

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG
TOWN OF HUNTERSVILLE**

**INTERLOCAL AGREEMENT FOR
FUNDING OF THE TORRENCE CREEK
STREAM RESTORATION PROJECT**

This Interlocal Agreement for Funding of the Torrence Creek Stream Restoration Project is entered into and agreed upon as of June ____, 2015, (the “Effective Date”), by and between **MECKLENBURG COUNTY** (the “County”), a political subdivision of the State of North Carolina and the **TOWN OF HUNTERSVILLE** (the “Town”), a municipal corporation organized under the laws of the State of North Carolina (hereinafter the “Parties”).

WITNESSETH:

WHEREAS, the County intends to make certain improvements to the water resources along Torrence Creek, located between Statesville Road and Reese Boulevard in Huntersville, North Carolina as shown in Exhibit “A” (hereinafter the “Property”), which may include the restoration of streams and Best Management Practices (“BMPs”) (hereinafter the “County Project”); and

WHEREAS, the Town is currently interested in improving minor system water resources by making certain improvements on said Property, which may include the restoration of a minor stream tributary of Torrence Creek (hereinafter the “Town Project”); and

WHEREAS, since it is in the Parties’ mutual best interest to make County Project and Town Project improvements concurrently by developing design plans and completing construction for both the County Project area and the Town Project area concurrently as one project (hereinafter the “Combined Project”); and

WHEREAS, the Parties desire to enter into a funding and development agreement that sets out their respective rights and responsibilities with respect to the Combined Project; and

NOW, THEREFORE, in consideration of the premises and the fulfillment of the terms of this agreement, the County and the Town agree as follows:

1. Combined Project Description. The Combined Project may include a combination of the following: stream restoration; stream enhancement; stream stabilization; habitat structure placement; buffer enhancements; and implementation of structural BMPs. The County will execute and manage both the design and construction contracts for the Combined Project.

2. Exhibit List. The following Exhibits are attached to this agreement and incorporated into and made hereof by reference:

Exhibit A: Map of the Property.

Exhibit B: Combined Project Funding.

Each reference to the agreement shall be deemed to include all Exhibits.

3. Consultant Selection. The County, after complying with all applicable statutory procedures, has selected a consulting engineering firm, Wildlands Engineering (the "Engineer"), which has expertise in the field of water resource design and construction contract services with projects similar in size and scope to the Combined Project, to provide engineering services with respect to the County Project. The Town assigns to the County its right to contract with the Engineer to provide engineering services for the Town Project portion of the Combined Project.

4. Design. The County shall be responsible, through the Engineer, for design of the Combined Project. The design plans will consist of major system improvements (County portion of design plans) and minor system improvements (Town portion of design plans). Upon receipt of the design plans from the Engineer, the County will submit to the Town a copy of the Town Project design plans for review at the 70% design milestone. The Town shall have a maximum of thirty (30) days to review Town Project design plans and provide comments to the County after each design submittal. The Town will have final approval authority for the plans and specifications for the Town project. The County shall also be responsible for contract administration for the design contract and the agreed funding for the County Project and the Town Project as specified in Exhibit "B". The County, with assistance from the Engineering Consultant, will be responsible for separating all costs between the County Project and Town Project.

5. Permits. The County shall, through the Engineer, obtain all Federal, State and local permits necessary to construct the Combined Project. The County will submit to the Town a copy of all permit authorizations related to the Combined Project.

6. Construction Contract. The County shall solicit and obtain bids for the construction of the Combined Project, including all labor, materials and services necessary to execute the work associated with the approved design plans and construction documents and award the contract for such Combined Project to a qualified contractor (hereinafter the "Contractor") in accordance with applicable law. Before awarding any contract, the County must notify the Town of all bidders for the Combined Project and their bid amounts. The County shall also be responsible for contract administration for the construction contract and the agreed funding for the County Project and the Town Project as specified in Exhibit B. The County, with assistance from the Engineering Consultant, will be responsible for separating all costs between with the County Project and Town Project.

7. Warranty Period Maintenance. Upon completion of the construction of the Projects, the County agrees to oversee the one-year warranty maintenance to be

provided by the Contractor.

8. Payment Responsibilities of the Town. The Town agrees to pay up to the amount as described in Exhibit B to the County for the design and construction of the Town Project upon the following conditions being met: receipt by the Town of an invoice or invoices from the County of costs associated with the design and construction of the Town Project, complete with actual cost documentation supporting the invoice or invoices. The Town's payment to the County shall be made within ninety (90) days of the above conditions being met.

9. Funding Administration. The County shall be responsible for contract administration for the design contract, the construction contract, and the funding agreement with the Town as specified in Exhibit B. The County, with assistance from the Engineer, will be responsible for separating all costs associated with the Combined Project.

10. Notices. All notices required or permitted to be given hereunder shall be deemed given if emailed, hand delivered, or faxed with a mailed copy to follow, or mailed in a sealed wrapper and deposited in the United States Mail, registered or certified, return receipt requested, postage prepaid, properly addressed as follows:

If to the County: Mecklenburg County Engineering
700 North Tryon Street
Charlotte NC, 28202
Attention: Brian G. Sikes

If to the Town: Town of Huntersville
P.O. Box 664
Huntersville, NC 28070
Attention: Max Buchanan, P.E.

Either party may change its notice address by giving written notice of the change to the other party in the manner specified above ten (10) days prior to the effective date of such change.

11. Applicable Law. This agreement shall be enforced, interpreted and construed by and under the laws of the State of North Carolina.

12. Dispute Resolution. The Parties agree that any disputes which cannot be resolved by the Town and County Managers or their designees will first be attempted to be resolved by mediation and if not resolved by mediation, then by binding arbitration. If the Parties cannot agree upon selection of an arbitrator and a process for arbitration, disputes between the parties arising out of or in connection with this agreement or the performance or breach thereof shall be resolved by binding arbitration in accordance with the then-applicable Commercial Arbitration Rules (the "Rules") of the American Arbitration Association. The Rules will apply except as specified in this paragraph. All arbitration proceedings will be held in Charlotte, North Carolina before a single arbitrator. The parties hereto agree to submit to the enforcement of any award resulting therefrom by any court of

competent jurisdiction. Judgment upon the award rendered in any such arbitration proceeding may be entered into any court having competent jurisdiction thereof, or application may be made to such court for a judicial acceptance of the award and an order of enforcement as the case may be.

13. Term of Agreement. The term of this agreement shall commence on the Effective Date and shall expire at the conclusion of the one year construction warranty period unless sooner terminated or extended in accordance with the provisions of this agreement.

14. Amendments. This Agreement may be amended by written agreement authorized by the governing bodies of each party and signed by authorized representatives of both parties.

15. Third Party Beneficiaries This benefit is solely for the benefit of the Parties. No provision of this Agreement shall be deemed to confer upon any other person any remedy, claim, liability, reimbursement, cause of action or right.

16. Termination. The Town and County may terminate this Agreement at any time by mutual consent under such terms as may be agreed to in writing by the Board of County Commissioners and the Town Board of Commissioners.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written by the authority duly granted by their respective governing bodies.

[Signatures are on following pages]

TOWN OF HUNTERSVILLE:

By: _____
Town Manager

ATTEST:

Town Clerk

[SEAL]

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

BY: _____
DIRECTOR OF FINANCE
Town of Huntersville

Approved as to form

Town Attorney

MECKLENBURG COUNTY

By: _____
Dena R. Diorio, County Manager

Attest:

Clerk to the Board

APPROVED AS TO FORM

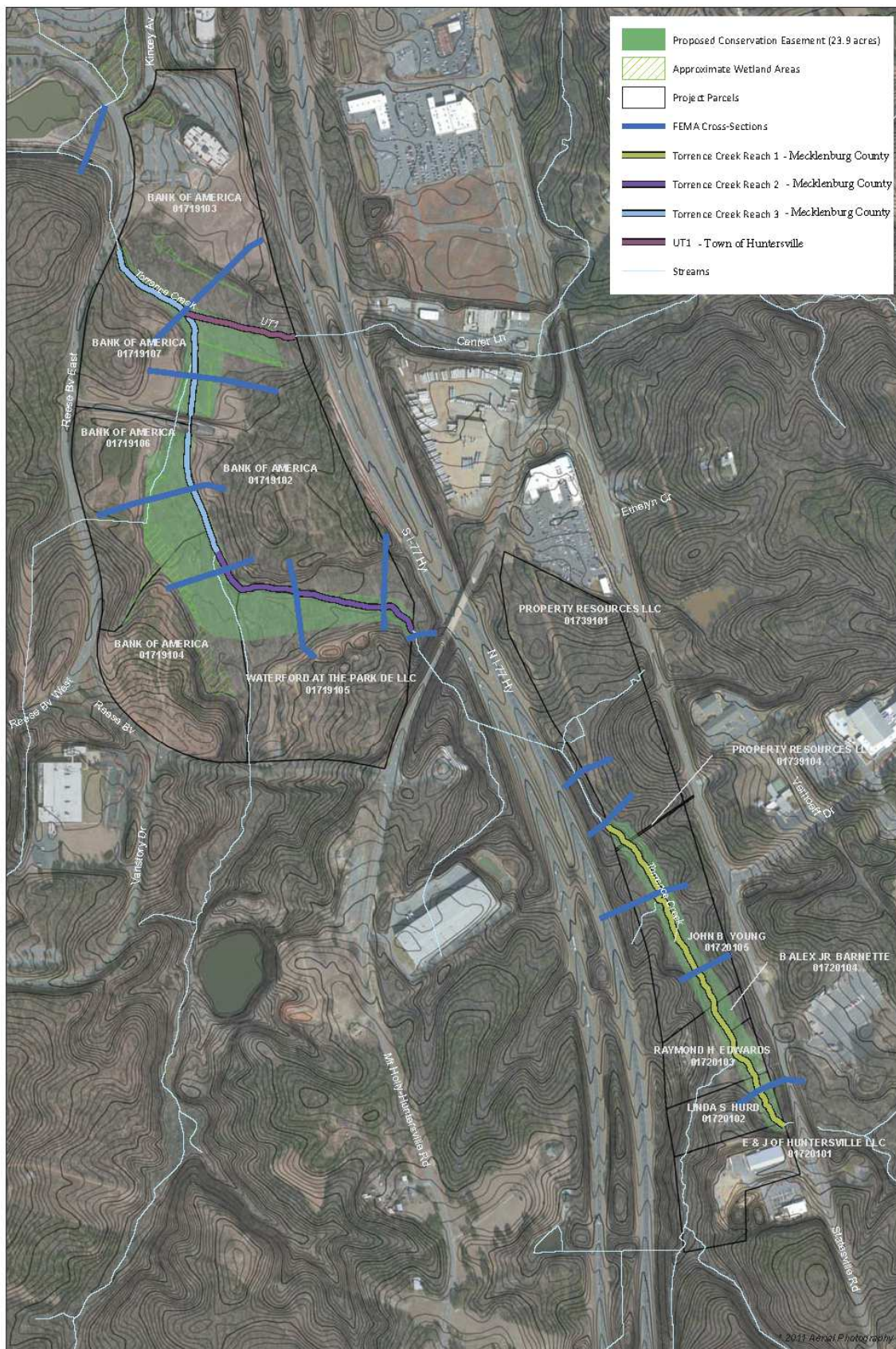
County Attorney

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

BY: _____
Mecklenburg County Director of Finance

Exhibit “A”

PROJECT MAP



0 250 500 Feet



Figure 1
Torrence Creek Stream Restoration Project- Phase II
Catawba River Basin (03050101)

Mecklenburg County, NC

Exhibit “B”

COMBINED PROJECT FUNDING

Feasibility Planning and Design

- County agrees to fund 100% of the planning and design of the County Project, *i.e.*, the major system improvements.
- Town agrees to fund 100% of the planning and design, of the Town Project, *i.e.*, the minor system improvements.

Construction and Construction Administration

- County agrees to fund 100% of the construction of the County Project.
- Town agrees to fund 100% of the construction of the Town Project.
- County and Town agree that construction administration by the Engineer, or a third party, is a cost of construction and that the Town shall fund 100% of said cost associated with the Town Project and County will fund 100% of said cost associated with the County Project.

The total overall cost for Design and Construction of the Town Project shall be in the maximum amount of \$141,866.00.

Miscellaneous

- The County will be the contract administrator for the Town’s EPA 319 grant (Contract No. 6193), which includes the preparation of project reports and expense reimbursements. A quarterly report will be prepared and submitted to the EPA 319 program by the County on behalf of the Town providing detailed project updates. A quarterly submittal of the Town’s paid invoices will be submitted by the County, on the Town’s behalf, to the EPA 319 program seeking the allowable reimbursement of expenses. Because the EPA 319 grant contract is between the Town and the grant program, the Town will directly receive the reimbursed amount quarterly. The County, with assistance from the Engineering Consultant, will complete a project final report submitted to NC DWQ at the expiration of the 319 Grant Project.
- All miscellaneous costs associated with the Town Project areas (*e.g.*, educational, signs, administrative, etc.) will be paid by the Town.
- All miscellaneous costs associated with the County Project areas will be paid by the County.