

Chapter 100
Cane Creek Water and Sewer District Agreement

[HISTORY: Adopted by the Board of Commissioners of Henderson County. Amended 6-16-2004.]

THIS AGREEMENT, made this the 16th day of June, 2004, by and between Henderson County, a body politic and corporate of the State of North Carolina, hereinafter "County", and the Cane Creek Water and Sewer District, a body corporate and politic of the State of North Carolina, hereinafter "CCWSD".

WITNESSETH:

WHEREAS, since the late 1980s, the County and the CCWSD have constructed and operated a sewerage system within the geographic boundaries of the CCWSD, hereinafter "CCWSD system"; and

WHEREAS, the County and the CCWSD are desirous of updating and formalizing the working relationship in the ownership, operation and administration of the CCWSD system;

NOW, THEREFORE THIS AGREEMENT, that for and in consideration of the mutual promises and covenants contained herein below, the parties agree as follows:

1. Authority.

This agreement is entered into pursuant to the authority granted by [N.C.G.S. Chapter 160A, Article 20](#), [N.C.G.S. Chapter 153A, Article 15](#), and other applicable laws.

2. Purpose.

The purpose of this agreement is to form an undertaking between the County and CCWSD to provide for the construction, ownership, operation, regulation, administration and maintenance of the CCWSD system.

3. Term.

The term of this Agreement is a period of forty (40) years, commencing on the date first written hereinabove. The term shall renew automatically unless the Agreement is sooner terminated in accordance with the terms and conditions contained herein below.

4. Operation and Regulation of the CCWSD System.

The County shall operate and regulate the CCWSD system on behalf of the CCWSD. To this end, the County shall exercise all of the powers granted to the County by [N.C. G. S. Chapter 153A](#) (including but not limited to Article 15), and shall exercise on behalf of the CCWSD all of the powers granted to the CCWSD by [N.C.G.S. Chapter 162A, Article 6](#). The County shall enforce and administer Henderson County Code, Chapter 94, entitled "Sewers" within the geographic boundaries of CCWSD, as such may be amended or enlarged. Nothing herein shall be interpreted so as to prohibit the County from amending, rewriting, or replacing Chapter 94, Sewers with such other ordinance and/or regulations as are necessary or desirable in the discretion of the County to carry out the terms and purposes of this Agreement.

5. Construction, Ownership, Acquisition, Administration, Maintenance and Management of the CCWSD System and other assets.

All real and personal property and Interlocal Agreement Page 1 other assets, both tangible and intangible, of the CCWSD System acquired or constructed from and after the date of this Agreement shall be titled in the name of the CCWSD. The CCWSD does hereby contract with the County to construct, acquire, administer, manage and maintain all of the real and personal property and all other assets, both tangible and intangible, of the CCWSD, whether acquired prior to, contemporaneous with, or subsequent to the date of this Agreement. At any termination or expiration of this Agreement, all such real and personal property and other assets shall remain the property of the CCWSD.

6. Grant of Powers.

CCWSD hereby approves, ratifies, and permits Henderson County Code, Chapter 94, as such as may be modified, amended or replaced by the County, to be in effect within the CCWSD and the County hereby agrees to the same. Such ordinance shall remain in full force and effect within the CCWSD through the term of this Agreement, and the CCWSD hereby grants to the County as allowed by [N.C.G.S. Chapter 162A, Article 6](#) and [N.C.G.S. Chapter 160A, Article 20](#), the authority to exercise all of the CCWSD's powers associated with the County's administration and enforcement of the same. In addition, the County shall have the authority to:

- (a) Construct or acquire any and all real and personal property, and any other assets, both tangible and intangible, in the name of the CCWSD.
- (b) Plan for the future provision of sewer services by the CCWSD system to the residents of the CCWSD, or to other service areas as the County may deem appropriate.
- (c) Contract on behalf of CCWSD and to commit funds of the CCWSD in furtherance of the terms and purposes of this Agreement.
- (d) Adopt an annual budget for the CCWSD.
- (e) Establish and collect (using all methods authorized by applicable laws) such charges and fees for the services provided to the public by the County on behalf of the CCWSD and the sewer services provided by the CCWSD system as either are deemed necessary by the County to provide for the economic stability of the CCWSD system, to provide for the economic stability of the CCWSD enterprise fund, and to fund the terms and purposes of this Agreement. Such revenues shall go into the enterprise fund for the CCWSD.
- (f) Expend CCWSD funds as necessary to carry out the terms and purposes of this Agreement.
- (g) Take any and all other actions on behalf of the CCWSD necessary to carry out the County's authorities, duties and obligations under this Agreement.

7. Employees and Other Expenses.

The County shall employ and supervise, as general County employees, the personnel used to carry out the terms and purposes of this Agreement. In carrying out the County's duties and obligations under this Agreement and the terms and purposes of this Agreement, the Henderson County employees shall have all the jurisdiction, authority, rights, privileges and immunities (including coverage under the workers' compensation laws) which they have when acting on behalf of Henderson County as long as they are acting pursuant to this Agreement and within the scope of their authority or course of their employment. The CCWSD shall reimburse the County for any and all personnel expense incurred in the County's performance of this agreement, including but not limited to, salaries and benefits. Said reimbursement shall be due June 30 of each fiscal year. All other expenses associated with the County's performance of its duties and obligations under this Agreement and the County's performance of all other terms and purposes of this Agreement shall be paid directly from the CCWSD enterprise fund.

8. Debt.

The County shall not have the authority to issue debt in the name of CCWSD. Any debt instrument obligating payment of any funds from the CCWSD enterprise fund shall require the express approval of CCWSD. Notwithstanding the foregoing, the County shall be obligated to pay, from the CCWSD enterprise funds, any and all debt service payments pursuant to any debt instrument approved by CCWSD, whether approved prior to or subsequent to the date of this Agreement.

9. Use of CCWSD Personal Property.

As partial consideration for its duties and obligations under this Agreement, the County shall be authorized to utilize the personal property of the CCWSD to service other water or sewerage systems owned or operated by the County, whether such water or sewer systems are inside or outside of the geographic boundaries of the CCWSD.

10. Amendments or Termination.

Any amendment of any term of this Agreement shall be made by the governing bodies of the County and the CCWSD upon such terms and conditions, which may include fees (or additional fees), as may be acceptable to the parties at that time. This Agreement may be terminated upon the mutual agreement of both parties. No such amendment or termination shall be valid unless it is approved by resolution of both the County and the CCWSD, and evidenced by a written instrument duly executed by both of the parties.

11. Future Ordinances.

Nothing herein shall be construed as a limitation on the ability of the County to adopt new ordinances as may be authorized by applicable laws during the term of this Agreement. Any new County ordinance unrelated to this Agreement shall be effective within the CCWSD to the same extent as in the other unincorporated areas of the County.

12. Amendments to Existing Ordinances.

Nothing herein shall be construed as a limitation on the ability of the County to amend, modify, replace or repeal any County ordinance. Any amendment, modification, replacement, or repeal of any County ordinance unrelated to this Agreement shall be effective within the CCWSD to the same extent as in the other unincorporated areas of the County.

13. CCWSD.

Nothing herein shall be construed as a limitation on the ability of the CCWSD to exercise any and all powers and authorities granted to CCWSD by applicable laws.

14. County.

Nothing herein shall be construed as a limitation on the ability of the County to exercise any and all powers and authorities granted to the County by applicable laws.

IN WITNESS HEREOF, both parties have caused this agreement to be duly approved and ratified by resolution of the respective governing bodies, spread upon the minutes of each, and to be executed in duplicate, each to have the force and effect of an original.