INTERLOCAL COOPERATION AGREEMENT

THIS INTERLOCAL COOPERATION AGREEMENT made and entered into this the 3rd day of October, 2016, by the COUNTY OF HAYWOOD, NORTH CAROLINA [herein referred to as "the County"] and TOWN OF CANTON, NORTH CAROLINA [herein referred to as "the Town"]

WHEREAS, the County:

- Is a political subdivision and a unit of local government of the State of North Carolina.
- Has the power and authority to enter into this Agreement pursuant to N.C.G.S. Chapter 160A Article 20.
- Has entered this Agreement with the specific authorization of its Board of Commissioners duly ratified by a resolution spread upon its minutes.
- The Haywood County Board of County Commissioners is desirous to work with and assist the County's municipalities to improve infrastructure, in order to promote the creation of sustainable jobs and attraction for new businesses and the expansion and retention of existing business.

WHEREAS, the Town:

- Is a body politic and corporate and a unit of local government of the State of North Carolina.
- Has entered this Agreement with the specific authorization of its Board duly ratified by a resolution spread upon its minutes.
- Has the power and authority to enter into this Agreement pursuant to N.C.G.S. Chapter 160A Article 20.
- The Canton Board of Aldermen and Alderwomen believes infrastructure projects are essential to promote the creation and attraction of new businesses, expansion and retention of existing business to stimulate job opportunities and to improve the quality of life in the Town of Canton and has passed a Reimbursement Agreement at their meeting on the 7th April, 2016.
- The Town has the authority under NCGS 160A-499 to enter into Reimbursement Agreements with private developers and property owners to provide municipal infrastructure which includes without limitation, water mains, sanitary sewer lines, streets, curb and gutter, sidewalks and other associated facilities

WHEREAS, TW WEST, LLC (TWW) has purchased property in Canton, NC being 4.158 acres Parcel Four of Plat Cabinet C Slot 7163 (herein referred to as the "site") a/k/a the former Anton Chevrolet building off Champion Drive and I-40 to move West Carolina Freightliner from Asheville, NC to Canton, NC expand their operations.

WHEREAS, West Carolina Freightliner, LLC dba West Carolina Freightliner Western Star (WCF) is a North Carolina Limited Liability company selling and servicing heavy duty trucks since 1995.

WHEREAS, TWW and WCF plan to invest in building upgrades and equipment valued of at least $1,000,000 and to create a second shift with additional employees in Haywood County at the site in Canton.

WHEREAS, TWW and WCF's investment and creation of jobs will further the economic interest of the County and Town by enhancing the property tax base, increased sales tax, employment of additional full time persons and provide a positive economic impact for Haywood County and the Town of Canton.

WHEREAS, this Agreement is entered into by the Parties pursuant to N.C.G.S. Section 160A-460 *et seq.* in order that the Parties may execute an undertaking which is a public enterprise requiring interlocal cooperation between the two parties.

NOW THEREFORE, in consideration of the mutual covenants, conditions and promises herein contained, IT IS HEREBY AGREED as follows:

1) **Project.** The project to be completed as a result of this Agreement is as follows:

   a) To provide infrastructure cost for the widening of a yet unnamed road off Champion Drive for public purpose as adopted by the Town of Canton on July 21, 2016 to the building formally known as Anton Chevrolet and as referenced by Plat C at Slot 7163.

   b) To move electrical lines, natural gas, fire hydrant, water and sewer lines and build a retaining wall.

2) **Acknowledgements.** The Parties acknowledge as follows:

   a) The Board of County Commissioners held a public hearing on September 19, 2016 to discuss this economic development appropriation and at their regular scheduled meeting on October 3, 2016 approved the appropriation up to $200,000.00 from the County's general fund.

   b) The total cost of the construction is reasonably projected to be $295,480.00

3) **Project Funding and Work.** The County, The Town and TWW and WCF shall provide funding in following manner to complete the project.

   a) The County will provide up to $200,000.00 from the County's general fund to the Town of Canton as to such amounts and payment schedule to be agreed upon.

   b) The Town will provide up to $44,500.00.

   c) TWW and WCF will provide the balance and any other amounts necessary to complete the project.

   d) The County and the Town will not be required to make any reimbursement to TWW and WCF at any time after any public announcement by TWW and WCF of its plan to cease operations at the site or not to complete the Project.

   e) The Town shall ensure that TWW and WCF shall follow all federal, State and local ordinances and laws as they complete the improvements to the Site, the Facility and the Street and the Project. TWW and WCF shall be specifically advised that the reimbursement ordinances for both the County and the Town also apply to this project.

4) **Duration.** The Town of Canton will enter into a Reimbursement Agreement with certain benchmarks for TWW and WCF for job creation. If WCF fails to add an additional 12 employees from the base number of twenty-five (25) employees, the Town will refund to the County a pro-rata share of $12,500 for each employee under the minimum of 12 employees that were added by July 1, 2019.

   If TWW and WCF reaches 37 employees for three consecutive quarters before July 1, 2019, this Agreement is hereby considered fulfilled and terminates.

5) **Personnel.** The personnel necessary to carry out the Purposes set forth above shall be provided as follows:

   a) Construction Phase – The Town and the County shall provide such personnel from their respective staffs and employees, together with their respective professional consultants, sufficient to diligently pursue and implement construction.

   b) WCF or their contractor shall provide such personnel from its staff and employees, together with its professional consultants, and such contractors as may be hereafter engaged, sufficient to diligently pursue and carryout the construction.

   c) The coordination of the Construction Phase efforts between WCF, the County and The Town shall be overseen respectively by the County Manager and the Town Manager or their designee.

   d) Document Execution – The Chairman of the Haywood County Board of Commissioners is authorized to execute such documents as may be required to undertake, implement, complete and otherwise on behalf of the County. The Mayor of the Town of Canton is authorized to execute such documents as may be required to undertake, implement, complete and otherwise carry out the Town's road improvement on behalf of Town.

6) **Ownership of Real Property**. Upon completion of the initial construction of the road improvements by WCF or their contractor, the property acquired for public purpose will be the sole responsibility of the Town. The Town shall thereafter maintain the property without any funding from the County.

7) **Cooperation**. The Parties shall diligently and promptly cooperate in and take all and any reasonable and necessary actions to fulfill and carry out the widening of the road for public purpose.

8) **Limitations.** To the extent allowed by law, neither the County and its Board of Commissioners, the Town and its Board of Aldermen, and all of their employees and agents shall be liable for damages based on any claims of third parties arising out of any act or omission of TWW or WCF, their agents or contractors in the performance required of it by this Agreement, or in the operations of their businesses thereafter and this provision shall be ratified by TWW and WCF in their agreement with Canton.

   The provision of this Section shall survive the Agreement's termination.

9) **Disclaimer of Warranties.** The County and the Town make no express or implied warranty or representation of any kind whatsoever with respect to the Site, or any component part thereof, including but not limited to any warranty or representation with respect to the merchantability or the fitness or suitability thereof for any particular purpose, and further including the design or condition thereof, the safety, workmanship, quality, or capacity thereof; compliance thereof with the requirements of any law, rule, specification or contract pertaining thereto; any latent defect; the sites ability to perform any function; or any other characteristic of the site; it being agreed that as between the County and the Town, TWW and WCF are to bear all risks relating to the Site, the completion thereof or the transactions contemplated hereby and this provision shall be ratified by TWW and WCF in their agreement with the Town.

   The provision of this Section shall survive the Agreement's termination.

10) **Termination**. This Agreement shall be terminated upon the occurrence of one of the following events:

    a) Failure of the Town of Canton, TWW and WCF to enter in to Reimbursement Agreement to complete the widening of the road and provide safeguards for the Town and County's investment and interests.

    b) The accepted bidder fails to enter into a construction contract with TWW and WCF and otherwise provide all required assurances and bonds requiring completion by the accepted bidder of the construction.

    c) Except for a termination occurring as a result of the occurrences set forth under Subsections a], and b] above, this Agreement shall terminate upon the end of the duration of this Agreement as provided in Paragraph 5 – Duration.

11) **Entire Agreement, Modification, Binding Effect**. This Agreement constitutes the entire agreement of the parties and supersedes any prior agreements, understandings or negotiations, written or oral. This Agreement may not be modified or amended except in writing, and such modification(s) and/or amendment(s) must be signed by both parties hereto. This Agreement shall be binding upon and inure to the benefit of Haywood County and Town of Canton.

12) **Governing Law and Choice of Forum.** This Agreement shall be subject to and governed by the laws of the State of North Carolina. All actions or proceedings arising directly or indirectly from this Agreement shall be litigated in the North Carolina General Courts of Justice, Superior Court Division, Haywood County, North Carolina, and no party shall take any action to disturb such choice of forum.

13) **NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS DELEGATING GOVERNMENTAL POWERS, WITHOUT FURTHER WRITTEN CONSENT, NOR AS A DONATION OR A LENDING OF THE CREDIT OF THE COUNTY WITHIN THE MEANING OF THE STATE CONSTITUTION. THIS AGREEMENT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE COUNTY TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE SOLE DISCRETION OF THE COUNTY FOR ANY FISCAL YEAR IN WHICH THIS AGREEMENT SHALL BE IN EFFECT. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED TO PLEDGE OR TO CREATE A LIEN ON ANY CLASS OR SOURCE OF THE COUNTY'S MONEYS, NOR SHALL ANY PROVISION OF THE AGREEMENT RESTRICT TO ANY EXTENT PROHIBITED BY LAW, ANY ACTION OR RIGHT OF ACTION ON THE PART OF ANY FUTURE COUNTY GOVERNING BODY. TO THE EXTENT OF ANY CONFLICT BETWEEN THIS ARTICLE AND ANY OTHER PROVISION OF THIS AGREEMENT, THIS ARTICLE TAKES PRIORITY.**

IN WITNESS WHEREOF on the day and year above first written, the parties have caused this instrument to be duly executed in their respective names for the purposes herein stated by their duly authorized representatives as their individual official act.

COUNTY OF HAYWOOD, NORTH CAROLINA

By: _____ **[Official Seal]**
Mark S. Swanger, Chairperson

Attest: _____
Ira Dove, Clerk to the Board

This instrument has been preaudited on behalf of the County of Haywood in the manner required by the Local Government Budget and Fiscal Control Act.

_____ _____
Finance Officer Date

TOWN of CANTON, NORTH CAROLINA

By: _____ **[Official Seal]**
Mike Ray, Mayor

Attest: _____
Jason Burrell, Clerk to the Board

This instrument has been preaudited on behalf of the Town of Canton in the manner required by the Local Government Budget and Fiscal Control Act.

_____ _____
Finance Officer Date