

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

**2021-2022 Interlocal Cooperation Agreement
Between the City of Durham and the Durham County Soil and Water Conservation
Department regarding Installation of Green Infrastructure Measures**

This is an Interlocal Cooperation Agreement (“Agreement”) between Durham County, by and through the “Durham County Soil and Water Conservation Department” (“County” or “Department”), and the City of Durham, a North Carolina municipal corporation, (“City”). This agreement is made pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes.

The parties agree as follows:

SECTION 1. PURPOSE

The City of Durham is collaborating with the Durham County Soil and Water Conservation Department (DCSWCD) on a project using grant funds from the Southeast Sustainable Communities Fund (SSCF). The primary goals of the project are to address climate change by reducing stormwater runoff, streambank erosion and flooding in low-income neighborhoods in the Ellerbe Creek Watershed of Durham and improving energy and water efficiency in homes in these same neighborhoods. The proposed project will install stormwater mitigation measures such as cisterns, rain gardens and swales on homes and properties, as well as planting trees and stabilizing streambanks along streams that are vulnerable to erosion and flooding. The project will weatherize homes in those same neighborhoods, install water-saving devices, and provide homeowners with information about available incentives for further energy savings. An important secondary goal is to provide disadvantaged students with an opportunity to learn green infrastructure job skills through participation in the Bionomic Education Training Center (BETC) program.

SECTION 2. RESPONSIBILITIES

The Durham County Soil & Water Conservation Department will manage the green infrastructure portion of the grant project and will be responsible for the deliverables listed below. Unless noted, where a deliverable specifies a calendar quarter for performance, the deadline shall be the last workday of the third month of the calendar quarter.

- A. Work with project partners to select 7 neighborhoods and at least 50 homes for project inclusion that are low-income as defined by the U.S. Treasury, that have a low tree canopy, are experiencing flooding due to climate change and stormwater runoff, or have homes in need of weatherization – 1st Quarter 2021 (25 landowners) and 1st Quarter 2022 (25 landowners).
- B. Educate at least 40 landowners in targeted neighborhoods about the impact of stormwater runoff and the purpose of Best Management Practices (BMPs) – 1st Quarter 2021 (20 landowners) and 1st Quarter 2022 (20 landowners).
- C. Conduct searches, interview and hire up to 126 Bionomic Education Training Center (BETC) program supervisors and students in partnership with the Durham Public Schools – 2nd Quarter 2021 and 2nd Quarter 2022.

- D. Implement BETC Training Program to install 30-40 total stormwater mitigation measures such as downspout disconnections, cisterns, rain gardens and swales on homes and properties in low-income neighborhoods, as well as planting 100 total trees and stabilizing 150 total linear feet of streambank along streams that are vulnerable to erosion and flooding – 2nd and 3rd Quarter 2021 (15-20 measures, 50 trees, 75 linear feet of streambank) and 2nd and 3rd Quarter 2022 (15-20 measures, 50 trees, 75 linear feet of streambank).
- E. Submit quarterly progress reports. These reports will be brief (2-3 pages) and will include: quantified progress on each of the deliverables specified in this section, results achieved to date (outputs and outcomes), funds spent to date, project timeline, and budget. Funding may be withheld if performance of the deliverables is delayed or does not occur.

SECTION 3. FUNDING

The City of Durham will disburse the following grant funds to the Durham Soil & Water Conservation Department during the two-year grant period (2021-22):

Student stipends	\$52,800.00
<i>Durham Public Schools Career & Technical Education will administer these funds)</i>	

Teacher stipends and training	<u>\$48,000.00</u>
<i>(Durham Public Schools Career & Technical Education will administer these funds)</i>	

Total to transfer to DPS through the DCSWCD	\$100,800.00
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Stormwater BMP materials and supplies	\$30,000.00
<i>(Durham County Soil and Water Conservation Department will administer these funds)</i>	

Contract services for BMP installations	<u>\$57,200.00</u>
<i>(Durham County Soil and Water Conservation Department will administer these funds)</i>	

Total for DCSWCD for implementation	\$87,200.00
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Total Grant Funding	\$188,000.00
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Durham County Soil and Water Conservation Department and Durham Public School Career & Technical Education will provide grant matching funds over two years in the following amounts:

Stormwater BMP materials and supplies	\$40,000.00
<i>(County Impaired Stream Improvement Program)</i>	

Project administration (in-kind)	\$15,000.00
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Student stipends	<u>\$12,300.00</u>
<i>(Durham Public Schools Career & Technical Education)</i>	

Total Match Funding	\$67,300.00
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SECTION 4. TERM

This Agreement shall become effective upon proper execution by both the Department and the City and shall expire on December 31, 2022.

SECTION 5. AMENDMENTS

This Agreement constitutes the entire understanding between the County and the City with respect to the subject matter hereof and may be amended at any time by execution by both parties through written amendment. The City Manager and County Manager may negotiate and execute written amendments to this Agreement, without separate adoption by their respective governing bodies, as necessary to achieve the program objectives through time extensions and other reasonable modifications, so long as the modified terms of the amendment do not increase the financial obligations of the parties.

SECTION 6. APPOINTMENT OF PERSONNEL

Except to the extent provided otherwise in this Agreement, it is agreed that the Durham County Soil and Water Conservation Department Director shall designate persons to carry out the Department's obligations under this Agreement, and that the Director of City General Services shall designate persons to carry out the City's obligations under this Agreement.

SECTION 7. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with laws of the State of North Carolina. The exclusive forum and venue for all actions arising from this Agreement shall be brought in the General Court of Justice in Durham County.

SECTION 8. HEADINGS

The subject headings in this Agreement are included for the purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been written by both parties.

SECTION 9. E-VERIFY

E-Verify Requirements. (A) If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) the Department represents and covenants that the Department and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor's subcontractors," and "comply" as used in this subsection (A) shall have the meanings intended by NCGS 143-129(j); shall include the Department; and (iii) the City is relying on this subsection (A) in entering into this contract. (B) If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

SECTION 10. Notice.

(a) In General. This subsection (a) pertains to all notices related to or asserting default, breach of contract, claim for damages, suspension or termination of performance, suspension or termination of contract, and extension or renewal of the term. All such notices must be in writing and made by personal delivery, UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or certified United States mail, return receipt requested; in addition, subsection (b) must also be complied with.

(b) Additional Notice by Fax or Email. In addition to complying with subsection (a), the party giving notice or other communication shall also send it by fax or email if the other party has provided a valid, working fax number or email address.

(c) When Notice Period Is Less than 9 Days. If a required notice period is less than 9 days, the party shall also make reasonable attempts, before or promptly after giving written notice under subsections (a) and (b), to use a telephone to orally communicate the substance of the contents of the written notice. Communicating the substance of the contents by an in-person conversation will satisfy the preceding sentence.

(d) Change of Address; Discovery of Invalid Fax Number or Email Address. A change of address, fax number, email address, telephone number, or person to receive notice may be made by either party by notice given to the other party. At any time that a party discovers that the other party has provided it a fax number or email address that is not valid, the discovering party shall provide notice of the discovery to the other party, so that it can substitute a valid fax number or email address.

(e) Date Notice Deemed Given. If a notice is sent by United States mail, it is deemed complete upon actual delivery or on the third day following the day on which it is deposited with the United States Postal Service, whichever occurs first. Notice is deemed given when both subsection (a) and subsection (b) have been complied with.

(f) When Undeliverable Notice Is Deemed Sent. If a notice is undeliverable because the address or other information provided to the sender by the other party is incorrect, incomplete, or out of date, the notice will be deemed sent on the date that the sender attempts to deliver by fax or email, or the date it places the notice in the custody of UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or the U. S. Postal Service for certified United States mail, return receipt requested. If a fax is not received because the recipient's fax number is busy on three attempts to fax that are at least ten minutes apart during a 4-hour period, the fax will be deemed undeliverable.

(g) Addresses. Subject to change pursuant to subsection (d), the addresses for these notices, are:

To the City:

Jina Propst
Director, General Services Department
City of Durham

101 City Hall Plaza
Durham, NC 27701-3329
The fax number is (919) 560-4970.
Email: jina.propst@durhamnc.gov

To the Department:

Eddie Culberson
Durham County Soil & Water Conservation District
201 East Main Street
Durham, NC 27701
The fax number is (919) 328-6192.
Email: eculberson@dcnc.gov

SECTION 11. Liability.

- A. Liability. To the extent permitted and in the manner prescribed under applicable law, the City and County agree to each be responsible for their own negligence and the negligence of their employees and agents. The Parties neither waive any rights or defenses under applicable law, nor do they waive any defense of sovereign or governmental immunity except to the extent provided in applicable law.
- B. Survival. This section shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise).

SECTION 12. Termination for Convenience ("TFC"). (a) *Procedure.* Without limiting any party's right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations.* Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate. (c) *Payment.* The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

SECTION 13. Miscellaneous

(a) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(b) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(c) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(d) Assignment, Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(e) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(f) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(g) EBOP. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(h) No Third Party Rights Created. This contract is intended for the benefit of the City and the County and not any other person.

(i) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this

instrument. (4) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar day. (8) The word "Work" is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

(j) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action. In testimony whereof, the Department has caused this Agreement to be signed in its name by its Department Director, and the City by the City Manager, and they, acting under and by virtue of the authority in them vested, have hereunto set their hand and seal, the days and year written below.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed on the day and year first above written, in their respective names by their proper officials of each of the public body.

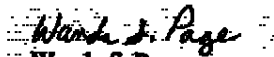
ATTEST:

Attest:


Ashley Wyatt
Deputy City Clerk
The City of Durham, NC



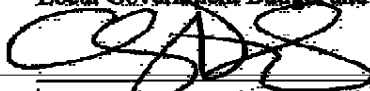
CITY OF DURHAM


Wanda S. Page
Interim City Manager

BY: _____

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

Pre-audit certification:


Deputy Finance Officer – Emily Desiderio
City of Durham

COUNTY OF DURHAM

ATTEST:

Clerk to the Board

BY _____
_____ County Manager

State of North Carolina

County of Durham

I, a Notary Public in and for the aforesaid County and State certify that

_____ personally appeared before me this day, and acknowledged that he or she is the Clerk to the Board of Commissioners for the County of Durham, a N. C. political subdivision, and that by authority duly given and as the act of the County, the foregoing contract or agreement with the City of Durham was signed in its corporate name by the County Manager, sealed with its corporate seal, and attested by its said Clerk. This the _____ day of _____, 20_____

(Official Seal)

Official Signature of Notary

My commission expires:
