's Infrastructure including, but not limited to, any risk that Applicant's Infrastructure is completed before the Other Project is completed. Consequently, Applicant hereby agrees to hold harmless the City, its officers, agents, and employees from and against any and all claims, damages, costs, expenses and liabilities (including attorneys' fees, expert witness fees, court costs, and similar costs), arising out of or related to the Other Project.
9. Default.
 - a. Failure to adhere to the construction deadlines set forth in Paragraph 3 shall constitute an event of default. The City, upon a thirty (30) day written notice and Applicant's failure to complete same within said thirty (30) days, may terminate the Contract.
 - b. The ownership rights to any and all of Applicant's Infrastructure shall be transferred to the City free and clear of all liens and claims after termination of this Contract.
 - c. All easements and/or rights-of-way directly related to the Applicant's Infrastructure will be transferred to the City in a form satisfactory to the City within thirty (30) days after termination of this Contract.

- d. In the event of termination resulting from a default by Applicant, the following paragraphs of Contract shall remain in full force and effect: 5.a., 7, 11, 12, and 13.

10. System Acceptance & Operations.

- a. Until the City accepts of the donation of Applicant's Infrastructure, then ownership of and responsibility for Applicant's Infrastructure shall remain with the Applicant.
- b. Authorization for the final connection from the Applicant's Infrastructure to the existing water and sewer system operated by Charlotte Water will not be authorized until all work has been approved by Charlotte Water's Chief Engineer. No authorization shall be granted for any additions or extensions of Applicant's Infrastructure that are not shown or depicted in the Project Description set forth in Paragraph 1 or Modification of Project set forth in Paragraph 2.
- c. Applicant shall furnish the original drawings of all construction plans, revised to show any and all revisions encountered during construction, to Charlotte Water marked "As-Built". The final plans shall show the actual condition in which the Applicant's Infrastructure was physically constructed and/or installed. Further, the final plans shall show the correct location of the Applicant's Infrastructure as it relates to easements, right-of-way lines, property lines, buildings, underground and/or overhead utility lines, roadways, railroads, and all other physical features that would have any effect or influence upon the constructed facility. These drawings shall become the property of the City. Applicant and City agree that the inclusion of any final plan is subject to the provisions of Paragraph 2. Any final plan may be retained in any file of the City and the parties will not require that it be attached to this Contract if it is subject to the provisions of Paragraph 2.
- d. Applicant shall offer the Applicant's Infrastructure as a donation to the City and the City shall accept the donation of Applicant's Infrastructure; provided, (i) Applicant's Infrastructure has complied with Paragraph 1; (ii) Applicant's Infrastructure has complied with Paragraph 2, if appropriate; (iii) Applicant has paid all fees assessed by the City, and (iv) Applicant has authorization for a final connection as set forth in Paragraph 9.b.
- e. Upon acceptance of the donation, the City shall (i) own, be responsible, operate, and maintain the Donated Facilities; and (ii) collect all fees for service rendered and all lateral connections made from the Donated Facilities, at the usual rates charged for such service, and all such collection shall be retained by the City.

11. No Successors and Assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement. Any successor-in-interest of Applicant or assignment by Applicant renders this Contract null and void. Any successor-in-interest of Applicant or assignee of Applicant may seek to engage the City with a new contract regarding the Applicant's Infrastructure, but the City is under no obligation to sign a contract with such successor-in-interest of the Applicant or assignee of the Applicant.

12. Entire Agreement; Governing Law. This Contract constitutes the entire agreement between City and Applicant with respect to the subject matter hereof and supersedes in their entirety all prior undertakings and agreements of City and Applicant with respect to the subject matter hereof. This Contract shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to the conflicts of law provisions of the State of North Carolina or of any other state.

13. No Obligation To Levy Taxes. This Contract shall not be construed to obligate the City, expressly or by implication, to exercise its power to levy taxes either to make payments falling due under this Contract, or to pay any judgment entered against the City as a result of the City's breach of this Contract.

14. No Liability For Delays. It is agreed that the City shall not be liable to the Applicant, its agents or representatives or any subcontractor for or on account of any delay in the performance of any of its obligations hereunder. The City shall not be liable under any circumstances for lost profits or any other consequential special or indirect damages.

15. Amendments. This Contract or any provision hereof may be amended only by the written agreement of City and Applicant.

16. Notices. Unless otherwise provided herein, all notices required or permitted hereunder shall be in writing and deemed effectively given upon personal delivery or three days after deposit in the United States Post Office, by registered or certified mail, postage prepaid, addressed to:

Applicant:

c/o: _____

PHONE: _____

EMAIL: _____

With Copy To:

c/o: _____

PHONE: _____

EMAIL: _____

City: Charlotte Water
c/o Keri Cantrell, PhD, PE, Chief Engineer
5100 Brookshire Blvd.
Charlotte NC 28216
PHONE: 704-336-1015
EMAIL: Keri.Cantrell@charlottenc.gov

With Copy To: City Attorney's Office
c/o Thomas E. Powers III
600 East Fourth Street, 15th Floor
Charlotte, NC 28202
PHONE: 704-336-5877
EMAIL: Thomas.Powers@charlottenc.gov

17. Counterparts. This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
18. Authority To Terminate. The following persons are authorized, consistent with this Contract, to terminate this Contract on behalf of the City: (a) the City Manager; (b) any designee of the City Manager; (c) Director of Charlotte Water; or (d) any designee of the Director of Charlotte Water.
19. Relationship Of The Parties. The relationship of the Parties established by this Contract is solely that of independent contractors, and nothing contained in this Contract 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 venturers, 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.
20. Severability. The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Contract shall not affect the validity of the remaining portion of this Contract so long as the material purposes of this Contract can be determined and effectuated. If any provision of this Contract is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

IN WITNESS HEREOF, the Parties hereto have each approved and executed this Agreement as of the date first set forth above.

_____ (APPLICANT):

BY: _____
signature

print name

title

witness signature

print name

title

CHARLOTTE WATER,
a division of the City of Charlotte

BY: _____
signature

print name

title

witness signature

print name

title