

**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 (this "Agreement") is entered into and agreed upon as of June _____, 2017, (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 in the McDowell Creek watershed, located between Old Statesville Road and Statesville Road 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 two minor stream tributaries 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"), even though construction of the Town Project may occur over a period of years through multiple construction contracts (i.e. multiple Town Project area construction phases); 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 the design contract for the Combined Project. Upon receipt of construction estimates

from the design engineer, the County and the Town will determine responsibility for management of construction of the Combined Project. Possible scenarios for construction management include the County managing the Combined Project, the County managing the major system component and the Town managing the minor system component, or discontinuation of all or parts of the Combined Project. Once a determination has been made on construction management, an addendum will be added to this Agreement to document the agreed upon management scenario. The County Manager and the Town Manager are authorized to negotiate and execute such an addendum and add it to this Agreement.

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: Estimated Combined Project Funding.

Each reference to the Agreement shall be deemed to include all Exhibits, including additional exhibits as might be added after execution of the Agreement to specify construction and any construction phases as provided in Section 6.

3. Consultant Selection. The County, after complying with all applicable statutory procedures, has selected a consulting engineering firm, WLS Engineering, PLLC (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 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 Project 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 written comments to the County after each design submittal. Once the Engineer has determined what it estimates construction costs will be for the Town Project, the Town will indicate to the County in writing how much of the Town Project the Town wants the County to solicit bids for. 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. As required by State law, and any grant requirements, the County shall solicit and obtain bids for the construction of the Combined Project, and if necessary, for individual phases of the Town 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 or contracts for such Combined Project to a qualified contractor (hereinafter the "Contractor") in accordance with applicable law. Before awarding any contract that includes any portion of the Town Project, the County must notify the Town of all bidders for the Combined Project and their bid amounts. The Town shall have thirty (30) days after notification of the bids to either authorize the County in writing to award the contract for the one of more portions of the Town Project for which bids were received, or to refused to authorize the County to award the contract for the Town Project portion of the bids. Any Town approval in writing to award the contract for the Town Project portion of the work bid must specify the dollar amount of the Town Project portion of the contract and contain an executed pre-audit certificate from the Town's Director of Finance for that work. Such approval shall be documented in an exhibit as described in Section 6. Responsibility for contract administration for the construction contract or contracts will be determined jointly by the County and the Town after construction cost estimates, construction phasing, grant funding and the agreed funding for the County Project and the Town Project as specified in **Exhibit B** are established. The County, with assistance from the Engineering Consultant, will be responsible for separating all costs between with the County Project and Town Project.

7. Construction Phases. Construction of the Combined Project and of the Town Project may be split into phases based upon availability of funds or other practical constraints. Upon completion of the design and cost estimates for both the County Project and the Town Project, the County and the Town will jointly decide on whether to construct the Combined Project under one construction contract or whether to do the Town Project in phases. That decision will be described in an **Exhibit C** to be added to this Agreement signed by the County Project Manager and the Town Project Manager, and for the Town, the Town Director of Finance. If the initial decision is to construct the Town Project in phases, any additional Town Project phases that are later to be constructed will be described in an Exhibit D and added to this Agreement. Additional phases can be added by adding additional exhibits labeled appropriately over the term of this Agreement. A construction phase can include both a County Phase and a Town Phase, or just a Town Phase.

8. Grants. The County and the Town may jointly decide to apply for grant funding to offset portions of the design or construction of the Combined Project. The County, with input from the Town and the Engineer, will be responsible for preparing grant applications and seeking approval to submit the application(s) from the Mecklenburg County Board of Commissioners. The Town will be responsible for seeking approval from the Huntersville Board of Commissioners.

9. 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 or Contractors.

10. Payment Responsibilities of the Town. The Town agrees to pay to the County the amounts as described in **Exhibit B** (and other lettered exhibits added to this Agreement as authorized by Section 6) 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 for each invoice submitted.

11. Funding Administration. The County shall be responsible for contract administration for the design contract, the construction contract or contracts, any grant contracts 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.

12. 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: Charlotte Mecklenburg Storm Water Services
2145 Suttle Avenue
Charlotte NC, 28208-5237
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.

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

14. 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 RBCWB:193558:5/25/2017

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.

15. 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.

16. 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.

17. 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.

18. 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.

19. Project Managers. The following individuals shall serve as project managers for the Combined Project who are authorized to add exhibits describing the construction to be performed, the contracted price for the construction, and phases as necessary as outlined in Section 6. The County Manager and Town Manager may change their Project Managers from time to time following the Notice provisions in Section 12 above.

County Project Manager:

Town Project Manager:

20. Easements for Combined Project. The County agrees to obtain all easements and rights-of-way as might be necessary for any surveying, design, construction and maintenance of the County Project, and agrees to indemnify and hold the Town harmless should any such rights not be sufficient for such purposes. The Town agrees to obtain all easements and rights-of-way necessary for any surveying, design, construction and maintenance of the Town Project, and will be responsible for recording such easements and rights-of-way and providing the recording information to the County. Town agrees to indemnify and hold the County harmless should any such rights not be sufficient for such purposes.

[Signatures are on following pages]

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.

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

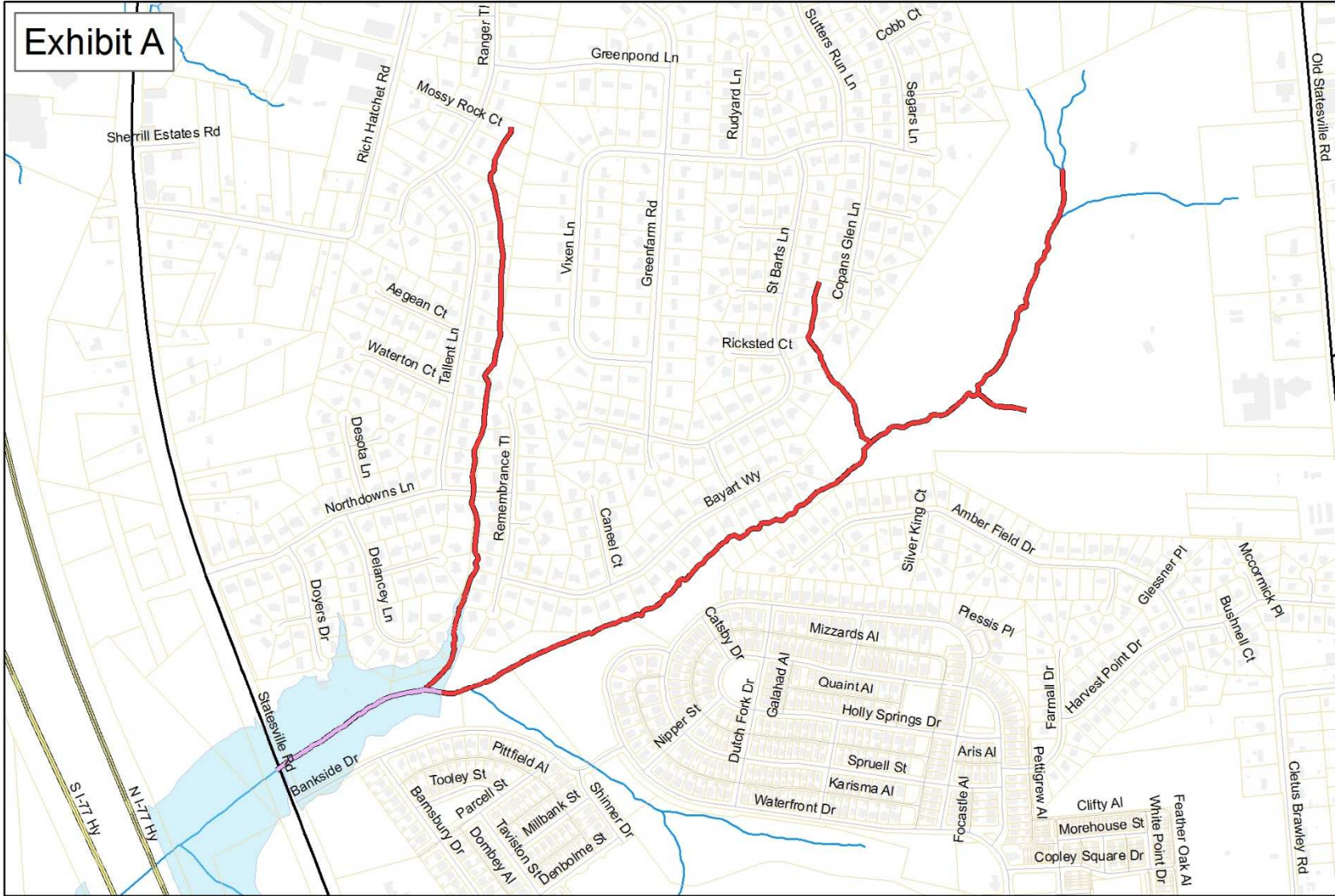
County Attorney

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



Legend					
	Major System Project		Streets		Parcels
	Minor System Project		Buildings		Floodplain

Exhibit “B”

COMBINED PROJECT FUNDING

The total overall cost for Design and Construction of the Town Project is estimated to be \$1,300,000. The total overall cost for Design and Construction of the County Project is estimated to be \$340,000.00. The total overall cost for the Combined Project is estimated to be \$1,640,000.

Feasibility Planning and Design

- County agrees to fund 100% of the planning and design of the County Project, *i.e.*, the major system improvements, which is estimated to be \$105,000
- Town agrees to fund 100% of the planning and design, of the Town Project, *i.e.*, the minor system improvements, which is estimated to be \$390,000

The County will invoice the Town for 80% of the staff resources expended on the project for Combined Project Design. This is based upon the approximate pro-rated breakdown of the length of the minor system relative to the entire project length.

Minor system to be addressed:	5280 feet (80% of combined project)
Major system to be addressed:	1350 feet (20% of combined project)
Combined Project Length:	6630 feet (100% of combined project)

The Town will be invoiced for 80% of the staff hours expended on the project at the following billing rates:

Project Manager	\$130.09 per hour
Associate Project Manager	\$101.88 per hour

The typical cost of staff resources to manage the design of a CIP project is approximately \$68,000. It is estimated that the minor system staff cost to design the project will be \$54,400.

Upon completion of the Combined Project Design, the breakdown will be reviewed and modified as needed to reflect the actual lengths of minor and major system to be addressed during construction.

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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.
- Upon completion of construction estimates by the design engineer, the County and the Town will mutually determine the path forward on construction. Several project

management scenarios will be considered:

- The County will manage construction of the Combined Project
- The County will manage construction of the major system and the Town will manage construction of the minor system
- The County will manage certain construction phases and the Town will manage other phases.
- If the County manages construction of the Combined Project the Town will be invoiced for the pro-rated length of the minor system component of the project relative to the total length the following billing rates:
 - Project Manager \$130.09 per hour
 - Associate Project Manager \$101.88 per hour
- The typical cost of staff resources to manage the construction of a CIP project is approximately \$70,000.

Anticipated Schedule

The following table presents the anticipated schedule including estimated funding needs.

Project Phase	Start Date (encumbrance date)	Estimated Town funding need	Estimated County funding need
Design			
Design Engineer Cost	June, 2017	\$390,000	\$105,000
County Project Management Cost	Billed to town monthly	\$54,400	\$13,600
Construction	July, 2018	\$910,000	\$235,000

Note: Construction management agreement to be determined mutually by County and Town after receipt of construction estimates from design engineer.

Miscellaneous

- The County will be the contract administrator for any grants, which includes the preparation of project reports and expense reimbursements
- 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.