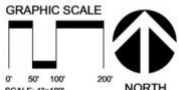




MAY 10, 2013
BRIAR CREEK: INDEPENDENCE TO MONROE ROAD
CONCEPTUAL DESIGN PLAN
 CHARLOTTE, NC



**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG
CITY OF CHARLOTTE**

**INTERLOCAL AGREEMENT FOR
FUNDING OF THE BRIAR CREEK WATER
QUALITY IMPROVEMENT PROJECT**

This Interlocal Agreement for Funding of the Briar Creek Water Quality Improvement Project is entered into and agreed upon as of June _____, 2013, (the “Effective Date”), by and between the **COUNTY OF MECKLENBURG** (the “County”), a political subdivision of the State of North Carolina and the **CITY OF CHARLOTTE** (the “City”), a municipal corporation organized under the laws of the State of North Carolina (hereinafter the “Parties”).

WITNESSETH:

WHEREAS, the Parties operate the Charlotte-Mecklenburg Storm Water Services utility pursuant to an interlocal agreement entered into between the Parties in 1993, which identifies their respective rights and responsibilities for operation and management of storm water throughout Mecklenburg County;

WHEREAS, the County owns properties or holds conservation easements in the floodplain of Briar Creek, located between Monroe Road and Independence Boulevard in Charlotte, North Carolina as shown in Exhibit “A” (hereinafter the “Property”). The County intends to make certain improvements to the water resources on said Property along Briar Creek and Edwards Branch, which may include the restoration of streams, Best Management Practices (“BMPs”) and provisions for subsequent maintenance and monitoring of the improvements (hereinafter the “County Project”);

WHEREAS, the City is currently interested in improving minor system water resources by making certain improvements to the water resources on said Property, which may include the restoration of the minor stream known as Chantilly Tributary, and a BMP on the former Cavalier Apartments property and a BMP on the former Doral Apartments property and provisions for subsequent maintenance and monitoring of the improvements (hereinafter the “City Project”);

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

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;

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

1. Combined Project Description. The Combined Project includes a combination of the following: stream restoration; stream enhancement; stream stabilization; habitat structure placement; buffer enhancements; and implementation of structural BMPs.

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.

Exhibit C: Storm Drainage Easement.

Exhibit D: Project Schedule.

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 engineering feasibility studies, 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 City, after complying with all applicable statutory procedures, has selected the same consulting engineering firm, Wildlands Engineering (the “Engineer”), which has expertise in the field of engineering feasibility studies, design and construction contract services with projects similar in size and scope to the Combined Project, to provide engineering services with respect to the City Project. The City assigns to the County its right to contract with the Engineer to provide engineering services for the City Project portion of the Combined Project.

4. Feasibility. The City and the County worked with the Engineer on the feasibility studies for their respective projects, and on integration of the County Project and the City Project. Design (Item 6, below) will be carried out using the results and alternatives based upon the results of the Feasibility Studies.

5. Easement Conveyance. Upon completion of the Interlocal Agreement, the County will convey a ‘Storm Drainage Easement’ to the City. This Easement is included as Exhibit C.

6. 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 (City portion of design plans). Upon receipt of the design plans from the Engineer, the County will submit to the City a copy of the City Project design plans for review at the 70% design milestone. The City shall have a maximum of thirty (30) days to review City Project design plans and provide comments to the County after each design milestone submittal. Prior to coordination with regulatory agencies, the City shall have approved all design plans proposed for mitigation credit. The City will have final approval authority for the plans and specifications for the City project.

7. 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 City a copy of all permit authorizations related to the Combined Project.

8. 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 City of all bidders for the Combined Project and their bid amounts. City Staff will be included in invitations to periodic and/or monthly construction meetings and punch list, as-built and/or final walkthroughs for the purpose of construction QC/QA of the City Project. The County will not award a contract for construction of the City Project in excess of 84% of the amount for City Project construction set forth in Exhibit B without express written authorization by the City and a commitment from the City to fund any required changes orders in excess of the amount set forth in Exhibit B.

9. Mitigation Credits. The County will accrue any mitigation credits for the major system portion of the Combined Project and the City will accrue any mitigation credits for the minor system portion of the Combined Project that may be approved by the United States Army Corps of Engineers. The City Mitigation Bank Administrator will have oversight of Permitting and coordination and submittal of any Site Specific Mitigation Plans (SSMP's) that are produced and submitted to United States Army Corps of Engineers and North Carolina Division of Water Quality.

10. Maintenance. Maintenance of the facility will be performed according to the terms of the Storm Drainage Easement which generally assigns responsibilities as follows:

The County will be responsible for maintenance activities associated with the aesthetic aspects of the completed project such as:

- Mowing and other aesthetic landscape management activities, at the discretion of the County; and
- Removal of trash, algae, mosquito control, and dead fish removal, at the discretion of the County; and
- Reporting blockages and nuisance animal activities such as burrowing animals.

The City will be responsible for the following functional maintenance activities:

- Annual inspection to address structural and functional maintenance items; and
- Non-routine maintenance including maintenance related to structural integrity, sediment removal, embankment failures, etc.; and
- Removal of major blockages in the primary and emergency spillway system.

11. Payment Responsibilities of the City. The City agrees to pay to the County the amount as described in Exhibit B for the design of the City Project upon the following conditions being met: receipt by the City of an invoice from the County of costs associated with the design of the City Project, complete with actual cost documentation supporting the invoice. Costs documented for Chantilly Tributary Stream Restoration will include all design costs and will be applied by the City into the Center associated with the Stream Restoration/Mitigation Program (Fund 2701, Center 359.21). All costs associated with design, construction and construction administration and inspection of the BMP's (BMP #1 and BMP #2) shall be associated with the Post Construction Controls Mitigation Program (Fund 2701, Center. The City's payment to the County shall be made within ninety (90) days of the above conditions being met.

The City agrees to pay to the County the amount as described in Exhibit B for construction of the City Project portion of the Combined Project upon the following conditions being met: receipt by the City of an invoice from the County of costs associated with the construction of the City Project, including construction, and construction administration and inspection, complete with

actual cost documentation supporting the invoice. The construction costs to construct the proposed BMP's for the City Project will be reported separately from the costs to construct Chantilly Tributary Stream Restoration in adherence with City requirements. The City's payment to the County shall be made within ninety (90) days of the above conditions being met.

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

13. 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: David Goode, PE

If to the City: City of Charlotte
 Storm Water Services
 600 East Fourth Street
 Charlotte, NC 28202
 Attention: John Schrum, PE

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.

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

15. Dispute Resolution. The Parties agree that any disputes which cannot be resolved by the City 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.

16. 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. Provided, however, the City's responsibility for maintenance of the City Project shall continue until terminated by the Board of County Commissioners by Interlocal Agreement.

17. Schedule: City and County staff have reviewed and agreed upon the proposed Project Schedule (Exhibit D). All due diligence will be undertaken by both parties to ensure adherence to the Schedule.

18. 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.

19. Termination. The City 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 City Council.

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]

CITY OF CHARLOTTE

By: _____
Ron Carlee, City Manager

ATTEST:

City Clerk

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

BY: _____
DIRECTOR OF FINANCE
City of Charlotte

MECKLENBURG COUNTY

By: _____
Bobbie Shields, Interim County Manager

Attest:

Clerk to the Board

APPROVED AS TO FORM

County Attorney

Exhibit “A”

PROJECT MAP

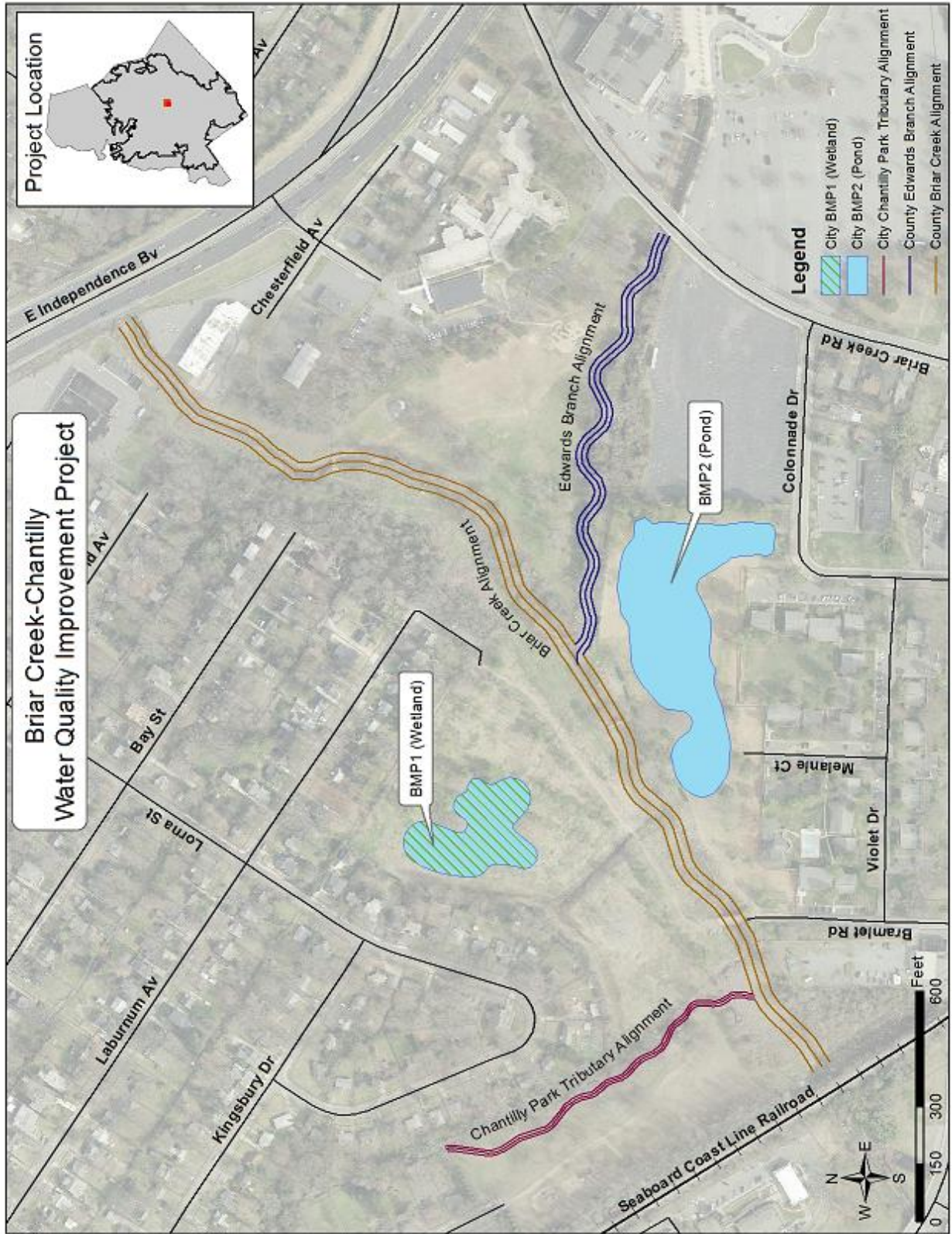


Exhibit “B”

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

Construction and Construction Administration

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

The total overall cost for Design and Construction shall be up to \$2,000,000.00.

Maintenance

- Division of maintenance responsibilities will be carried out per the Storm Drainage Easement and as described in Item 10, above, Maintenance.

Monitoring

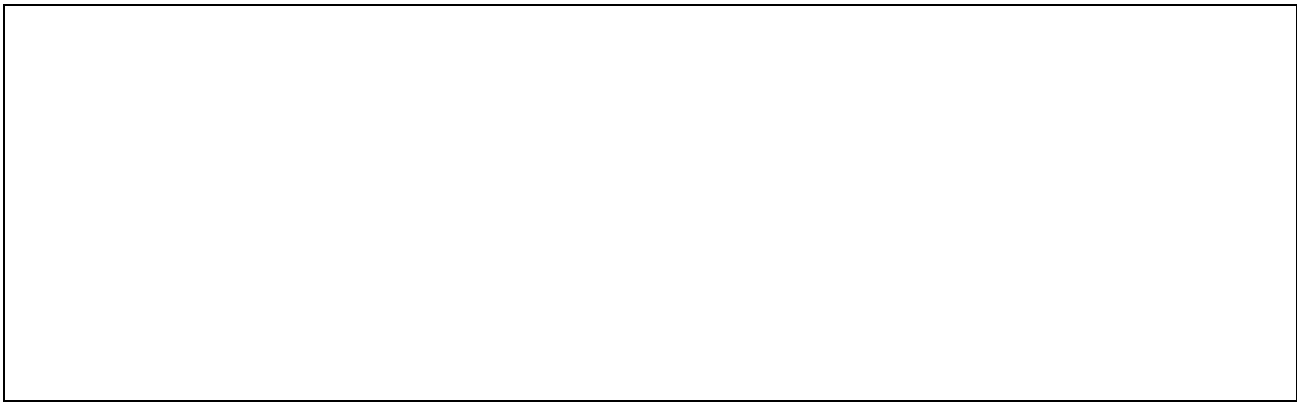
- The City will administer and carry out any monitoring associated with Stream Restoration for the purpose of obtaining Mitigation Credits on the City portion of the project.

Miscellaneous

- All miscellaneous costs associated with the City Project areas (*e.g.*, educational, signs, administrative, etc.) will be paid by the City.
- All miscellaneous costs associated with the County Project areas will be paid by the County.

Exhibit “C”

STORM DRAINAGE EASEMENT



For Register of Deeds Use Only.

PROJECT NAME: _____
TAX CODE NOS.: _____
PARCEL NUMBER: _____
SITE ADDRESS: _____

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

STORM DRAINAGE EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that _____, their successors and assigns, hereinafter called "GRANTOR" (whether one or more), for valuable consideration, does hereby grant unto the CITY OF CHARLOTTE, its successors and assigns, hereinafter called "GRANTEE", the right, privilege, and easement to enter in and upon a portion of that land conveyed to GRANTOR (hereinafter "premises") by instrument recorded in Deed Book _ at Page _, in the Mecklenburg County Register of Deeds, as illustrated in **Exhibit A**, attached hereto and incorporated by reference, showing the approximate location of the easement;

And over and across said premises within an easement, as shown on said **Exhibit A**, for the purposes of constructing improvements, and reconstructing, operating and maintaining storm drainage facilities which include, but are not limited to, a dam embankment, spillways and pond, along with access to the perimeter of the facilities. The following rights are also granted to GRANTEE: to enter upon said premises to inspect and repair the storm drainage facilities, to obtain storm water samples from time to time for testing purposes; to remove from the easement, now or at any time in the future, trees, structures, or other obstructions that may endanger the proper maintenance and operation of said storm drainage facilities.

It is understood and agreed by and between the parties hereto that the GRANTEE shall have the right of ingress, egress, and regress over and upon lands of the GRANTOR adjacent to or in the vicinity of the premises as may be essential to the use thereof for the aforesaid purposes, and no entry for such purposes shall be deemed a trespass. Any damage which may occur outside of the easement to fences, buildings, or other structures resulting from the GRANTEE'S exercise of the right of ingress, egress and regress shall be repaired by the GRANTEE.

Upon completion of the improvements, GRANTEE agrees to provide, at a minimum, annual inspections of the facilities, including the earthen dam, primary and emergency spillways, main pond and shoreline, the constructed wetlands and forebay, if applicable, and agrees to be responsible for the non-routine maintenance, which includes but is not limited to, any repairs related to structural integrity, sediment removal, repair of the embankment, removal of blockages from the primary and emergency spillway system or other repairs necessary to preserve structural integrity.

If as a result of the inspections, the GRANTEE observes work items required to be conducted by GRANTOR in accordance with this Agreement, GRANTEE shall advise GRANTOR in writing of the items requiring maintenance. Said notification is solely to advise the GRANTOR of his obligations pursuant to this Agreement and is not intended to notify GRANTOR of any permit obligations or other requirements..

It is further understood that, upon completion of the improvements, GRANTOR agrees to assume responsibility for maintenance work and items not specifically assumed by GRANTEE, which items include, but are not limited to, removal of dead fish and trash.

In addition, the GRANTOR agrees to be responsible for routine maintenance of the ground surfaces within the Easement. Such maintenance shall include, but not be limited to, mowing the grassed area of the dam at least three times annually during the active growing season. GRANTOR shall maintain a fully vegetated dam comprised of a good stand of grass, and shall repair any bare spots or erosion that might arise from foot traffic, or any other disturbance. GRANTOR shall notify the GRANTEE of any rodent, reptile, or other holes within the dam so that the GRANTEE may address them appropriately as they arise. GRANTOR further agrees that it shall not place, plant or

allow any woody vegetation to grow on the upstream or downstream slopes of the dam.

GRANTOR agrees to report to GRANTEE any observations of significant blockages in any pond outlet structure(s) or pipe(s); excessive build-up of sediment in the forebay, if applicable; damage to the embankment, including significant erosion, settling, and/or burrowing; nuisance wildlife (i.e. muskrats or beavers) damaging storm water facilities. GRANTOR shall also report to GRANTEE any unusual changes in the elevation of the pond's water surface.

GRANTOR understands and agrees that GRANTEE may elect to install wetland and submerged marsh plantings at the perimeter of the pond and within the constructed wetlands area, if applicable, inside the Easement and to permit other natural vegetation to emerge over time. GRANTOR shall allow any wetland and/or submerged marsh plantings to grow to their natural height and appearance and shall not cut, spray, or otherwise disturb this vegetation. GRANTEE may enter upon the Property, from time to time, to harvest the plant materials by taking cuttings that will be used to vegetate other storm water projects of GRANTEE.

It is further understood that GRANTOR shall not erect any permanent structure over or across this easement, nor alter the storm drainage facilities without permission of GRANTEE, which permission shall not be unreasonably denied. GRANTEE will prohibit permanent structures that block or otherwise impede the natural flow of runoff, reduce the ability of the facility to improve water quality, prevent the pond system from accommodating major flooding events, restrict GRANTEE'S ability to maintain the facilities, or unduly increase the expected cost of providing maintenance. For purposes of this easement, permanent structures include, but are not limited to, the following: buildings, including sheds, docks, walls and other masonry structures, tennis courts, and swimming pools.

This easement is given to permit the construction of improvements, and the operation and maintenance of storm drainage facilities.

Improvements to existing facilities or the installation of new facilities does not guarantee that the premises will be free of flooding and/or erosion. No work performed by GRANTEE is warranted to keep the premises free of water or flooding.

The privileges and responsibilities of this easement shall run with the land for the mutual use and benefit of the parties hereto, their heirs and assigns.

TO HAVE AND TO HOLD the land herein before described unto the GRANTEE, its successors and assigns, for the aforesaid uses and purposes.

IN WITNESS WHEREOF, GRANTOR has hereunto set his hand and seal, this _____ day of _____, 20_____.

_____(SEAL)

_____(SEAL)

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

I, _____ a Notary Public of the County and State aforesaid, certify that _____ and _____, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the ____ day of ____, 20____.

NOTARY PUBLIC

My Commission Expires:_____

[NOTARIAL SEAL]

The foregoing Certificate(s) of _____

_____ is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on first page hereof.

_____ REGISTER OF DEEDS FOR MECKLENBURG
COUNTY

By _____ Deputy/Assistant-Register of Deeds.

**Drawn By and Return To:
City of Charlotte
Storm Water Services Division
600 East Fourth Street, 14th Floor
Charlotte, NC 28202-2844**

Exhibit “D”

PROJECT SCHEDULE

Task	Early Finish Date	Late Finish Date
Real Estate and Interlocal Phase	6/17/2013	9/2/2013
Design and Permitting	1/20/2014	6/16/2014
CMUD Briar Creek Construction	1/20/2014	10/13/2014
Bid Phase (4 month bid phase)	5/12/2014	10/6/2014
Construction Phase (12 month Construction Phase for Stream and BMPs)	6/1/2015	12/14/2015

MECKLENBURG COUNTY

RESOLUTION AUTHORIZING EXECUTION OF THE
INTERLOCAL AGREEMENT BETWEEN MECKLENBURG COUNTY AND THE CITY OF
CHARLOTTE FOR FUNDING OF THE BRIAR CREEK WATER QUALITY PROJECT

WHEREAS, on May 17, 1993 the Mecklenburg County Board of Commissioners adopted the “Mecklenburg County – Storm Water Management Plan” which sets forth guiding principles and a financial plan for the operation of the comprehensive storm water management program in Mecklenburg County, the plan requires use of a rate structure based on impervious area and a base rate charge for fixed and administrative costs sufficient to cover such costs; and

WHEREAS, N.C. Gen. Stat. § 160A-461, “Interlocal Cooperation Authorized,” authorizes units of local governments to enter into agreement with each other in order to execute an undertaking such as the operation of a storm water management program by one unit of local government on behalf of another unit of local government; and

WHEREAS, Mecklenburg County and the City of Charlotte (the “City”) have negotiated an Interlocal Agreement for Funding of the Briar Creek Water Quality Project; and

WHEREAS, N.C. Gen. Stat. § 160A-461 requires that such agreement “...shall be ratified by resolution of the governing board of each unit spread upon its minutes”; now, therefore, be it

RESOLVED by the Board of Commissioners of Mecklenburg County that the Interim County Manager is hereby authorized and directed to execute the Interlocal Agreement for Funding of the Briar Creek Water Quality Project between the County of Mecklenburg and the City of Charlotte in substantially the form attached to this resolution and that this resolution shall be spread upon the minutes.

Approved as to form:

County Attorney

CERTIFICATION

I, Janice S. Paige, Clerk of the Board of Commissioner of Mecklenburg County, DO HEREBY CERTIFY that the foregoing is a true and exact copy of a resolution adopted by the Board of Commissioners, in regular session convened on the 18th of June, 2013.

WITNESS my hand and the common seal of the County of Mecklenburg, North Carolina, this the _____ day of June, 2013.

Janice S. Paige, Clerk to the Board