

ROWAN COUNTY

AGREEMENT FOR SERVICES

NORTH CAROLINA

This Agreement is made and entered into between Rowan County, North Carolina (“County”) and W. Brown Construction LLC. (“Provider”).

WHEREAS, the County and the Provider wish to enter into a contract under which the Provider will provide certain specified services and/or materials to the County in exchange for payment. NOW, THEREFORE, in consideration of the mutual covenants, promises, terms, conditions, and agreements herein, the County and the Provider agree as follows:

1. Services To Be Performed. The Provider agrees to perform the services and to provide the materials (all collectively called the “Services”) for the County as described in Section A of the attached Exhibit A (the “Contract Specifications”), which is incorporated into this Agreement by reference as if it were fully set forth herein. The Provider warrants that all materials it provides shall be of good quality and shall meet industry standards and the County’s expectations and approval, and the Provider warrants that it shall perform all Services in a good and workmanlike manner, in accordance with industry standards and the County’s expectations, and to the County’s full satisfaction.

2. Term. The term of this Agreement shall be as provided in Section B of the attached Exhibit A, the Contract Specifications.

3. Payment. In accordance with Section C of the attached Exhibit A, the Contract Specifications, the County agrees to pay the Provider for Services satisfactorily performed in accordance with this Agreement. The County shall pay each properly submitted invoice within thirty (30) days of its submission. Each invoice shall document, to the County’s satisfaction, the work performed and the basis for the amount of payment sought. If the Provider fails to perform in accordance with this Agreement, the County may, without penalty, withhold any payment(s) associated with Services not properly performed until and unless the Provider completes or corrects its performance, as applicable. The County’s remedies under this Agreement are not exclusive and are in addition to all other rights and remedies provided by law.

4. Non-waiver. If the County at any time does not require the Provider to satisfy any of the Provider’s obligations under this Agreement, or if the County fails at any time to exercise any right or privilege granted to it by this Agreement, that shall not waive or limit the County’s ability to require the Provider to satisfy those obligations in the future or the County’s ability to enforce its rights or privileges in the future. If the County waives any breach of this Agreement by the Provider, which shall not be deemed a waiver of any later breach by the Provider, nor shall it be deemed a waiver of this section of the Agreement.

5. Independent Contractor. For purposes of this Agreement, the Provider at all times shall be considered an independent contractor, and the County shall not be deemed the employer of the Provider or of any of the Provider’s agents or employees, nor shall the County be responsible for the actions or omissions of the Provider or its agents and employees. For purposes of this

Agreement, the Provider and its agents and employees shall not be deemed an employee of the County for any purpose, including (by example only and not for purposes of limitation) federal or state income taxation, unemployment benefits, or worker's compensation benefits.

6. Insurance. For the term of this Agreement, the Provider shall maintain at its sole expense the insurance specified in Section E of the attached Exhibit A, the Contract Specifications. All insurance policies shall be issued by a company authorized to issue insurance in the State of North Carolina. Before beginning to perform under this Agreement, the Provider shall provide the County with a certificate of insurance showing that all insurance required by this Agreement is in effect, and the Provider shall keep that certificate current by submitting to the County updated certificates as the Provider's insurance policies are renewed or otherwise modified. The County shall be named as an additional insured. The Provider shall notify the County immediately if any insurance required by this Agreement will be or has been cancelled or not renewed or if the amount of coverage of any such insurance will be or has been reduced.

7. Indemnity. The Provider agrees that it shall defend, indemnify, and hold harmless the County and its officials, employees, and agents from and against any and all losses, liabilities, claims, demands, suits, costs, damages, or expenses (including reasonable attorneys' fees) arising from or related to this Agreement and/or the Services, including (by example only and not for purposes of limitation) those for bodily injury, death, or property damage. The Provider's obligations under this section shall survive termination of this Agreement.

8. Termination. Notwithstanding any other provision of this Agreement (including any provision in the attached Exhibit A), this Agreement may be terminated at any time by mutual written agreement of the County and the Provider, or it may be terminated by the County upon ten (10) days' written notice to the Provider. Ten days' written notice for termination by the County is not required if the County is terminating because the Provider has breached the Agreement. Further this agreement includes the following Non-appropriation Clause: Provider acknowledges that Rowan County is a governmental entity, and the contract validity is based upon the availability of public funding under the authority of its statutory mandate. In the event that public funds are unavailable and not appropriated for the performance of Rowan County's obligations under this contract, then this contract shall automatically expire without penalty to Rowan County thirty (30) days after written notice to Provider of the unavailability and non-appropriation of public funds. It is expressly agreed that Rowan County shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this contract, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its governmental operations. In the event of a change in Rowan County's statutory authority, mandate and mandated functions, by state and federal legislative or regulatory action, which adversely affects Rowan County's authority to continue its obligations under this contract, then this contract shall automatically terminate without penalty to Rowan County upon written notice to Provider of such limitation or change in Rowan County's legal authority.

9. Entire Agreement. This Agreement (including the attached Exhibit A, the Contract Specifications) constitutes the complete and entire Agreement between the County and the Provider concerning the subject matter of the Agreement and supersedes any and all prior agreements, discussions, understandings, promises, or representations concerning that subject

matter. This Agreement may be modified only by a writing signed by both the County and the Provider.

10. Governing Law and Forum for Disputes. This Agreement shall be governed by the laws of the State of North Carolina without regard to North Carolina's choice of law provisions. Any lawsuit or other legal proceeding concerning this Agreement and/or the Services must be filed in Rowan County, North Carolina, unless it is properly filed in federal court, in which case it must be filed in the federal District Court for the Middle District of North Carolina.

11. Severance Clause. If any part of this Agreement is deemed unenforceable by a court of competent jurisdiction, then that part shall be enforced to the greatest extent legally possible, and the rest of this Agreement will remain in full force and effect.

12. Compliance With Laws. The Provider acknowledges and agrees that it will perform all Services and will satisfy all of its obligations under this Agreement in full compliance with all applicable federal, state, and local laws and regulations.

13. Sales/Use Taxes Collection and Refunds: Unless otherwise exempted by North Carolina General Statutes from payment of sales or use taxes, Provider must collect all applicable sales and use taxes due under this Agreement and comply with NCGS Chapter 105. If eligible, the Contractor and all subcontractors shall: (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this contract, pursuant to NCGS 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their reimbursement reports.

14. Records. All materials, reports, etc. generated pursuant to this Agreement shall at all times remain the property of Rowan County, with copies of all such materials, reports, etc. being provided to Rowan County in a timely manner. It is further understood that some materials may be subject to NC Public Records laws, and any request for documents pursuant to such shall be processed through Rowan County prior to their release.

15. Repair of Damages. The Provider shall promptly and fully repair any damages that it or its employees or agents cause to the County's property. Alternatively, the County may choose in its discretion to require the Provider to fully compensate the County for any such damages rather than have the Provider repair them.

16. Titles and Headings. Titles and headings used in this Agreement are for convenience only and do not limit or modify the language within each section of this Agreement.

17. Non-Assignment. The Provider may not assign its rights or obligations under this Agreement, nor may it sub-contract any part of this Agreement, without written approval from the County.

18. Notices. Any notice or communication to the County or the Provider for purposes of this Agreement shall be delivered or shall be deposited in the United States Mail, first class, addressed to the addressee in Section E of the attached Exhibit A, the Contract Specifications.

19. Number and gender. This Agreement's use of singular, plural, masculine, feminine, and neuter pronouns shall include the others as the context may require.

20. Exhibit A. To the extent of a conflict between the above language of this Agreement and the attached Exhibit A (the Contract Specifications), the above language of this Agreement will control.

IN WITNESS WHEREOF, the County and the Provider have caused this Agreement to be executed as of the Effective Date.

THE COUNTY

BY: _____

Name: Aaron Church

Title: County Manager

THE PROVIDER

BY: _____

Name: _____

Title: _____

EXHIBIT A

CONTRACT SPECIFICATIONS

A. Services To Be Performed By The Provider.

Provider to provide the necessary materials, labor, equipment, and supervision to perform the removal of stream debris along six (6) locations in Rowan County as explained in Exhibit B.

LOCATION	ESTIMATED QUANTITY
Third Creek (Knox)	3,700 linear feet
Sills Creek (Horton)	7,400 linear feet
Sills Creek (Hoffner)	2,000 linear feet
Kerr Creek (Horton)	1,300 linear feet
Kerr Creek (Hoffner)	3,300 linear feet
Fourth Creek (Shaver)	1,923 linear feet
TOTAL	12,648 linear feet

B. Term of the Agreement.

Provider will complete work by December 15, 2024.

C. Payment to the Provider.

Provider will provide monthly statements to the County, pending approval of finished sections per liner feet from NCDA & CS Division of Soil and Water Conservation's Inspections. Total cost shall not exceed \$313,972.00

D. E-Verify. North Carolina General Statutes prohibit counties from entering into contract with contractors and subcontractors who have not complied with the requirement of Article 2 of Chapter 64 of the NC General Statutes. When required by law, the Contractor must submit the E-Verify Affidavit with bid proposals and/or contracts.

E. Insurance. During this Agreement's term, the Provider shall maintain worker's compensation insurance as required by North Carolina law to cover all of the Provider's employees engaged in any work under the Agreement. The Provider shall also maintain the following insurance to cover its performance under this Agreement during the Agreement's term:

- General commercial liability in the amount of \$500,000 per occurrence / \$1,000,000 aggregate with County listed as additional insured.

- Workers' Compensation in the amount of \$500,000 employer's liability
- Automobile liability covering all owned, hired, and non-owned vehicles used in connection with this Agreement. The minimum combined single limit shall be \$1,000,000 for bodily injury and property damage; and, \$1,000,000 uninsured/underinsured motorist coverage.

F. Contact Information.

THE COUNTY

AARON CHURCH,
COUNTY MANAGER
130 West Innes Street
Salisbury, NC 28144
Telephone: 704-216-8180

THE PROVIDER

These Contract Specifications are effective on the date signed and hereby acknowledged and agreed to by:

THE COUNTY

BY: _____

Name: Aaron Church

Title: County Manager

Date: _____

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

(Signature of County Finance Officer)

THE PROVIDER

BY: _____

Name: _____

Title: _____

EXHIBIT B

SCOPE OF WORK

Rowan County has been awarded grant funds through the SteamFlow Rehabilitation Assistance program. The funding is to be used for the removal and disposal of down trees, logs, and debris in and adjacent to the designated waterways with minimal disturbance. Attached you will find a map showing the location of the six areas to be cleared.

- All debris must be removed from 100-year floodplain.
- Within the project area, contractor will cut debris bank to bank, through all trees, logs, and debris impeding water flow.
- All beaver dams must be breached during high water but only upon approval.
 - Beaver activity will need to be reported, for approval, before proceeding in the removal of the dams.
- Cut debris section will be removed from the stream and hauled to a pre-determined site on the same parcel, outside of the 100-year floodplain.
- Equipment shall operate adjacent to the stream and not within the stream unless prior approval is granted. When necessary, trees can be cut for access to worksites; however, mechanized land clearing will not occur within the area at any time. Crossing a stream to gain access to the opposite bank is permissible. Crossing sites should be selected to minimize damage to the streambank and aquatic habitat.

Location(s):

- a) Third Creek off Knox Road, Cleveland, from the bridge of Knox Road 3700 linear feet east to end of Knox property.
- b) Sills Creek off Lyerly Road, Mt. Ulla, from Lyerly Road bridge northeast to White Road bridge, 7400 linear feet.
- c) Sills Creek off Lyerly Road, Mt. Ulla, from Lyerly Road bridge southwest to Hoffner property line, 2000 linear feet.
- d) Kerr Creek off of Sloan Road, Mt. Ulla, from the Sloan Road Bridge near Kerr Mill Rd northeast to the shared Hoffner property line, 1300 linear feet.
- e) Kerr Creek off of Sloan Road, Millbridge, from the Meadows property line of (d. above) near Kerr Mill Rd. northeast to the bridge at White Rd., 3300 linear feet.
- f) Fourth Creek off of NC Hwy. 70, Cleveland, near the Rowan/Iredell County line, from the northeast property corner of Rowan County GIS Parcel #261 002 (Shaver Wood Products, Inc.) upstream for approximately 1923 linear feet.

Equipment: Method of debris removal will be accomplished with appropriate hand tools/chain saws, heavy equipment including long reach excavators with thumb, and cabling/chaining. The contractor is allowed to use any heavy equipment for this project. Heavy haul truck/tandem dump truck will likely be necessary.

Access: The Contractor will ensure that permits are secured, if required, for each site and landowner permission is granted prior to start of any Work for that site. If an alternative route is obtained by a private property owner, the Contractor shall obtain written approval from the property owner. Copies of written approvals must be provided to the County before use of private owned property.

Clearing & Debris Removal: Removal of debris will be limited to vegetative and woody materials. Fallen trees and limbs within or across the cross section of the waterway and the associated debris shall be removed from the 100-year floodplain and hauled to a pre-determined site on the same parcel and piled. Trees severely undercut by stream bank erosion and trees severely leaning over the waterway at an angle greater than 30 degrees of vertical whose near-term

fall is apparent shall also be masticated on-site or removed and placed in a designated area for tub grinding. **Excavation of soil/sediment within the stream shall not be performed.**

- Unless otherwise approved by the Project Manager, trees designated for removal shall be cut as low as practical in relation to the ground surface or streambank.
- For leaning trees where the root system of the tree is not exposed, the trunk of the tree shall be cut a few feet above the ground or streambank to allow potential re-sprouting.
- For trees that are leaning or down and the root system is partially exposed (i.e.: hinged on one side) the trunk shall be cut a few feet above the ground or streambank to alleviate falling and stream blockage.
- Trees that have been “snapped” are not leaning, have a strong root structure, and pose no threat to the waterway shall be left as they are, provided the contractor does not need to remove the tree for access purposes.
- Naturally leaning trees with apparently undamaged root systems and other natural, undamaged vegetation shall remain in its natural condition and not be removed.

Removal of standing trees outside of the designated debris removal area is limited to the cutting of severely damaged trees leaning across the waterway and other trees as needed to gain access for equipment to points of waterway blockage. The approval of the Project Manager shall be obtained prior to the cutting of any “healthy” tree for equipment access. Unless otherwise marked, access for pre-approved for mechanized equipment shall be limited to one side of the waterway. Access to the waterway shall generally be perpendicular to the waterway with precautions taken to protect most producing and stream canopy trees. Dead trees that provide den habitat and are determined to pose no hazard to the waterway shall be protected.

Disturbance of the waterway bottom and banks, and equipment access areas shall be held to the minimum necessary to allow the construction equipment to remove the debris. Trees shall be felled in such a manner as to avoid damage to trees left standing or existing structures and with due regard for the safety of persons and property. Spoil berms along the stream bank may be removed for access to debris for removal, but must be replaced/reinstated before moving on to the next stream segment or blockage.

Method of debris removal and securement will minimize impact to vegetation on adjacent shorelines; all disturbed areas must be seeded and mulched within 24 hours unless otherwise indicated.

Disposal: All debris must be removed from the 100-year floodplain and hauled to a pre-determined site on the same parcel and piled. It will then be the landowners’ decision what will be done with the pile.

Environmental Requirements: Equipment shall operate adjacent to the stream and not within the stream unless prior approval is granted by the Project Manager. Crossing a stream to gain access to the opposite bank is permissible. The Construction Inspector shall select crossing sites to minimize damage to streambank and aquatic habitat. Removal operations will be controlled to minimize soil disturbance. Should an area of the waterway be encountered which is affected by beavers, the beaver dam shall be removed to its lowest point after approval from County Representative.

Equipment shall be maintained to prevent fuel, oil, and lubricant spill. Refueling, repairs, and lubrication shall be performed at safe distances from the stream. Should fuel leaks, oil leaks or hydraulic line rupture occur during construction, the Contractor's operator is required to immediately remove the equipment to a safe area and take prompt action to minimize damage and safeguard the site. The Contractor must immediately report the discharge to the North Carolina Division of Water Resources, Mooresville Regional Office at 610 East Center Avenue, Suite 301, Mooresville, NC 28115 Phone: 704-663-1699 or 1-800-858-0368, and the provisions of the North Carolina Oil Pollution and Hazardous Substances Control Act shall be followed.

The Contractor must immediately report any emergency discharge to Rowan County 9-1-1 and the Project Manager, contact information will be provided once bid has been awarded.

The Contractor shall provide tanks or barrels to be used for off-site disposal of chemical pollutants such as drained lubricating or transmission oils, greases, etc. produced as a by-product of this work. Washing, fueling, or servicing of equipment shall be avoided where spillage or wash water can enter the watercourse.

The Contractor shall be responsible for all wetlands, and erosion control issues associated with this type of project.

Revegetation: All ground surface areas denuded due to debris removal or equipment access shall be revegetated as directed by the Project Manager. Prior to revegetating, any ruts or other surface irregularities resulting from this operation shall be smoothed and the ground surface shall be returned to its original degree of uniformity as directed by the Project Manager. Some soil fill material may be required where the existing surface has been compacted to return the ground surface to its original degree of uniformity. Seeding and mulching will be done daily as the work is completed. If an area is disturbed by the Contractor or the Contractor's crew after it has been seeded and mulched the Contractor shall reseed and re-mulch the disturbed area. Seed, fertilizer, and mulch shall be uniformly applied at the following rates per 1,000 square feet:

All areas except those revegetated as along streambanks and riparian zones:

1.7 lb. Kentucky 31 Tall Fescue

12 lb. 10-20-20 Fertilizer

70 lb. Hay or Small Grain Straw Mulch


Should locality, climatic and/or ground conditions warrant, the Project Manager may alter the planting dates to an earlier or later period, seed combinations or mulch requirements shown for more favorable vegetative results.

Method of Payment: Method of payment for this project will be made for the units of work completed as confirmed by a Rowan County representative. Payment will be made per linear foot after NCDA & CS Division of Soil and Water Conservation's inspection and approval of the County. The payment shall be considered full compensation for all labor, equipment, tools, materials, seeding, mulching, mobilization, demobilization, and other items necessary and incidental to complete the work.


Rowan StRAP Project

Third Creek reaches for debris removal

Legend

 Third Creek Debris Removal Area

 Rowan StRAP (C) Knox Grain 1 Start

Rowan StRAP (C) Knox Grain 1 End 

Google Earth


1000 ft



Rowan StRAP Project

Sills Creek reaches for debris removal

Legend

 Sills Creek Debris Removal Area

Rowan StRAP (P) Chris Hoffner 2 Start

Rowan StRAP (E) Ray Horton 1 Start

Rowan StRAP (E) Ray Horton 1 End

Rowan StRAP (P) Chris Hoffner 2 End

Google Earth




1 mi

Kerr Creek, White Rd

Horton and Hoffner Properties
1300 feet and 3300 feet between
Sloan Rd and White Road

Legend


 Rowan





Fourth Creek, Hwy 70

Shaver Wood Products Property
Approx. 1923 feet of this stretch.

Legend

 Rowan

 Rowan StRAP (A) Shaver Wood Start

 Rowan Strap (A) Shaver Wood End

Elmwood Rd

3rd Creek

3rd Creek Church Rd

70

Statesville Blvd

N

4000 ft

Google Earth