INTERLOCAL AGREEMENT BETWEEN THE COUNTY OF BUNCOMBE AND THE TOWN OF WOODFIN FOR DESIGN AND CONSTRUCTION SERVICES FOR GREENWAYS

THIS INTERLOCAL AGREEMENT is made and entered into this 21 day of NOVEMBER, 20 17, by and between the County of Buncombe, North Carolina (sometimes herein "County") and the Town of Woodfin (sometimes herein "Woodfin").

WITNESSETH

WHEREAS, Buncombe County has been a destination for outdoor enthusiasts who have enjoyed the region's trails and outdoor recreation for more than a century;

WHEREAS, all of Buncombe County is experiencing a growing expectation for facilities that provide for movement of pedestrians and bicyclists, not just for recreational purposes but for transportation, running errands, relieving stress and offsetting the effects of obesity, attracting new businesses and making communities more livable and marketable;

WHEREAS, Woodfin believes that the creation of a greenway and park system along the French Broad River will enhance property values, encourage investment and improve the lives of its citizens;

WHEREAS, preliminary studies are completed, and Phase 1 of Woodfin's greenways will run from the South End of Woodfin near the Broadway and Riverside Drive interchange and running up to the MSD Administrative Building where it will peel off in two separate lines;

WHEREAS, Woodfin voters recently approved a referendum to allow Woodfin to proceed to borrow general obligation bonds to fund parks and recreation facilities, including greenways;

WHEREAS, on October 17, 2017, the Buncombe County Board of Commissioners authorized the execution of a grant agreement with the Buncombe County Tourism Development Authority in the amount of two million two hundred fifty thousand and 00/100 dollars ($2,250,000.00) Hereinafter "Grant Funds" for the construction of the Woodfin Greenway & Blueway, which will include 5 miles of new greenway trails and will be part of a 25 mile-plus network of greenways within Buncombe County (hereinafter referred to as the "Project") and, further, authorized the execution of an interlocal agreement between Buncombe County and the Town of Woodfin allowing Buncombe County to aid the Town of Woodfin in, and manage the construction of the Project utilizing the Grant Funds;

WHEREAS, Woodfin now desires to take advantage of the County's collective experience for final design and construction services to complete Phase 1 of the Woodfin Greenway and to begin and pursue funding and accessing feasibility of further greenways expansions;

WHEREAS, the County has agreed to act as agent for Woodfin to conduct, oversee and manage the construction project;

WHEREAS, the Parties have agreed that the design of all improvements shall conform to the programming needs as identified by Woodfin with County participation, subject to budget constraints;

WHEREAS, this Agreement is in addition to an Agreement related to use of funding provided to the County by the Buncombe County Tourism Development Authority for the project; and

WHEREAS, N.C.G.S. §160A-461 allows units of local government to enter into agreements to execute such an undertaking.

NOW THEREFORE, the parties hereto, for and in consideration of the promises and covenants contained herein agree to enter into the Interlocal Agreement for the design and construction of Phase 1 of the Woodfin Greenway and agree as follows:

1. The Recitals set forth above, along with the definitions of certain terms, are incorporated herein by reference as if fully restated

2. Appointment of Agent. The Parties hereby agree that the County shall act as agent for Woodfin and shall be designated as the "owner's representative" in all documents requiring such a designation. Such agency authority shall be exercised by County in its sole discretion, except as set forth above, and shall apply to design and construction activities as necessary, including but not limited to, the following:

a) Engaging in design review and coordination with applicable regulatory agencies of State and Local Government;
b) any property acquisition or negotiation for the use of any property relative to the project;
c) Advertising for, opening, and evaluating bids for construction work as permitted by law;
d) Directing any a preconstruction conferences and approving the issuance of a Notice to Proceed;
e) Directing the management of the construction phase;
f) Approving or denying change orders;
g) Engaging in dispute resolution as required by law; and
h) pursue funding and accessing feasibility of further greenways expansions.
I) to abandon the undertaking if Woodfin fails to secure funding or breaches any part of this Agreement and/or if the County deems wise, in the County's sole discretion.

In performing all its duties as agent on the design and construction of the Greenway, the County hereby agrees to consult with, and keep the Woodfin project representative informed of design and construction activities.

3. Woodfin Funding of Projects. Woodfin shall conduct the following activities as required for the design and construction of the Greenway:

a) Pass any and all necessary reimbursement resolutions;
b) Collect taxes as authorized by law;
c) Request technical assistance as necessary to execute project elements and ensure the continuity of project operations;
d) Borrow for the project as authorized by law and Woodfin's referendum; and
e) Satisfy any and all debt for design and construction.

4. Budget and Billing. The budget for the design and construction of the Greenway shall be agreed upon in writing as an addendum to this memorandum following the conclusion of each study/design phase. The amount agreed upon will utilize sealed engineering estimates as a basis for the established budget. The budget for the design phase of the Riverside Drive Greenway segment from Broadway Avenue to Elk Mountain Road shall not exceed $660,000 as stipulated in the Surface Transportation Block Grant award from the Federal Highway Administration.

5. Insurance and Indemnity. The County of Buncombe is hereby self-insured for tort claims. The County hereby agrees to indemnify and hold harmless Woodfin and its officers, agents, and employees against all liability, loss and costs arising from actions, suits, claims, or demands attributable solely and exclusively to acts or omissions of the County for any damages that result from the County's negligence involving the construction of the Greenway. This notice of self-insurance does not waive any defense the County may raise to such a claim, including but not limited to governmental immunity.

6. Entire Agreement. This Agreement contains the entire agreement between the Parties and supersedes and replaces any and all prior or contemporaneous agreements or understandings, written or oral, with regard to the matters set forth herein. The terms of this Agreement are contractual and not merely a recital. This Agreement may not be altered or amended except by an amendment in writing duly executed by the Parties.

7. Invalid Provision to Affect no Others. If any provisions of this Agreement is held, determined or adjudicated to be invalid, unenforceable or void for any reason, each such provision shall be severed from the remaining provisions of this Agreement and shall not affect the validity and enforceability of such remaining provisions.

8. This Agreement may only be modified by the written consent of the Parties.

9. The individual signatories below have the expressed and implied authority on behalf of their respective Boards to execute this Agreement. The Parties may execute this Agreement in separate counterparts and the execution of a copy shall have the same effect as the execution of an original. Such execution may be by facsimile or PDF attachment to an email.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties hereto have executed this instrument as of the day and year written below.

TOWN OF WOODFIN

By: _____
M. Jerry VeHaun, Mayor

11-21-17
Date

Attest:

By: _____

Clerk to the Board

11/21/17
Date

COUNTY OF BUNCOMBE

By: Brownie Newman
Brownie Newman, Chair

6-19-18
Date

Attest:

By: Kathy Hughes
Kathy Hughes,
Clerk to the Board

6-19-18
Date