



**CITY OF SHELBY
STORMWATER INFRASTRUCTURE ASSISTANCE PROGRAM**

Background:

The City of Shelby maintains drainage facilities within public City rights of way as defined in the City of Shelby Code of Ordinances. The City does not have operation or maintenance responsibilities of drainage facilities on private property unless a legal permanent drainage easement has been established and recorded at the Cleveland County Register of Deeds.

This program was established to assist private property owners within the jurisdictional limits of Shelby with the costs of making drainage improvements (including driveway pipes) and correcting illicit discharges and/or illicit connections on private property. Ongoing funding for this program is considered each fiscal year with the adoption of the City's operating budget. The following information will help property owners apply for assistance.

Policy:

1. In order to qualify for City funding assistance through the Stormwater Infrastructure Assistance Policy, the applicant(s) shall have no past due fees to the City.
2. Applicant(s) shall review the stormwater infrastructure or drainage situation with Stormwater Departmental Staff.

Contact: City of Shelby
Attn: Stormwater Coordinator
PO Box 207
Shelby, NC 28151-0207
Telephone: (704) 484-6840

3. Stormwater Departmental Staff shall advise applicant(s) of appropriate engineering solutions, necessary limits of a project, and whether or not the project qualifies for the assistance program.
4. Applicant(s) shall submit a complete application including a description of the stormwater issue with supporting documentation (flooding frequency, photographs, etc.) and a \$50 non-refundable application fee.
5. A notification letter will be sent to the applicant(s) identifying if the request has been granted or denied. A project may be approved and awarded assistance funding when funding is available during the next budget cycle if there is inadequate funding in the current budget.

6. If an engineering design is deemed necessary by the City, the City will pay for 100% of the design assistance from a third-party consulting engineer. Should the property owner(s) decide not to complete the project, the property owner(s) involved shall pay 50% of the actual engineering expenses.
7. It is the City's responsibility to solicit three competitive bids from qualified contractors for the work based on the approved engineering design and specifications. All obtained bids shall be reviewed with the property owner. The City reserves the right to refuse any and/or all bids. In the case of driveway pipes, the City may utilize City equipment and labor to attempt to flush, or otherwise remove debris from the pipe at a cost to the applicant of \$50 per incident. The City will be held harmless related to the cleaning of driveway pipes as stated in the required agreement.
8. A City of Shelby Stormwater Infrastructure Assistance Agreement between the City and the property owner(s) must be executed before any assistance-eligible work commences.
9. The City shall acquire all temporary construction easements from neighboring property owners as necessary. Any costs associated with acquiring easements will be included in the total construction costs to be shared by the City and property owner(s).
10. The City or a third party delegated by the City will provide construction oversight and inspections to ensure that the project is completed in substantial conformance with the proposal.
11. Within 14 days of project completion, all associated agreements and/or easements will be recorded in the Office of the Register of Deeds of Cleveland County to give notice to subsequent purchasers of future maintenance conditions that are stated in the agreement(s).
12. If executed agreements and deposits (if applicable) are not received within 30 days following presentation of the agreements by the City, the City will provide a second notice that agreements should be executed and/or deposits made. If agreements and/or deposits are not received within 30 days following the second notice, the project will be terminated, and deposits will be refunded. Application fees will not be refunded.

Funding:

1. Projects will be funded using a cost-sharing formula of 80% City / 20% applicant(s) for residential properties and 50% City / 50% applicant(s) for commercial properties with a cap of \$50,000 for the total project cost. Participation by City in projects will be for the most feasible, cost efficient solution as determined by the City. Applicant(s) may select alternative solutions, but will be responsible for all costs in excess of the City's share as outlined above.
2. In the case of clogged driveway pipes, the City will utilize City equipment to attempt to flush debris from the pipe at a cost of \$50 per incident. In the event that the issue is not abated by flushing debris from the pipe, construction alternatives will be evaluated

and may be funded based on Items (1) and (2) within this section if requested by the private property owner.

Evaluation of Assistance Requests:

1. Assistance will be evaluated individually, based on established priorities, subject to available funds, and awarded in the order they are received. In the event of imminent structural damage, the City reserves the right to alter the order in which assistance funding is distributed.
2. City funding up to an amount of \$10,000 may be awarded by the City Manager. Funding in excess of \$10,000 shall be presented to the Shelby City Council for consideration.
3. Proposed projects that are located within a North Carolina Department of Transportation (NCDOT) right of way shall be addressed at the discretion of NCDOT. The City of Shelby does not have maintenance responsibilities within NCDOT right of way. The City will provide assistance with cleaning driveway pipes within NCDOT right of ways within the City's jurisdictional limits.
4. Optional work within the street right of way (e.g., relocating a drain pipe from private property to public right of way) must include private cost participation as specified in this assistance program.
5. The proposed construction project must be reasonably expected to have a life cycle of more than five (5) years. To fulfill this standard, property owners shall commit to a higher level of maintenance than they have provided in the past during the five (5) year period following completion of construction (e.g., keeping ditches free from overgrowth and debris).
6. Established assistance prioritization shall be as follows:
 - a. Threat to an inhabited home from severe erosion.
 - b. Threat of flooding to an inhabited home.
 - c. Damaged or undersized drainage features connecting to street drains.
 - d. Damaged or undersized drainage features on private property (not connected to street drains).
 - e. Illicit Discharges or Illicit Connections.
 - f. Private property flooding (not impacting a permanent structure).
 - g. The system is not part of the NCDOT maintained stormwater system.
7. An issue caused by stormwater runoff that originates on an individual parcel is the responsibility of the property owner and is not eligible for assistance through this policy (i.e. roof, driveway, and/or parking lot runoff that originates solely on said property).

Payment:

Applicants may complete the payment of their portion by choosing one of the following two methods found in this section:

1. Applicant(s) may pay their share of the cost by depositing with the City a minimum of 50% of the amount equal to the estimated share and executing an agreement regarding responsibilities of the applicant(s) and the City. The remainder of the applicant(s) share is due at the time of written notification and documentation of project completion and total construction costs by the City. The applicant(s) costs will not exceed the applicable percentage of the actual construction costs, and any payment in excess of this calculated cost will be refunded to the applicant(s).
2. Applicant(s) may pay their portion of the projects costs in installments under the following conditions:
 - a. Applications for installment payments shall be submitted with a non-refundable \$200 application fee to cover credit checks, appraisals, and other costs associated with a special assessment.
 - b. A first or second position lien in an amount no greater than 80% of the unencumbered property value will be considered sufficient security for the loan.
 - c. After determination that income, credit history, security, and other normal requirements for the assessment have been met, the application for installment payments will be approved by the City.
 - d. The applicant shall submit a deposit at least equal to 10% of the actual construction cost and an executed agreement to pay the remainder in equal payments over a time period not to exceed 5 years. The first payment will be due one year after notification of project completion by the City.
 - e. The minimum assessment amount will be \$1,000.

Restrictions:

1. Funding may not be used on storm drainage system features within five feet of a permanent structure.
2. Funding may not be used on storm drainage system features underneath permanent structures.

Legal Background:

The North Carolina Supreme Court formally adopted the common law doctrine known as the “rule of reasonable use” with respect to surface water drainage in 1977. The rule of reasonable use allows each landowner to make reasonable use of his land even though by doing so, he alters in some way the flow of surface water, thereby harming other landowners. Liability is incurred only when the harmful use is found to be unreasonable and causes substantial damage. The questions of what is unreasonable and what constitutes substantial damage are dependent upon the circumstances of each situation, and can be determined only through litigation.

The State Court has ruled on several cases to establish the following general principles that are applicable to stormwater drainage throughout North Carolina:

1. Every property owner has the right to develop his property to the extent allowed by local ordinances (zoning and subdivision ordinances).
2. Development results in more runoff at a higher velocity. Downstream property owners are obligated to accommodate the increased runoff (except for diversions).
3. Municipalities are not obligated to address storm drainage on private property.
4. If a City has accepted streets with insufficient drainage facilities, the City must use reasonable diligence to keep the drains in good repair, but the City is not obligated to upgrade them.
5. If a City annexes an area with drainage problems, the City is required to provide the same level of service to that area as is provided Citywide. The City is not obligated to correct existing problems in a newly annexed area.
6. If a City “exercises control” over a drainage way on private property, the City can be held perpetually liable for that drainage way. This is the primary reason that municipalities throughout North Carolina are hesitant to make drainage improvements on private property. The phrase “exercises control” is not well defined. It may depend on the circumstances of each situation, and it may become the key question in litigation.

Abating a nuisance on private property in accordance with the City’s Nuisance Ordinance is not considered “exercising control” and protects the City from assuming perpetual liability. Similarly, providing assistance to property owners is not considered “exercising control” and protects the City from assuming perpetual liability. This means that the City cannot control storm drainage on private property or operate a continuous drainage system as it does with the city operated potable water and sanitary sewage systems.



City of Shelby

Stormwater Infrastructure Assistance Program Application

| |
|--------------|
| Date: |
| Fee: \$50.00 |
| Paid: Y N |

Property Location: _____

Applicant(s)' Name: _____

Mailing Address: _____

Email: _____

Phone: _____

Description of Problem: _____

ATTACH SUPPORTING PHOTOGRAPHS (if available)

By signing, I hereby certify that all information that I have provided in this application is correct and complete to the best of my knowledge. I understand that providing false or incomplete information may be grounds for denial of my request for assistance.

 Signature of Applicant

 Date

****DO NOT WRITE BELOW THIS LINE****

Received by:

 City of Shelby

 Date

STATE OF NORTH CAROLINA

COUNTY OF CLEVELAND

**CITY OF SHELBY
STORMWATER INFRASTRUCTURE ASSISTANCE AGREEMENT**

THIS AGREEMENT, is made and entered into this ____ day of _____, 20__, by and between the City of Shelby, a municipal corporation of the State of North Carolina, hereinafter referred to as the CITY, party of the first part, and _____ of _____ (city), _____ (state), hereinafter referred to as the OWNER(S), party of the second part.

BACKGROUND

The CITY, pursuant to City Council Resolution No.3-2016, has adopted a formal policy for providing City assistance for upgrades and repairs to stormwater drainage systems on private property. The OWNER(S), pursuant to this policy, have petitioned the CITY to participate in stormwater drainage improvements within the boundaries of their property, based upon a sharing of costs for such work. These agreements and undertakings are in consideration of the sums agreed to be paid for such work by the OWNER(S), the benefit therefrom according to the public, and the mutual terms and conditions set forth below.

The CITY as specified in Resolution No.3-2016, will perform or contract for improvements as indicated in plans developed by the CITY for the infrastructure improvement project described below:

WHEREAS, the Common Law Doctrine known as the “rule of reasonable use” which has been formally adopted by the North Carolina Supreme Court with respect to surface water drainage allows reasonable alteration of the flow of storm water runoff which may cause harm to properties; and

WHEREAS, there are locations throughout the City of Shelby where the altered flow of storm water runoff through private property interferes with the safety, comfort, welfare, and/or convenience of property owners or the general public; and

WHEREAS, the City, in most cases does not have legal authority to make drainage improvements on private property; and

WHEREAS, the City is willing to award assistance to promote the improvement of drainage facilities on private property and to correct illicit discharges and/or illicit connections on private property in accordance with the City of Shelby Stormwater Infrastructure Assistance Program;

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties agree as follows:

1. The CITY agrees to share in the cost of upgrades or repairs to the stormwater system on or along the property of the OWNER(S) as set forth in, those project plans identified as _____ (This work shall be referred to herein as “the Project”). The CITY agrees to pay a pro-rata share representing 80 percent (residential property) or 50 percent (commercial property) of the actual construction costs of the Project for the most feasible, cost efficient solution determined by the CITY for a project on private property. The CITY agrees to pay 100 percent of design costs for a third-party consulting engineer if deemed necessary by the CITY.

2. The OWNER(S) agree to pay their pro-rata share representing 20 percent (residential property) or 50 percent (commercial property) of the actual construction cost of the Project. OWNER(S) shall pay their share of the cost by depositing with the CITY a minimum amount equal to 50 percent of the preliminary estimated share of the OWNER(S). The remainder of the OWNER(S) share is due at the time of written notification from the CITY of Project completion and total construction costs of the CITY. The OWNER(S) costs will not exceed their pro-rata share of the actual construction costs, and any payment in excess of actual cost will be refunded to the OWNER(S). Should the OWNER(S) choose not to complete the project following a design by a third-party consulting engineer, the OWNER(S) shall pay 50 percent of the engineering design fee.

OWNER(S) may choose to participate in the special assessment payment option, as evidenced by the attachment to this Agreement of a properly executed Note and Instrument Payment Agreement and Deed of Trust. The Project may proceed upon proper execution and submittal to the CITY of the Agreement, Note and Deed of Trust.

OWNER(S) participating in the special assessment payment option are subject to the following conditions:

- a. Applications for installment payments shall be submitted with a non-refundable \$200 application fee to cover credit checks, appraisals, and other costs associated with a special assessment.
- b. A first or second position lien in an amount no greater than 80% of the unencumbered property value will be considered sufficient security for the assessment.
- c. After determination that income, credit history, security, and other normal requirements for the assessment have been met, the application for installment payments will be approved by the City.
- d. The applicant shall submit a deposit at least equal to 10% of the actual construction cost and an executed agreement to pay the remainder in equal payments over a time period not to exceed 5 years. The first payment will be due one year after notification of Project completion by the City.
- e. The minimum assessment amount will be \$1,000.

3. The total project cost shall not exceed \$50,000.

4. The construction contract for the construction of the improvements to the residential or commercial property located at _____ and described in Deed Book _____ Page _____ at the Cleveland County Register of Deeds shall be let for bids and awarded in accordance with Article 8 of Chapter 143 of the North Carolina General Statutes, and specifically including the requirement that any contract be awarded to the lowest responsible bidder. All obtained bids shall be provided to the OWNER(S) for review. The CITY reserves the right to refuse any and/or all bids. The total CITY share of the Project will be 80 percent (residential property) or 50 percent (commercial property) of the actual construction cost of the improvements for the most feasible, cost efficient solution determined by the CITY for the Project on private property. The OWNER(S)' share of cost of the project shall not exceed 20 percent (residential property) or 50 percent (commercial property) of the actual construction cost of the improvements for the most feasible, cost efficient solution determined by the CITY for the project. The work will be undertaken only if CITY funds are available.

5. The CITY shall obtain all temporary construction easements from neighboring property owners. Costs associated with acquiring easements will be included in the total Project costs shared by the CITY and OWNER(S). OWNER(S) shall grant a temporary construction easement to the CITY at no cost.

6. The Stormwater Division reviews and approves the design plans and specifications prior to bid solicitation.

7. The work shall conform to City standards and other applicable local, state, and federal requirements.

8. The CITY, or a third party delegated by the CITY, shall provide construction oversight and inspections to ensure that the Project is completed in substantial conformance with the proposal.

9. In consideration for the CITY's undertaking stormwater drainage improvement assistance on private property, the OWNER(S) hereby agree to discharge, release, and hold harmless the CITY, its agents, employees, and officers, for liability for personal injury or property damage, or both, arising under this Agreement or the work to be performed hereunder. The OWNER(S) hereby agree to discharge, release, and hold harmless the CITY's contractor or contractors for liability for personal injury or property damage, or both, to the extent such are not covered by the contractor's liability insurance.

10. The OWNER(S) acknowledge and agree that no action taken or work performed by the CITY pursuant to this Agreement or the official City of Shelby Stormwater Infrastructure Assistance Program shall constitute a taking or appropriation of the stream, ditch, water course, or drainage way on or along their property as part of the CITY's stormwater drainage system. Further, the OWNER(S) acknowledge and agree that the CITY has assumed no liability over, or responsibility for, their property, the drainage way, or any drainage improvements located on their property. The OWNER(S) agree to be responsible for the future maintenance and repair of all drainage facilities and improvements located on their property.

11. The undertaking of the Project by the CITY shall be conditioned upon full participation in this Agreement and undertaking by all property owners abutting the Project. The OWNER(S) understand and acknowledge that, in the event any of the Project participants fail to make full payment for the cost of the work, or fail to execute all required documents and agreements, the final approval of the Project will be withheld by the CITY, and this Agreement shall be void and of no effect.

12. The CITY and/or the OWNER(S) may withdraw participation in the Project if the actual construction bids exceed the preliminary cost estimate or available City funding.

13. These provisions represent the entire Agreement between the parties and may not be modified by oral representations. As used herein, the plural designation may indicate the singular, where applicable.

14. The OWNER(S)' share of the funding as outlined above must be paid to the CITY following the completion of design plans and bidding, but prior to the execution of any construction contracts.

15. The Project must be expected to have a life cycle of more than five (5) years, therefore the OWNER(S) shall commit to a higher level of maintenance than may have previously been conducted (i.e. maintaining vegetation and/or removing debris from ditches) for a period of five (5) years. The CITY will complete annual inspections during this five (5) year period and notify the OWNER(S) of maintenance issues that exist if any are present.

NOW, THEREFORE, in consideration of the City's willingness to enter into the Agreement, the undersigned agrees that the Agreement shall be governed by the laws of the State of North Carolina and venue for any civil action between the parties shall be Cleveland County Civil Superior Court.

This Agreement shall be binding on the heirs, personal representatives, successors and assigns of the parties with reference to the subject matter of this Agreement.

IN WITNESS WHEREOF, the OWNER(S) have set their hands the date above written.

OWNER(S): _____

Print Name: _____

Title: _____

Print Name: _____

Title: _____

ATTEST: _____

(Seal if appropriate)

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public of the County of _____ and State of North Carolina, do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing Stormwater Infrastructure Assistance Agreement, together with attached addendum/addenda (if applicable).

WITNESS my hand and official seal this ____ day of _____, 20____.

Notary Public

(SEAL)

My Commission Expires: _____

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public of the County of _____ and State of North Carolina, do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing Stormwater Infrastructure Assistance Agreement, together with attached addendum/addenda (if applicable).

WITNESS my hand and official seal this ____ day of _____, 20____.

Notary Public

(SEAL)

My Commission Expires: _____

CITY OF SHELBY,

A North Carolina Municipal Corporation

Rick Howell
City Manager

ATTEST:

Bernadette Parduski, NCCMC, MMC
City Clerk

(SEAL)