

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG
TOWN OF CORNELIUS

**INTERLOCAL AGREEMENT FOR FUNDING
OF THE WILLOW POND STREAM RESTORATION PROJECT**

This Interlocal Agreement for Funding of the Willow Pond Stream Restoration Project (this "Agreement") is entered into and agreed upon as of _____, 2018, (the "Effective Date"), by and between **MECKLENBURG COUNTY**, a political subdivision of the State of North Carolina ("County"), and the **TOWN OF CORNELIUS**, a municipal corporation organized under the laws of the State of North Carolina (the "Town"), and together with County, each a "Party" and collectively the "Parties").

WITNESSETH:

WHEREAS, Town intends to make certain improvements to the water resources in the McDowell Creek watershed, in an area located between Statesville Road and JV Washam Elementary School in Cornelius, North Carolina, as shown on the map attached hereto as Exhibit A (hereinafter, the "Property"), which improvements may include (i) the restoration of streams, (ii) the construction of best management practices ("BMPs"), and (iii) the construction of greenway trails ((i), (ii), and (iii) collectively, the "Town Project");

WHEREAS, County is also currently interested in improving major system water resources by making certain improvements on said Property, which improvements may include the restoration of a section of the McDowell Creek major system (hereinafter, the "County Project");

WHEREAS, County has, on Town's behalf, assembled and submitted applications to each of the (i) North Carolina Division of Water Resources and (ii) North Carolina Department of Environmental Quality 319 grant programs;

WHEREAS, it is in the Parties' mutual interest to undertake the County Project and the Town Project 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.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and the fulfillment of the terms of this Agreement, County and 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; construction of greenway trails; interpretative signage, and implementation of structural BMPs. Town 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:

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 may be added after execution of the Agreement to detail construction and any construction phases as provided in Section 6).

3. Consultant Selection. Town, after complying with all applicable statutory procedures, will select a qualified engineering firm(the "Engineer"), which has expertise in the field of water resource and greenway 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. Town, with Engineer's assistance, shall be responsible for design of the Combined Project. The design plans will consist of (i) major-system improvements (the "County Project Design Plans") and (ii) minor-system improvements and greenway trails (the "Town Project Design Plans"). Upon receipt of the design plans from the Engineer, Town will submit to County a copy of the County Project Design Plans for review at the 30% and 70% design milestones. County shall have fifteen (15) business days to review the County Project Design Plans after each such milestone, and shall provide Town any written comments. County will have final approval authority for County Project Design Plans. Town shall also be responsible for contract administration for the design contract, any grant contracts, and the agreed funding for the Combined Project as specified at Exhibit B attached. Town, with assistance from Engineer, will be responsible for separating all design and land acquisition costs between the County Project and the Town Project. Town will invoice County for all Design costs associated with the County Project as specified in Exhibit B attached hereto, and County shall have thirty (30) days from receipt of any such invoice to remit payment thereof.

5. Permits. Town shall, with Engineer's assistance, obtain all federal, state and local permits necessary for the Combined Project, and will upon receipt thereof submit to County copies of all such permits and authorizations.

6. Construction Contract. As required by state law and any grant requirements, Town 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 or contracts for the Combined Project to a qualified contractor (hereinafter the "Contractor") in accordance with applicable law. Before awarding any contract that includes any portion of the County Project, Town shall notify the County of all bidders for the Combined Project, and their bid amounts. Town shall also be responsible for contract administration for the construction contract, any grant contracts, and the agreed funding for the Combined Project as specified at Exhibit B attached hereto. Town, with assistance from Engineer, will be responsible for separating all construction and construction administration costs between the County Project and Town Project. Town will invoice County for all Construction costs associated with the County Project as specified in Exhibit B attached hereto, and County shall have thirty (30) days from receipt of any such invoice to remit payment thereof.

7. Warranty Period Maintenance. Upon completion of the Combined Project, Town agrees to oversee (and enforce, as necessary) the one (1) year maintenance warranty provided by Contractor.

8. Services. County will, as requested, provide Town technical services (including, but not limited to, plan review, education and outreach, bid review, construction supervision inspection, warranty period maintenance oversight and other services related to the Combined Project). County will invoice Town for such services as specified at Exhibit B attached hereto.

9. Payment Responsibilities of County. Upon receipt by County of an invoice or invoices from Town detailing the costs associated with the design and construction of the County Project (together with actual cost documentation supporting said invoice or invoices), County agrees to pay Town the amounts set forth at Exhibit B attached hereto for the design and construction of the County Project. County shall remit payment for each invoice meeting the requirements above within thirty (30) days of receipt thereof.

10. Intentionally Omitted.

11. 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: David Woodie
Email: David.Woodie@MecklenburgCountyNC.gov

If to the Town: Town of Cornelius
P.O. Box 339
Cornelius, NC 28031
Attention: Tyler Beardsley
Email: TBeardsley@Cornelius.org

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 respective managers of Town and County (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 an arbitrator and a process for arbitration, any 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 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. Unless sooner terminated or extended in accordance with the provisions hereof, the term of this Agreement shall commence on the Effective Date and shall expire at the conclusion of the Contractor’s construction warranty period, as approved by each of County, Town, and Contractor.

15. Amendments. This Agreement may be amended only by written agreement authorized by the Parties and signed by authorized representatives of the Parties.

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

17. Termination. Each of 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.

18. Project Managers. The following individuals shall serve as project managers for the Combined Project, and are authorized to add exhibits to this Agreement describing (i) the construction to be performed, (ii) the contracted price for the construction, and (ii) any construction phases as necessary, as may be outlined in Section 6. The managers of County and Town may change their respective Project Managers from time to time following the Notice provisions in Section 11 above.

County Project Manager:
David Woodie, Project Manager
Charlotte-Mecklenburg Storm Water Services
2145 Suttle Avenue
Charlotte, NC 28208

980-314-3210

Town Project Manager:

Tyler Beardsley, Assistant to the Manager
Town of Cornelius, NC
P.O. Box 339
Cornelius, NC 28031
704-892-6031

19. Easements for Combined Project. Town agrees to (i) obtain all easements and rights-of-way as may be necessary for any surveying, design, construction and maintenance related to the County Project, (ii) be responsible for recording such easements and rights-of-way and providing the recording information to County and (iii) indemnify and hold County harmless should any such rights not be sufficient for such purposes. Town agrees to use an easement form provided by the County for easements to be granted to the County.

Town agrees to (i) obtain all easements and rights-of-way necessary for any surveying, design, construction and maintenance related to the Town Project, (ii) be responsible for recording such easements and rights-of-way and providing the recording information to County, and (iii) indemnify and hold 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:

TOWN OF CORNELIUS,
a municipal corporation organized under
the laws of the State of North Carolina

By: [Signature]
Name: Andrew Grant
Title: Town Manager

ATTEST:

[Signature]
Town Clerk

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

By: [Signature]
Name: Julie Niswonger
Title: Director of Finance, Town of Cornelius

Approved as to form:

[Signature]
Town Attorney

COUNTY:

MECKLENBURG COUNTY,
a political subdivision of the State of North Carolina

By: _____
Name: Dena R. Diorio
Title: County Manager

Attest:

Clerk to the Board

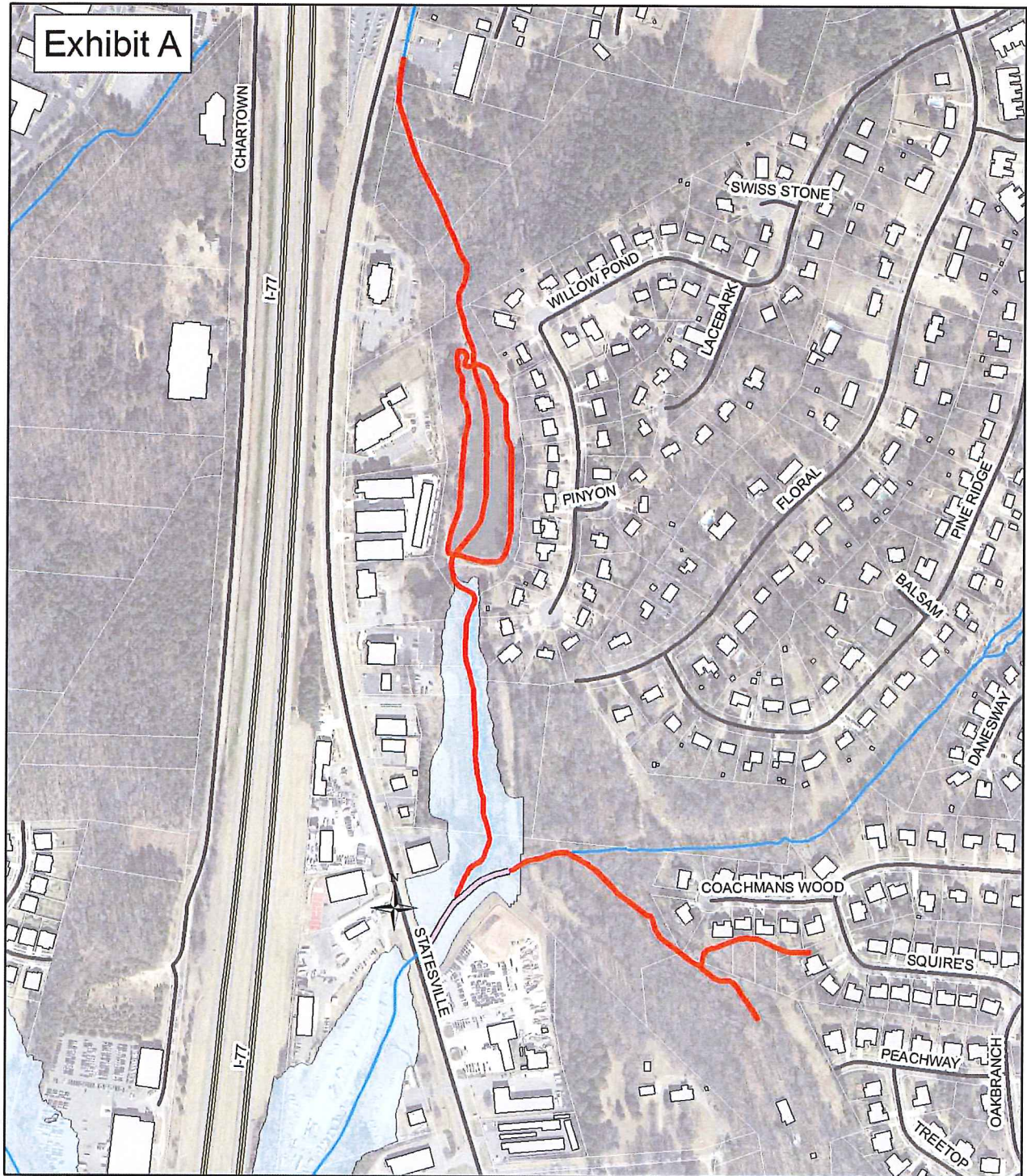
Approved as to form:

County Real Estate Attorney

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

By: _____
Name: _____
Title: Mecklenburg County Director of Finance

Exhibit A



0 125 250 500
Feet

Legend

- County Reach
- Town Reaches
- Streams
- Interstate
- Streets
- FEMA Floodplain
- Parcels

Exhibit B

[Combined Project funding]

The total overall cost for design and construction of the Combined Project is estimated to be \$1,750,000.00. The total overall cost of the County Project is estimated to be \$150,000.00. The total overall cost for the Town Project is estimated to be \$1,600,000.00.

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 \$50,000.00.
- 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 \$250,000.00.

Technical Services

Town may choose to request technical advice from County related to the Town Project. These services may include design review, construction administration, public meeting support, grant administration and other services related to the Town Project. County will invoice Town for the staff resources expended on the Town Project through the existing agreement and invoice process between County and Town.

Town will be invoiced for County staff hours expended on the Town Project at the following billing rates:

Project Manager	\$63.09 per hour
Public Information Officer	\$43.74 per hour
Lead Project Manager	\$67.60 per hour
Associate Project Manager	\$42.75 per hour
Program Manager	\$77.08 per hour
Administrative	\$32.96 per hour

These services will be provided only when requested by Town; however, it is estimated that the following County staff costs will be invoiced to Town for the Town Project:

Project Manager	150 hours for a total of \$9,463.50
Public Information Officer	40 hours for a total of \$1,749.6
Total	190 hours for a total of \$11,213.10

In 2020 the aforementioned rates will be increased to reflect full cost recoverable calculations per the Storm Water Interlocal Agreement between the Town and County.

Construction and Construction Administration

- County agrees to fund 100% of the construction of the County Project, *i.e.*, the major system improvements.
- Town agrees to fund 100% of the construction of the Town Project, *i.e.*, the minor system improvements.
- County and Town agree that construction administration by Engineer (or a third party) is a cost of construction and that 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, *i.e.*, the major system improvements.
- Town will manage the construction of the Combined Project.

Anticipated Schedule

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

Project Phase	Start Date (encumbrance date)
Design	July, 2018
Construction	April, 2020

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

Miscellaneous

- All miscellaneous costs associated with the Town Project areas (*e.g.*, educational, signs, administrative, etc.) will be paid by Town.
- All miscellaneous costs associated with the County Project areas will be paid by County, provided, however, County will not reimburse the Town for any payments to property owners for easements granted to the County for the County Project, i.e., the major system improvements.