

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

**AMENDED AND RESTATED INTERLOCAL AGREEMENT  
FOR FUNDING OF THE UPPER TORRENCE  
TRIBUTARY #1 STREAM RESTORATION PROJECT**

This Amended and Restated Interlocal Agreement 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”) is entered into and agreed upon as of \_\_\_\_\_, 2020, (the “Effective Date”), for the funding of the Upper Torrence Tributary #1 Stream Restoration Project (“this Agreement”).

**WITNESSETH:**

**WHEREAS**, the County intends to make certain improvements to the major system water resources in the McDowell watershed located from North Mecklenburg Park to Interstate 77 in Huntersville, North Carolina as shown in Exhibit “A” (hereinafter the “Property”), pursuant to the major system repairs described in the final plans titled Upper Torrence Creek Tributary No. 1 Stream Restoration by Wildlands Engineering dated February 25, 2020 which include the restoration of streams and best management practices (hereinafter the “County Project”); and

**WHEREAS**, the Town is currently interested in improving minor system water resources in the McDowell watershed by making certain improvements on said Property, pursuant to the minor system repairs described in the final plans titled Upper Torrence Creek Tributary No. 1 Stream Restoration by Wildlands Engineering dated February 25, 2020 which include the restoration and repair of minor stream tributaries of Upper Torrence Tributary #1 and stormwater infrastructure (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

**WHEREAS**, on June 5, 2017, the Parties entered into an Interlocal Agreement for Funding of the Torrence Creek Stream Restoration Project (the “Initial Agreement”) that

set out their respective rights and responsibilities with respect to the Combined Project;

**WHEREAS**, the Parties desire to amend and restate the Initial Agreement by executing this Amended and Restated Agreement (this “Amended Agreement”) to update the Town Project’s funding amount.

**NOW, THEREFORE**, in consideration of the premises and the fulfillment of the terms of this Amended 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 stormwater infrastructure. 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 herein by reference:
  - a. **Exhibit A: Map of the Property.**
  - b. **Exhibit B: Estimated Combined Project Funding.**
  - c. Each reference to the Agreement shall be deemed to include all Exhibits, including additional exhibits as may 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, 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 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 Engineer, 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, 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 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 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 Engineer, will be responsible for separating all costs between 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 to the County the amounts as described in **Exhibit B** 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.
9. 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.
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 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: Kevin Fox, P.E.

11. 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.
12. Applicable Law. This agreement shall be enforced, interpreted and construed by and under the laws of the State of North Carolina.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.

[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**



# Exhibit “B”

## COMBINED PROJECT FUNDING

The Combined Project’s estimated linear feet (LF) of stream to be restored is 6,133 LF. The Town Project is 4,567 LF of minor system. The County Project is 1,566 LF of major system.

Town’s minor system to be addressed:	75% of combined project
County’s major system to be addressed:	25% of combined project
Combined Project:	100% of combined project

The Construction Estimate for the Town Project on the minor system is \$1,847,500.

### 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 County will manage construction of the Combined Project.
- The Town will be invoiced for County staff hours expended on the project during Construction and Construction Administration Phase 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 construction of a CIP project is approximately \$70,000. It is estimated that the prorated minor system staff cost (based on linear feet of stream) to construct the project will be \$52,500.

### Anticipated Schedule and Budget

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

Project Phase	Start Date	Estimated Town funding need
County Project Management Estimated Cost	Billed to town quarterly	\$52,500
Construction Estimate	June, 2020	\$1,847,500

The total cost for Construction of the Town Project shall not exceed \$1,900,000.

### 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.