

**STATE OF NORTH CAROLINA  
NORTH CAROLINA LAND AND WATER FUND  
GRANT CONTRACT  
(RESTORATION OF DEGRADED STREAMS)**

**NCLWF PROJECT NUMBER:** 2021-401

**GRANTOR:** North Carolina Land and Water Fund (“NCLWF” or “Fund”), also known as the Clean Water Management Trust Fund, a division of the Department of Natural and Cultural Resources, acting through its Board of Trustees solely in its official capacity pursuant to Part 41, Article 2, Chapter 143B of the North Carolina General Statutes (“N.C.G.S.”)

**CONTRACT ADMINISTRATOR:** Stephen Bevington  
North Carolina Land and Water Fund  
1651 Mail Service Center  
Raleigh, NC 27699-1651  
Phone: 919.707.9128  
Email: [steve.bevington@ncdcr.gov](mailto:steve.bevington@ncdcr.gov)

**GRANT RECIPIENT:** Town of Apex, a North Carolina Local Government Unit, (“Grant Recipient”)

**CONTRACT ADMINISTRATOR:** Michael Deaton, Water Resources Director  
Town of Apex  
PO Box 250  
Apex, NC 27502-0250  
Phone: (919) 249-3413  
Email: [Michael.deaton@apexnc.org](mailto:Michael.deaton@apexnc.org)

**GRANT AWARD DATE:** September 15, 2021 (the “Award Date”)

**CONTRACT EFFECTIVE DATE:** \_\_\_\_\_ (the “Effective Date”)

**CONSTRUCTION CONTRACT DATE:** September 15, 2022

**CONTRACT EXPIRATION DATE:** November 30, 2023 (the “Expiration Date”)

**REIMBURSEMENT DATE:** December 14, 2023

**GRANT AMOUNT:** up to \$409,658 (the “Grant”)

**THIS GRANT CONTRACT** (the “Grant Contract”) is made and entered into, as of the Effective Date by and between the NCLWF and the Grant Recipient, both sometimes hereinafter referred to individually as a “Party” or collectively as the “Parties.”

**WITNESSETH:**

**WHEREAS**, the Grant Recipient has submitted to the NCLWF an application requesting a grant of funds (hereinafter the “Grant Application”) to engage in a project for restoring degraded lands in order to protect the quality of surface waters.

**WHEREAS**, the NCLWF is authorized by N.C.G.S. Chapter 143B, Article 2, Part 41, to, among other actions and activities, restore previously degraded lands to reestablish their ability to protect water quality, and acquire conservation easements or other interests in real property for protecting and conserving surface waters and drinking water supplies.

**WHEREAS**, the Grant Recipient is a qualified applicant as defined in N.C.G.S. §143B-135.238(a).

**WHEREAS**, the NCLWF approved the Grant Recipient’s application at its meeting on the Award Date and is willing to make the Grant to the Grant Recipient pursuant to the terms and conditions set forth in this Grant Contract.

**WHEREAS**, the Grant Recipient agrees to conduct the project approved by the NCLWF’s Board of Trustees for the purposes and according to the scope of work, conditions, and schedule in **Exhibit A** (the “Project”) and pursuant to the project budget in **Exhibit B** of this Grant Contract.

**WHEREAS**, the Parties desire to enter into this Grant Contract and intend to be bound by its terms.

**NOW, THEREFORE**, for and in consideration of the Grant, the mutual promises each to the other made, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties mutually agree as follows:

1. **Grant Contract Documents**. The Grant Contract consists of, and only of, the documents described below, which are hereinafter collectively referred to as the “Grant Contract.” In the case of conflict, specific and special terms, conditions, and requirements shall control over general terms, conditions, and requirements. Upon execution and delivery of the Grant Contract, including the execution of all of the Exhibits that require execution, the Grant Contract shall constitute a valid and binding contract between the Parties, enforceable in accordance with the terms thereof. The Grant Contract constitutes the entire contract between the Parties, superseding all prior oral and written statements or contracts. Only changes deemed non-material in type by the NCLWF’s Executive Director may be made to the Grant Contract without the consent of the NCLWF’s Board of Trustees.

The Grant Contract Documents consist of:

- (a) Cover page
- (b) The main body of the Grant Contract
- (c) Exhibit A – Project Summary
- (d) Exhibit B – Project Budget
- (e) Exhibit C – NCLWF Pre-Disbursement Checklist
- (f) Exhibit D – Additional Definitions
- (g) Exhibit E – General Terms and Conditions
- (h) Exhibit F – Conservation Easements *[May not apply]*

2. **Purpose**. The purpose of the Grant is for restoring degraded streams in order to protect the quality of surface

waters, more particularly described in **Exhibit A**. Grant funds may not be used for the purchase of improvements or for the removal of debris on any property, or for any other purpose not set forth herein. Further, Grant funds may not be used for any eminent domain litigation or any action or expenditure related to eminent domain, unless approved by the NCLWF's Board of Trustees in writing prior to the action. The Board of Trustees shall review requests to use Grant funds for eminent domain on a case-by-case basis. The Grant Recipient shall provide such requests in writing.

3. **NCLWF's Duties.** Subject to the appropriation, allocation, and availability to NCLWF of Grant funds for the Project, NCLWF hereby agrees to pay the Grant funds to the Grant Recipient in accordance with the payment procedures set forth herein. Neither of the Parties is obligated to perform and the Grant Contract is not a binding agreement on all Parties until all Parties have executed the main body of the Grant Contract and all exhibits that require execution, the Department of Natural and Cultural Resources has notified the NCLWF that funds for the Grant contemplated hereunder have been encumbered, and the Grant Recipient has received its counterpart original of the Grant Contract, fully executed and with all dates inserted where indicated on the cover page to the Grant Contract.

4. **Grant Recipient's Duties.** The Grant Recipient shall carry out the Project pursuant to the terms of this Contract.

5. **Contract Period.** The NCLWF's commitment to disburse Grant funds under this Grant Contract shall cease on the Reimbursement Date. It is the responsibility of the Grant Recipient to ensure that the Project is completed by the Expiration Date and that all costs to be reimbursed have been submitted to the NCLWF by the Reimbursement Date. After the Expiration Date, any Grant monies remaining under this Grant Contract will no longer be available to the Grant Recipient except to pay proper invoices for budgeted costs incurred by the Expiration Date and that are submitted to the NCLWF no later than the Reimbursement Date. **The burden is on the Grant Recipient to request an extension of the Grant Contract if the Grant Recipient anticipates that the Project will not be completed by the Expiration Date.** The request for an extension must be a formal one made in a writing addressed to the NCLWF's Executive Director, giving complete details of the reasons why an extension is needed, and proposing a new expiration date for the Grant Contract. This written request must be submitted to and received by the NCLWF's office at least 60 days prior to the Expiration Date. Approval of any requested extension is at the sole discretion of the NCLWF. The approval or denial of the requested extension will be based upon Project performance, among other factors. **The NCLWF is not obligated to send reminders or other notification of an approaching Expiration Date.**

6. **Permanent Protections on Properties of the Project Site.**

(a) **Projects for Which Property Protections are Required.** Real property on which NCLWF funds are to be used for construction must be protected permanently by legal instruments conforming to N.C.G.S. Chapter 121, Article 4, and N.C.G.S. Chapter 143B, Article 2, Part 41. The Grant Recipient shall so restrict, or cause to be restricted, uses of and activities on such real property by way of one or more permanent conservation agreements or by other instruments of property interest approved in writing by the NCLWF. Such instruments of property interest must encumber real property essential to the Project, including necessary easements and rights of way. Real property essential to the Project, including necessary easements and rights of way, hereinafter is collectively referred to as the "Project Site" and is the properties listed in the Schedule of Properties for Legal Protection of Riparian Buffers in **Exhibit A**.

(b) **Requirements for Instruments of Property Interest.** Property interests acquired for the Project shall provide or conform to the following:

- i. property interests shall ensure undisturbed use and possession of the properties of the Project Site for the purpose of construction and operation of the Project and include other such restrictions as the NCLWF deems necessary and satisfactory, in its sole discretion;

- ii. property interests shall be permanent; and
- iii. instruments of property interests shall be approved as to form and content by the NCLWF in writing.

(c) Requirements for Holding of Property Interest. Property interests acquired for the Project shall be held by a party satisfactory to the NCLWF, such party being identified as holder (as defined in NCGS Chapter 121, Article 4) in **Exhibit A**. If a holder of property interests acquired for this Project is not named in **Exhibit A**, or if the Party named as holder in **Exhibit A** does not accept the role and responsibility of holder, the Grant Recipient shall name a party to serve as holder, subject to approval in writing by the NCLWF.

(d) Recordation of Instruments of Property Interest. The Grant Recipient shall provide to the NCLWF a copy of instruments creating property interest obtained and recorded in connection with the Project Site. (The NCLWF will disburse construction funds only after having received from the Grant Recipient a copy of each recorded instrument and associated documents set forth in **Exhibit F**.)

7. **Pre-Disbursement Requirements.** Prior to the disbursement of any Grant monies under this Grant Contract, the Grant Recipient shall deliver to the NCLWF all of the documentation described in **Exhibit C**.

8. **Disbursement of Grant Funds.**

(a) Proportionate Spending of Matching Funds. Grant monies are awarded based on a commitment of matching funds to the Project. The NCLWF's final, cumulative portion of the total Project cost will be no more than the percentage of funds originally committed to in the Grant Contract as given in **Exhibit B**. The Grant Recipient must demonstrate expenditure of matching funds as payments by the NCLWF are requested.

(b) Requests for Payment. The NCLWF will not disburse Grant funds until receipt by the NCLWF's Contract Administrator of the Grant Recipient's requests for payment. Payment requests shall conform to the following.

- i. Payment requests shall be accompanied by appropriate itemized documentation supporting all expenses claimed and clearly identifying each expenditure for which payment is requested. Supporting documentation must be organized in a manner that clearly relates expenditures in the supporting documentation to the line items on the payment request form. Any request for payment that does not clearly identify each expenditure or does not relate each expenditure to the line items on the payment request form will not be processed and will be returned to the Grant Recipient for correction and resubmittal.

- ii. Payment requests shall identify all amounts of sales tax for which the Grant Recipient and/or its vendors have or will obtain payment from the North Carolina Department of Revenue. The NCLWF will not reimburse the Grant Recipient for such amounts.

- iii. Each payment request shall include a completed claim form and progress report submitted using the online grants management software (GMS). The progress report shall describe work accomplished on the Project and progress toward completing the Project Scope of Work.

(c) Alternate Disbursement of Grant Funds. The NCLWF may, upon request by the Grant Recipient, disburse Grant funds prior to the Grant Recipient's actual payment to its vendors if such expenditures are documented by vendors' third-party invoices. In order for the NCLWF to disburse Grant funds to the Grant Recipient based on unpaid third-party invoices, the Grant Recipient must submit the following documentation.

- i. The Grant Recipient shall acknowledge on the claim form that the claim contains unpaid expenses to third-party vendors. The Grant Recipient shall also acknowledge that it shall comply with all terms of this Grant Contract in incurring the expense, has reviewed and approved the unpaid third-party invoice, and shall certify to the NCLWF that the unpaid third-party invoice will be paid within three (3) working days of receipt of the disbursed Grant funds.
- ii. Payment requests shall be accompanied by appropriate itemized documentation supporting all expenses claimed and clearly identifying each expenditure for which payment is requested. Supporting documentation must be organized in a manner that clearly relates expenditures in the supporting documentation to the line items on the payment request form. Any request for payment that does not clearly identify each expenditure or does not relate each expenditure to the line items on the payment request form will not be processed and will be returned to the Grant Recipient for correction and resubmittal.
- iii. Payment requests shall identify all amounts of sales tax for which the Grant Recipient and/or its vendors have or will obtain payment from the North Carolina Department of Revenue. The NCLWF will not reimburse the Grant Recipient for such amounts.
- iv. Each payment request shall include a completed claim form and progress report submitted using the online grants management software (GMS). The progress report shall describe work accomplished as well as progress toward completing the Project Scope of Work.

The Grant Recipient will confirm in writing to the NCLWF that the required payment has been made within thirty (30) days of payment.

- (d) Limited Grant Funds Disbursement in January, June, July, and December. Funds will not be disbursed during the first week of January, the last three weeks of June, the first week of July, and the last two weeks of December.
- (e) Certification by Licensed Professional. At the option of the NCLWF, payments may be made only on the certificate and seal of an appropriately qualified licensed professional (e.g., licensed Professional Engineer) that the work for which the payment is requested has been completed in accordance with approved plans and specifications, to which certificate shall be attached an estimate by the construction contractor setting forth items to be paid out of the proceeds of each such payment. The NCLWF, at its option, may further require a certificate from such appropriately qualified licensed professional that the portion of the Project completed as of the date of the request for payment has been completed according to schedule and otherwise as approved by the NCLWF and according to applicable standards and requirements. However, the NCLWF may, at its discretion, make payments without requiring such certificates or construction contractor's estimate, in which event the Grant Recipient shall furnish the NCLWF a list of and the amounts of items to be paid out of the payment, or such other evidence as the NCLWF may require.
- (f) Payment Based on Progress. The Grant Recipient agrees to proceed with diligence to complete the Project according to the schedule set out in **Exhibit A** and shall show appropriate progress prior to each payment. Payment may be withheld or delayed if the Grant Recipient fails to make progress on the Project satisfactory to the NCLWF. Amounts withheld shall be reimbursed with subsequent payments in the event that the Grant Recipient is able to demonstrate an ability to resume satisfactory progress toward completion of the Project.
- (g) Proof of Payment. The Grant Recipient agrees to pay, as the work progresses, all bills for expenses

incurred on the Project and agrees to submit to the NCLWF all such receipts, affidavits, canceled checks, or other evidence of payment as may be requested from time to time and, when and if requested by the NCLWF, to furnish adequate proof of payment of all indebtedness incurred on the Project.

- (h) The NCLWF Retaining Portion of Funds until Project Completion. The NCLWF will withhold payment from the Grant Recipient in the amount of **\$25,000** of the Grant until the Grant Recipient has satisfactorily submitted its grant contract final report.
- (i) No Excess Costs. The NCLWF agrees to pay or reimburse the Grant Recipient only for reasonable costs actually incurred by the Grant Recipient that do not exceed the funds budgeted for the Project in **Exhibit B**.
- (j) Period for Incurring Expenditures. The NCLWF will reimburse the Grant Recipient for allowable Project expenditures that are incurred by the Grant Recipient or its vendors only during the period between the Award Date and the Expiration Date of the Grant Contract. The NCLWF will not reimburse the Grant Recipient for Project expenditures that are not incurred during this period.
- (k) Costs of Project Administration. The NCLWF agrees to reimburse the Grant Recipient for administrative costs consisting only of costs of labor for administrative work conducted exclusively on this Project. The Grant Recipient's requests for such payment shall be made under the Project Administration line item of **Exhibit B** and shall conform to the following.
  - i. Costs allowable under the Project Administration line item shall be only reasonable costs of labor needed to comply with the general conditions of the Grant Contract (e.g., progress reports, payment requests, preparing the grant contract final report, revisions to the Grant Contract). Allowable Project Administration labor costs may include any of the following:
    - (a) compensation to the Grant Recipient's employees, plus the Grant Recipient's cost of paying benefits on such compensation (i.e., employees' pay times an audited or auditable benefits multiplier);
    - (b) compensation to the Grant Recipient's independent contractors (e.g., temporary office support), payable at the Grant Recipient's actual cost, without application of a benefits multiplier; and/or
    - (c) cost of professional services contracted by the Grant Recipient (e.g., engineering firm or consultant), payable at the Grant Recipient's actual cost.
  - ii. Costs of any other work described in the Project Scope of Work in **Exhibit A** are not allowable under the Project Administration line item.

9. **Grant Withdrawal for Failure to Enter into a Construction Contract.** Pursuant to N.C.G.S. §143B-135.238(f), if the Project includes construction, this Grant award shall be withdrawn if the Grant Recipient fails to enter into a construction contract for the Project within one year after the Award Date, unless the NCLWF's Board of Trustees finds that the Grant Recipient has good cause for the failure. If the Trustees find good cause for the Grant Recipient's failure, the Trustees must set a date by which the Grant Recipient must take action or forfeit the Grant.

10. **Refunds, Reversion of Unexpended Funds, and Reduction of the Grant based on Construction Cost less than Budgeted Construction Cost.**

- (a) Refunds. The Grant Recipient shall repay to the NCLWF any compensation it has received that exceeds the payment to which it is entitled herein, including any interest earned on funds reimbursed pursuant to the Grant Contract.

- (b) Reversion of Unexpended Funds. Any unexpended Grant monies shall revert to the NCLWF upon termination of the Grant Contract.
- (c) Reduction of the Grant based on Construction Cost less than Budgeted Construction Cost. The NCLWF may reduce the Grant amount if the Grant Recipient expects actual construction costs to be less than budgeted construction costs, as follows:
  - i. the Grant Recipient shall provide to the NCLWF construction contract pricing information consisting of at least a statement of the scope of the construction work, agreed-upon constructor or vendor pricing for the construction work, and a total anticipated construction cost based on the pricing;
  - ii. the Grant Recipient shall deliver the construction contract pricing information to the NCLWF's Contract Administrator within thirty (30) days of executing a construction contract for the Project; and
  - iii. the NCLWF may, at its discretion after comparing the total anticipated construction cost with the Grant Contract project budget, choose to reduce the Grant. If the NCLWF chooses to reduce the Grant, the NCLWF's Contract Administrator will prepare an amendment to the Grant Contract for this purpose, and the NCLWF will approve requests for reimbursement of the Grant Recipient's construction costs only after the amendment has been signed by both the Grant Recipient and the NCLWF.

11. **Reporting Requirements**. Beginning three (3) months after the Effective Date, the Grant Recipient must submit to the NCLWF a quarterly report on the status of the Project, via the appropriate form provided on the Fund's online grant management system. In addition, N.C.G.S. Chapter §143C, Article 6, Part 3 and Title 09, Subchapter 3M of the North Carolina Administrative Code (N.C.A.C.) require each Grant Recipient of State funds to comply with certain reporting requirements, as applicable. The Grant Recipient must also provide the required documentation as set forth in **Exhibit C1**. The Grant Recipient shall submit to NCLWF's Contract Administrator a grant contract final report via the appropriate form available on NCLWF's website and on the NCLWF grant management system (GMS). If the grant contract final report is not acceptable to the NCLWF, the NCLWF shall return it to the Grant Recipient for revision. Final payment will not be made until the grant contract final report is acceptable to the NCLWF.

12. **Notice: Contract Administrators**. All notices, requests, or other communications permitted or required to be made under this Grant Contract shall be given to the respective Contract Administrator. Notice shall be in writing, signed by the Party giving such notice. Notice shall be deemed given three (3) business days next following the date when deposited in the mail, postage prepaid, registered, or certified mail, return receipt requested, unless another form is otherwise noted herein.

13. **Signature Warranty**. Each individual signing below warrants that he or she is duly authorized to sign this Contract for the respective party, and to bind said party to the terms and conditions of this Grant Contract.

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**IN WITNESS WHEREOF**, the Grant Recipient and the Fund have executed this Grant Contract in one (1) original as of the Effective Date. One original shall be retained by the Fund and a copy of the original will be sent to the Grant Recipient. If there is any controversy among the documents, the document on file in the Fund’s office shall control.

**GRANT RECIPIENT:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Town Attorney

**NCLWF:**

**NORTH CAROLINA LAND AND WATER FUND**

By: \_\_\_\_\_

Name: John B. Wilson, Jr.

Title: Chairman, Board of Trustees

By: \_\_\_\_\_

Name: William B. Summer

Title: Executive Director

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**EXHIBIT A**  
**NCLWF PROJECT NO. 2021-401**

**Stream of the Project Site:** UT to Beaver Creek

**Water bodies downstream:** Beaver Creek, Jordan Lake

**River basin:** Cape Fear

**County:** Wake

**Amount requested from NCLWF:** \$409,658

**NCLWF approved grant amount up to:** \$409,658

**Total matching contributions:** \$276,500

**Total project budget:** \$686,400

**Percent match:** 40%

**Grant award date:** September 15, 2021

**Related NCLWF-funded projects** The project site is in a Town of Apex park purchased with an NCLWF grant where the 57 acres Seymour tract was secured as project number 2004A-001

**Project Site:** The Project Site is approximately 2,400 linear of a unnamed tributary of Beaver Creek on Town of Apex property within Apex Nature Park.

**Stream Condition:** The stream in the project area is moderately unstable. Riparian vegetation at certain points along the reach show evidence of trampling as disc golf users have repeatedly accessed the waters' edge.

**Project Summary:** The Town of Apex is requesting \$409,658 from the NC Land and Water Fund to complete a stream restoration project of 2,400 linear feet on an incised and laterally unstable unnamed tributary (UT) to Beaver Creek. Much of the restoration work will be conducted in a Town park that had been purchased and placed under conservation easement in 2005.

**Scope of Work, The Grant Recipient shall conduct and complete the activities given below:**

1. Consult with relevant permitting and regulatory agencies
2. Draft and complete engineering designs and plans
3. Secure all required local, State, and Federal permits
4. Secure conservation agreements on riparian areas (much of this work completed under previous grant)
5. Construct project per engineering design and plans
6. Develop educational features
7. Manage the project in total and report to the Fund

**Special Grant Contract Conditions:**

1. The Grant Recipient shall provide or otherwise ensure that the matching funds identified in **Exhibit B** are provided to the project.
2. Stream restoration, enhancement, and stabilization designs and their implementation must provide for permanently vegetated riparian buffers and permanent legal protection of the riparian buffers in accordance with the following.
  - (a) Riparian buffer widths, areas, and vegetation. Except as otherwise provided in these Special Contract Conditions, riparian buffers must be vegetated with protected existing vegetation and/or new planted vegetation established to become permanent over the entire buffer area in accordance with the following.

i. Widths and areas of riparian buffers: The widths and areas of vegetated riparian buffers are given in the Schedule of Properties for Legal Protection of Riparian Buffers.

Schedule of Properties for Legal Protection of Riparian Buffers								
No.	Property Owner	PIN	Stream Right			Stream Left		
			Stream Frontage (LF)	Protected Buffer Width (feet)	Protected Buffer Area (acres)	Stream Frontage (LF)	Protected Buffer Width (feet)	Protected Buffer Area (acres)
1	Town of Apex	0721778068				800	76	1.4
2								
3								
4								
5								
6								
7								
8								
9								
Totals						800	76	1.4
Average protected buffer widths								

ii. Woody vegetation along stream banks. Along restored streambanks and protected existing streambanks, native woody vegetation must be protected or established at a density such that vegetation will reach a survival rate of at least 320 trees per acre. Native woody vegetation must be protected or established from the top of each protected or restored streambank outward to widths of at least 50 feet perpendicular to the streambank.

(b) Permanent legal protection of riparian buffers. Real properties on which vegetated riparian buffers are to be provided must be protected permanently by legal instruments conforming to N.C.G.S. Chapter 121, Article 4, and N.C.G.S. Chapter 143B, Article 2, Part 41 (see **Exhibit F** and Section 5 of this Grant Contract). Real properties of the Project Site and corresponding land areas to be permanently protected are given in the Schedule of Properties for Legal Protection of Riparian Buffers.

3. The Grant Recipient shall permanently restrict uses on each property identified in the Schedule of Properties for Legal Protection of Riparian Buffers, as follows.

(a) Properties owned by the Town of Apex. Permanent property restrictions needed to implement the Project shall be in the form of recorded declarations of covenants of land-use restrictions that provide for the State of North Carolina to have rights of enforcement of the declarations of covenants. Declarations of covenants shall be substantially in a form of the document approved and signed as-to-form by the NCLWF. The Grant Recipient is responsible to accomplish and complete the following for these properties:

i. submit to the NCLWF a letter of intent from the Town of Apex indicating its intent to enter into permanent land-use restrictions on Town of Apex-owned properties identified in the Schedule of Properties for Legal Protection of Riparian Buffers to protect portions of properties needed to implement this Project. This letter shall describe the properties and the portions of the properties to be protected, shall state that the Town of Apex intends to enter into permanent land-use restriction to protect land that is part of the Project Site, and shall be signed by the Town of Apex. The NCLWF will approve the Grant Recipient’s requests for payment of any costs only after receiving such a letter;

- ii. prepare and execute a declaration of covenants of land-use restrictions for each property and record each executed declaration with the Wake County Register of Deeds; and
  - iii. provide a copy of each recorded declaration to the NCLWF. The NCLWF will approve the Grant Recipient's requests for payment of any costs for construction only after receiving all recorded declarations.
4. The Grant Recipient shall secure applicable Federal and State permits before the start of construction and submit copies of the permits to the NCLWF. The NCLWF shall approve requests for payment of the Grant Recipient's construction costs only after receiving copies of applicable Federal and State permits.
  5. In accordance with Water Quality Certification No. 3885, before construction begins the Grant Recipient shall submit a Pre-Construction Notification (PCN) form and three (3) copies of the Project plans and specifications to the North Carolina Division of Water Resources (DWR) 401 Certification Program for review. The Grant Recipient shall follow the latest guidelines on DWR's website (<http://portal.ncdenr.org/web/wq/swp/ws/401>) for the types of information to submit to DWR for review. The Grant Recipient shall name the NCLWF as the "agent" on the PCN form and shall send a copy of the PCN form to the NCLWF at the same time the form is sent to DWR.
  6. In conducting this Project, the Grant Recipient shall employ principles for restoring streams that have been established by the DWR 401 Certification Program. The Grant Recipient shall work with staff of the DWR 401 Certification Program to provide a Project design that, to the extent practicable, re-establishes the structure, function, and self-sustaining behavior of the Project reach of stream to those that existed before the stream reach was disturbed. NCLWF will release funds for reimbursing the Grant Recipient for construction only after receiving a letter from the DWR 401 Certification Program stating that either: (a) the Project design is capable of restoring the stream reach, or (b) if, in the opinion of the DWR 401 Certification Program, restoration of the full stream reach is not practicable but the Project design is capable of enhancing portions of the reach that cannot be restored. If DWR does not provide such a letter within 30 days from receiving the PCN and Project design (plans and specifications) from the Grant Recipient, then NCLWF will deem the design meets the requirements of the DWR 401 Water Quality Certification Program. Definitions used by the DWR 401 Certification Program are given in **Exhibit D**.
  7. The following General Terms and Conditions in **Exhibit E** do not apply to this Grant Contract: none.
  8. Other conditions special to this grant:
    - a. A plan describing Park activities such as frisbee golf be managed and planned so that riparian areas of the project area not be disturbed is to be provided to the Fund.

### **Project Schedule**

1. **Construction Contract Date: September 15, 2022 (one year after the Contract Award Date).** The Grant Recipient shall enter into a construction contract by this date for the work identified as construction in **Exhibit A**. Failure to enter into a construction contract by this date will result in withdrawal of the Grant, unless the NCLWF's Board of Trustees has found that the Grant Recipient had good cause for such failure and the Board of Trustees has set a date by which the Grant Recipient must take action.
2. **Contract Expiration Date: November 30, 2023.** The Grant Recipient shall complete the Project Scope of Work and submit the grant contract final report (Grant Contract Section 10 and as otherwise specified in **Exhibit A**) by

this date. The NCLWF will not reimburse the Grant Recipient for Project costs incurred after this date.

3. **Reimbursement Date: December 14, 2023.** The NCLWF must receive the Final Request for Payment for the Project by this date. The NCLWF will not accept or process for payment any request for payment received after this date. The NCLWF will not reimburse the Grant Recipient for costs incurred after the Contract Expiration Date.

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**EXHIBIT B**  
**NCLWF PROJECT NO. 2021-401**

**PROJECT BUDGET**

Item	NCLWF Grant Funds <sup>1</sup>	Matching Funds <sup>2</sup>	Total Item Budget
1. Design and permitting	\$60,000	\$50,000	\$110,000
2. Easement preparation and recordation	\$0	\$0	\$0
3. Construction	\$338,250	\$169,148	\$507,398
4. Construction administration/observation	\$0	\$17,500	\$17,500
5. Construction contingency <sup>3</sup>	\$0	\$0	\$0
6. Monitoring, data collection, data evaluation and analysis	\$0	\$0	\$0
7. Value of easements to be donated <sup>4</sup>	\$0	\$22,602	22,602
8. Project administration	\$0	\$17,500	\$17,500
9. Monitoring	\$11,408	\$0	\$
<b>Total Project Budget</b>	<b>\$409,658</b>	<b>\$276,750</b>	<b>\$686,408</b>
<b>% of Total Project Budget</b>	<b>60%</b>	<b>40%</b>	<b>100%</b>

Notes:

<sup>1</sup>To obtain payment, the Grant Recipient must submit itemized documentation substantiating direct costs incurred in implementing the project.

<sup>2</sup>Matching funds are contributed by: Town of Apex, \$276,500.

<sup>3</sup>Construction contingency funds allow the project to cover unanticipated construction costs, often resulting from unexpected conditions encountered during construction. Construction contingency funds shall not be used for work that is not construction (e.g., design or construction administration) nor for construction that is not part of the project scope of work (e.g., add-on work). Construction contingency funds may be disbursed only after the Grant Recipient has demonstrated to the NCLWF that it has expended 100 percent of funds in Construction line items, 100 percent of local matching funds, and at least 90 percent of all other matching funds, including matching grant and/or loan funds.

<sup>4</sup>The value of a conservation easement (or other legal instrument acceptable to the NCLWF) donated to the project by a property owner or acquired by the Grant Recipient may be claimed as matching funds contributed to the project only after the Grant Recipient has provided to the NCLWF all of the following information for that donated easement:

- (a) calculated area of the easement;
- (b) copy of the easement document as recorded by the county register of deeds; and
- (c) basis for the claimed value of the easement, which may be in the form of:
  - i. current property tax valuation assessed by the Wake County Tax Assessor’s Office showing total value of land and/or improvements, if any, with indicated year of the actual assessment. This option is available for land acquisitions for which the total price for any given parcel does not exceed \$100,000. An appraisal is required if the total value of any given parcel exceeds \$100,000. See additional details on appraisal requirements below; or
  - ii. if a recent appraisal has been prepared, the appraisal summary may be used, instead of the

tax valuation.

**Appraisal Requirements.** Appraisals are required if the total value of any given parcel exceeds \$100,000 and must be satisfactory to the NCLWF, performed by an independent certified appraiser acceptable to the NCLWF, and consistent with regulations or policies of the State Property Office (SPO) and policies of the NCLWF, *specifically in the “complete summary appraisal” format in accordance with Uniform Standards of Professional Appraisal Practice (USPAP)*. Two (2) appraisals are required if the value of the property is greater than \$500,000.00. All Appraisals should be forwarded to the NCLWF as soon as possible, but no later than 60 days prior to the anticipated closing date. The Appraisal should reflect the fair market value of the property. All Appraisals are subject to review by the SPO. At the discretion of the NCLWF, the Grant Recipient may be required to amend or update the Appraisal. The Grant Recipient specifically acknowledges that NCLWF’s acceptance of the matching funds value for the land acquisition is contingent upon approval of the appraised value by the SPO. **All Appraisals must be ordered in consultation with the NCLWF’s Real Property Agent in the State Property Office. Provide two (2) originals of each Appraisal obtained. NCLWF must be included as an authorized user of the Appraisal.**

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**EXHIBIT C**  
**NCLWF PROJECT NO. 2021-401**

**Pre-Disbursement Checklist**  
**Documents to Be Submitted to NCLWF Before any Funds will be Disbursed under the Grant**

Requirement		Description/What to Submit
<b>Submit before first request for payment</b>		
1	Authorization to obligate*	Does not apply to this contract.
2	Matching funds**	Proof of availability of matching funds included in the project budget.
3	Easements and/or declarations of covenants	Letters of intent from property owners.  Letter from the holder of the easements stating that it accepts this role and its responsibilities.
4	Documents in <b>Exhibit A</b>	Documents as identified in <b>Exhibit A</b> “Special Contract Conditions” (if any) as required prior to the release of NCLWF funds.
<b>Submit before first request for construction payment</b>		
5	Easements and/or declarations of covenants	Copies recorded easements and/or declarations of covenants for the properties in Schedule of Properties for Legal Protection of Riparian Buffers in <b>Exhibit A</b> . Each easement and each declaration of covenants is subject to review and acceptance by NCLWF.
6	Construction permits	Provide a copy of each applicable Federal or State permit issued for construction, or written documentation from the appropriate State agency that construction of the Project does not require a Federal or State permit.
7	Construction contract pricing information	Within 30 days of executing a construction contract for the Project, submit construction contract pricing information consisting minimally of a statement of the scope of the construction work, agreed-upon constructor or vendor pricing for the construction work, and a total anticipated construction cost based on the pricing. (Refer to Section 10 of the Grant Contract.)
8	Documents in <b>Exhibit A</b>	Documents as identified in <b>Exhibit A</b> “Special Contract Conditions” (if any) as required prior to the release of NCLWF funds.
<b>Submit before or accompanying request for final payment</b>		
9	Grant contract final report	Report per Grant Contract Section 10.
10	Easements and/or declarations of covenants	Schedule of Properties for Legal Protection of Riparian Buffers in <b>Exhibit A</b> . Each easement and each declaration of covenants is subject to review and acceptance by NCLWF.
11	Documents in <b>Exhibit A</b>	Documents as identified in <b>Exhibit A</b> “Special Contract Conditions” (if any) as required prior to the release of NCLWF funds.

\* Examples of proof of authorization to obligate include:

- resolution of the governing board to obligate
- certified copy of board meeting minutes documenting giving of authority to obligate

\*\*Examples of proof of availability of matching funds include:

- grants from other sources:
  - copy of grant agreement
  - copy of grant award letter
- local agency matching funds:

- resolution of the governing board
- budget showing allocation of matching funds to the Project, accompanied by a certified copy of board meeting minutes approving the budget or by a certified copy of board meeting minutes authorizing use of local matching funds for the Project
- certified copy of board meeting minutes attesting to the use and amount of local funds for match
- letters from other sources of matching funds attesting to contribution of the funds
- value of conservation easements to be donated:
  - current properties' fair market tax valuations assessed by the county tax assessor's office, prorated to apply only to the areas of the permanent conservation easements to be recorded for this project; or
  - appraisals, prepared and signed by a North Carolina-licensed appraiser, of the diminution of properties' fair market values as a result of being encumbered by permanent conservation easements required for this project.

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**EXHIBIT C.1**  
**ASSURANCES FOR NON-FEDERALLY FUNDED CONTRACTS**

*Exhibit C.1 applies only to grant recipients that are nonprofit corporations.*

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**EXHIBIT D**  
**ADDITIONAL DEFINITIONS**

The definitions set forth in N.C.G.S. Chapter 143C shall apply to this Grant Contract except as otherwise provided herein below. The definitions provided by 09 N.C.A.C. 03M shall apply to this Grant Contract to the extent they are not in conflict with N.C.G.S. Chapter 143C or this Grant Contract. In the event of conflict, N.C.G.S. Chapter 143C shall control over 09 N.C.A.C. 03M, and this Grant Contract shall control over N.C.G.S. Chapter 143C.

1. “Grant Contract” means a legal instrument that is used to reflect a relationship between the Grantor and the Grant Recipient and is used interchangeably herein with the term “Contract.”
2. “Construction contract” means a legally binding agreement between the Grant Recipient and another party for implementing construction work described in the project scope of work given in **Exhibit A**.
3. “Enter into a construction contract” means signature of a construction contract by both the Grant Recipient and another party for the construction work described in the project scope of work given in **Exhibit A**.
4. “Grant” and “grant funds” as defined in N.C.G.S. §143C-6-23 means State funds disbursed as a grant by a State agency; however, the terms do not include any payment made by the Medicaid program, the State Health Plan for Teachers’ and State Employees, or other similar medical programs. For purposes of this Grant Contract, both “grant” and “grant funds” shall be referred to as the Grant that is provided to the Grant Recipient to carry out the objectives of the Grant Contract.
5. “Grantee” as defined in the N.C.G.S. § 143C-6-23 means a non-State entity that receives State funds as a grant from a State agency but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission. For purposes of this Grant Contract, however, a “grantee” as defined in N.C.G.S. §143C-6-23 shall be referred to as the Grant Recipient and the term “grantee” shall mean and refer to an entity that is the recipient of an interest in real property.
6. “Grantor” means an entity that provides resources, generally financial, to another entity in order to achieve a specified goal or objective. For purposes of this Grant Contract, the Grantor is the NC Land and Water Fund.
7. “Stream enhancement” means the process of implementing certain stream rehabilitation practices in order to improve water quality and/or ecological function. These practices typically are conducted on the stream bank or in the flood prone area. An enhancement procedure may include fencing cattle out of a stream and re-establishing vegetation in order to provide streambank stability. These types of practices should be conducted only on a stream reach that is not experiencing severe aggradation or erosion. Enhancement also may include placing in-stream habitat structures, provided that the in-stream structures do not affect the overall dimension, pattern, or profile of a stream that is in dynamic equilibrium.
8. “Stream restoration” means the process of converting an unstable, altered, or degraded stream corridor including adjacent riparian zone and flood prone areas, to its natural or referenced, stable conditions considering recent and future watershed conditions. This process also includes restoring the geomorphic dimension, pattern, and profile and biological and chemical integrity, including transport of water and sediment produced by the stream’s watershed in order to achieve dynamic equilibrium.
9. “Stream stabilization” means the in-place stabilization of a severely eroding streambank. Stabilization techniques that include “soft” methods or natural materials (such as root wads, rock vanes, and vegetated crib walls) may be considered as part of a restoration design. However, stream stabilization techniques that rely heavily on “hard” engineering, such as concrete-lined channels, rip rap, or gabions, to stabilize streambanks will not be considered to be stream restoration or stream enhancement.
10. “State agency” shall mean a unit of the executive, legislative, or judicial branch of State government, such as a department, institution, division, commission, board, council, or The University of North Carolina. The

term does not include a unit of local government or a public authority. For purposes of this Grant Contract, both the North Carolina Department of Natural and Cultural Resources and the NC Land and Water Fund are State agencies.

11. For purposes of this Grant Contract, a “Subgrantee,” as defined in N.C.G.S. §143C-6-23, and “Subrecipient,” as defined in 09 NCAC 03M .0102 and applicable to 09 N.C.A.C. 03M, shall be referred to as a “Sub-grant Recipient.”

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**EXHIBIT E**  
**GENERAL TERMS AND CONDITIONS**

A. Affirmative Covenants

1. **Title.** If the property right to be acquired is fee title, the Grant Recipient shall acquire good and marketable title to the Property free and clear of any liens, other charges, or encumbrances that would materially affect the use of the Property as intended under this Grant Contract.
2. **No Mitigation.** The Grant Recipient shall not use the Property or any portion thereof to satisfy compensatory mitigation requirements under 33 USC § 1344 or N.C.G.S. §143-214.11.
3. **Right of Entry and Inspections.** The Grant Recipient shall permit NCLWF's representatives to enter the Property for inspection of the Property and to enter any other premises of the Grant Recipient associated with the activities of the Grant Recipient pursuant to the Grant, including to review books and records in any way related to the Grant or the Property.
4. **Retention, Operation, Maintenance and Use.**
  - (a) The Grant Recipient agrees to complete the Project as approved by the NCLWF. The descriptions, purpose, schedules, scope of work, and budgets set out in **Exhibits A and B**, and accompanying or related plans, specifications, estimates, procedures, and maps submitted to the NCLWF by the Grant Recipient are the foundation of this Grant Contract. Only changes deemed non-material in type by the Executive Director may be made without the consent of the NCLWF's Board of Trustees.
  - (b) For a period of ten (10) years after Project completion, the Grant Recipient agrees to maintain and manage, at maximum functional utility, the end product of the Project. The Grant Recipient shall inspect the Project on a routine basis and make routine repairs to restore the infrastructure to its full function within two (2) weeks of the need for the repairs. The Grant Recipient shall make additional inspections following major storm events and shall make all necessary repairs to return the infrastructure to its full function within the sooner of four (4) months after the major storm event or as soon as is commercially practicable after the major storm event.
  - (c) Property acquired, developed, or improved with grant assistance from the NCLWF shall be retained and used for the purposes identified in **Exhibit A**, and the Grant Recipient hereby agrees to file or record such restrictions as may be required to ensure such continued use and such restrictions shall be in form and substance satisfactory to the NCLWF.
  - (d) If at some future date, the NCLWF and the Grant Recipient agree in writing that the Project should no longer continue on as property(ies) of the Project Site, then Grant Recipient will abandon the Project and allow such property to return to its natural state.
5. **Signage.** If funds are available in the Grant Contract at the end of the Project, the Grant Recipient agrees to post signs, acknowledging NCLWF as the source of monies for conservation of the Property, on publicly visible areas of those Properties that have public access and/or where private property owners are amenable to signage.
6. **Publicity.** To the extent possible, the Grant Recipient will use its best efforts to appropriately publicize the Project's benefits to the general public and to local government and State representatives, including the role of the NCLWF in the funding and development of the project.
7. **Conflicts of Interest.** The Grant Recipient shall at all times comply with the Grant Recipient's conflict of interest policy.

8. **Compliance with Reporting Requirements.** The Grant Recipient shall comply with the reporting requirements contained in Section 9 of the Grant Contract, and in N.C.G.S. Chapter 143C, Article 6, Part 3, and 09 N.C.A.C. Subchapter 03M-Uniform Administration of State Grants, including audit oversight by the Office of the State Auditor, the provision of access to the accounting records by both the funding entity and the Office of the State Auditor in accordance with N.C.G.S. §147-64.7, and availability of audit work papers in the possession of any auditor of any recipient of State funding. If a Grant Recipient has not met these reporting requirements and fails to submit revised reports in accordance with a grantor agency determination letter, the grantor agency shall suspend further payments to the Grant Recipient and report the Grant Recipient to the Office of the State Auditor and the Office of the State Controller.
9. **Books and Records.** The Grant Recipient agrees to maintain and make available for inspection by the NCLWF, at all reasonable times, all documents, books, and records of all expenditures for costs applicable to this Grant Contract, and to submit properly certified billings for such costs on forms prescribed by the NCLWF and supported by detailed data sheets which will facilitate the audit of the Grant Recipient's records. Further, the Grant Recipient shall maintain all Grant records for a period of five (5) years or until all audit exceptions have been resolved, whichever is longer.
10. **Additional Requirements.** The Grant Recipient shall comply with all legal requirements applicable to the use of the Grant funds.
11. **Permits and Approvals.** All required regulatory approvals to use the Property and the Conservation Easement area in accordance with **Exhibit A** have or will be obtained.
12. **Compliance with Laws.** The Grant Recipient agrees to perform and maintain the Project in compliance with all Federal, State, and local laws and regulations, including, without limitation, environmental, zoning, and other land use laws and regulations. The Grant Recipient agrees to take reasonable steps to advise Project participants that they shall comply in the same manner.
13. **Insurance.** The Grant Recipient agrees to keep structures or improvements of any sort constituting the Project fully insured at all times during construction and to keep fully insured all building materials at any time located on the Project. The Grant Recipient will ensure that all contractors furnish adequate payment and performance bonds.
14. **No Pollution Credits.** If the Project enables the Grant Recipient to qualify for pollution credits by reducing the discharge of phosphorus, nitrogen, or any other nutrient or pollutant below, or further below, applicable regulatory limits, or otherwise ("Pollution Credits"), the Grant Recipient shall not sell, trade, or give to another person or entity that percentage of any resulting Pollution Credits achieved by the Project corresponding to the percentage of the Project costs provided by the NCLWF.
15. **Material Modifications.** Any proposed material modification of the Project shall be subject to approval by the NCLWF.
16. **Data Requests.** If the NCLWF so requests, the Grant Recipient shall provide data to the North Carolina Rural Economic Development Center's Water Resources Inventory and Data Management Project and/or to the North Carolina Geographic Information Coordinating Council's NC One Map Project.
17. **Conservation Easement or Other Land Use Restrictions.** The Grant Recipient shall obtain Conservation Easements or other land use restrictions for this Project satisfactory to the NCLWF in its sole discretion.
18. **Boundary Marking of Riparian Buffer Easement Areas.** The Grant Recipient shall mark the outside limits of riparian buffer conservation easement areas in a manner that is clearly visible and identifiable as the limit of the easement area.

## B. Representations and Warranties

In order to induce the NCLWF to enter into this Grant Contract and to make the Grant as herein provided, the Grant Recipient after reasonable inquiry makes the following representations, warranties, and covenants, which shall remain in effect after the execution and delivery of this Grant Contract and any other documents required hereunder, any inspection or examinations at any time made by or on behalf of the NCLWF, and the completion of the Project by the Grant Recipient:

1. **No Actions.** There are no actions, suits, or proceedings pending, or to the knowledge of the Grant Recipient threatened against or affecting the Grant Recipient before any court, arbitrator, or governmental or administrative body or agency that might affect the Grant Recipient's ability to observe and perform its obligations under this Grant Contract.
2. **No Untrue Statements.** Neither this Grant Contract nor any information, certificate, statement, or other document furnished by the Grant Recipient in connection with the Grant contains any untrue statement of a material fact or omits disclosure of a material fact that affects a property(ies) of the Project Site, the Conservation Easement, or the ability of the Grant Recipient to perform this Grant Contract.
3. **Validity of Grant.** Upon execution and delivery of this Grant Contract, it will be a valid and binding agreement, enforceable in accordance with the terms thereof.
4. **Zoning.** The present and proposed use of the Property, including, without limitation, the purpose of the Conservation Easement, is in compliance with all applicable zoning ordinances, and all applicable municipal and other governmental and regulatory approvals have been or will be obtained for the use and for operation of the Property according to this Grant Contract.
5. **Tax Exempt Status.** As applicable, the Grant Recipient shall maintain tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or any successor section) and the regulations promulgated there under (the "Code") and shall notify the NCLWF within thirty (30) days upon any change in its status under the Code.

## C. Termination: Events of Default

1. **Termination by Mutual Consent.** The Parties may terminate this Grant Contract by mutual written consent with sixty (60) days prior notice, or as otherwise provided by law.
2. **Termination for Cause.** The happening of any of the following, after the expiration of any applicable cure period without the cure thereof, shall constitute an event of default ("Event(s) of Default") by the Grant Recipient of its obligations to the NCLWF, and shall entitle the NCLWF to exercise all rights and remedies under this Grant Contract and as otherwise available at law or equity.
  - (a) **Property Unsuitable.** A determination by the NCLWF, prior to the disbursement of the Grant funds, that a property(ies) of the Project Site is unsuitable for the purposes of the Grant Contract.
  - (b) **Unsuitable Use.** A property(ies) of the Project Site is used in a manner materially inconsistent with the purposes of this Grant Contract or the Project.
  - (c) **Default in Performance.** The default by the Grant Recipient in the observance or performance of any of the terms, conditions, or covenants of this Grant Contract; provided, however, that no such default shall occur until the Grant Recipient has been given written notice of the default and 30 days to cure have elapsed.
  - (d) **Misrepresentation.** If any representation or warranty made by the Grant Recipient in connection with the Grant or any information, certificate, statement, or report heretofore or hereafter made shall be untrue or misleading in any material respect at the time made.

- (e) Eligibility of Grant Recipient. If the Grant Recipient ceases to be qualified to receive Grant funds, is dissolved, or otherwise ceases to exist.
- (f) Failure to Monitor Conservation Easement. If the Grant Recipient fails to notify the NCLWF of any potential violation of the Conservation Easement reasonably known to the Grant Recipient within a reasonable period of time so as to avert or cure any potential violation.
- (g) Abandonment of the Project. If the Grant Recipient abandons or otherwise ceases to continue to make reasonable progress towards completion of the Project.

#### D. The NCLWF's Rights and Remedies

If an Event of Default shall occur, the NCLWF shall have the following rights and remedies, all of which are exercisable at the NCLWF's sole discretion, and are cumulative, concurrent, and independent rights.

1. **Project Termination**. If an Event of Default occurs, the NCLWF may, at its discretion, suspend and/or terminate all obligations of the NCLWF hereunder. If, in the judgment of the NCLWF, such failure was due to no fault of the Grant Recipient, amounts required to resolve at minimum costs any irrevocable obligations properly incurred by the Grant Recipient shall, in the discretion of the NCLWF, be eligible for assistance under this Grant Contract.
2. **Additional Remedies**. If an Event of Default occurs, the NCLWF shall have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Project by any acts that may be unlawful or in violation of this Grant Contract or any other item or document required hereunder, (b) to obtain title to or otherwise preserve or protect its interest in the Project and any property acquired with Grant funds, (c) to compel specific performance of any of the Grant Recipient's obligations under this Grant Contract, (d) to obtain return of all Grant Funds, including equipment if applicable and/or (e) to seek damages from any appropriate person or entity. The NCLWF, or its designee, may also, at the NCLWF's sole discretion, continue to complete the Project, or any portion thereof deemed appropriate by the NCLWF, and the Grant Recipient shall cooperate in the completion of the Project. The NCLWF shall be under no obligation to complete the Project.
3. **Non-waiver**. No delay, forbearance, waiver, or omission of the NCLWF to exercise any right, power, or remedy accruing upon any Event of Default shall exhaust or impair any such right, power, or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power, and remedy given to the NCLWF may be exercised at any time and as often as may be deemed expedient by the NCLWF.

#### E. Miscellaneous

1. **Modification**. This Grant Contract may be rescinded, modified, or amended only by written agreement executed by all Parties hereto.
2. **Benefit**. This Grant Contract is made and entered into for the sole protection and benefit of the NCLWF, the State, and the Grant Recipient, and their respective successors and assigns, subject always to the provisions of Section E.8 of this **Exhibit E**. Except for the State, there shall be no third-party beneficiaries to this Grant Contract.
3. **Further Assurance**. In connection with and after the payment of Grant funds under this Grant Contract, upon the reasonable request of the NCLWF, the Grant Recipient shall execute, acknowledge, and deliver or cause to be delivered all such further documents and assurances, and comply with any other requests as may be reasonably required by the NCLWF or otherwise appropriate to carry out and effectuate the Grant as contemplated by this Grant Contract and the purposes of the Conservation Easement.

4. **Compliance by Others.** The Grant Recipient shall be responsible for compliance with the terms of this Grant Contract by any Sub-grant Recipient, including but not limited to, a political subdivision, public agency, or qualified non-profit organization to which funds or obligations are transferred, delegated, or assigned pursuant to this Grant Contract. Delegation by the Grant Recipient to a Sub-grant Recipient of any duty or obligation hereunder does not relieve the Grant Recipient of any duty or obligation created hereunder. Failure by such Sub-grant Recipient to comply with the terms of this Grant Contract shall be deemed failure by the Grant Recipient to comply with the terms of this Grant Contract. Any such delegation of duties or obligations shall be in writing, signed by the Grant Recipient and Sub-grant Recipient, shall be in accordance with Section E.8 of this **Exhibit E**, and shall contain an affirmative covenant by the Sub-grant Recipient that it shall abide by the rules set forth in Title 09, Subchapter 03M of the North Carolina Administrative Code.

5. **Independent Status of the Parties.** The Parties are independent entities and this Grant Contract shall not create a partnership or joint venture between the Parties. Further, the Grant Contract shall not in any way be interpreted or construed as making the Grant Recipient, its agents, or employees, to be agents or representatives of the NCLWF. The Grant Recipient is and shall be an independent contractor in the performance of this Grant Contract and as such shall be wholly responsible for the work to be performed and for the supervision of its agents and employees. In no event shall the NCLWF be liable for debts or claims accruing or arising against the Grant Recipient. The Grant Recipient represents that it has, or shall secure at its own expense, all personnel required in the performance of this Grant Contract. Such employees shall not be employees of, nor have any individual contractual relationship with, the NCLWF.

6. **Indemnity.** The Grant Recipient agrees, to the fullest extent permitted by law, to release, protect, indemnify, and hold harmless the State, the NCLWF, its Trustees, employees, agents, and assigns against any and all claims, losses, liabilities, damages, and costs, including reasonable attorney fees, that result from or arise out of: (a) damages or injuries to persons or property caused by the negligent acts or omissions of the Grant Recipient, its employees, agents, or assigns in use or management of the Property; (b) use or presence of any hazardous substance, waste, or other regulated material in, under, or on the Property; or (c) the performance of the Grant Recipient's duties under this Grant Contract. The obligations under this Section are independent of all other rights or obligations set forth herein. This indemnity shall survive the disbursement of the Grant funds, as well as any termination of this Grant Contract.

7. **No Discrimination.** The Grant Recipient shall ensure that no person will be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity covered by this Grant Contract solely on the grounds of race, color, age, religion, sex, or national origin.

8. **Binding Effect, Contract Assignable.** The terms hereof shall be binding upon and inure to the benefit of the successors, assigns, and personal representatives of the Parties; provided, however, that the Grant Recipient may not assign this Grant Contract or any of its rights, interests, duties, or obligations hereunder or any Grant proceeds or other moneys to be advanced hereunder in whole or in part without the prior written consent of the NCLWF, which may be withheld for any reason and that any such assignment (whether voluntary or by operation of law) without said consent shall be void. In the event assignment is allowed, neither the Grant Recipient nor the Sub-grant Recipient shall be relieved of any of the duties and responsibilities of the Grant Contract. Further, the Sub-grant Recipient shall agree to abide by the all the requirements of this Grant Contract, and to provide all information needed in order for the Grant Recipient to comply with this Grant Contract.

9. **Governing Law, Construction and Jurisdiction.** This Grant Contract and all matters relating thereto shall be governed by and construed and interpreted in accordance with the laws of the State of North Carolina, notwithstanding the principles of conflicts of law. The headings and section numbers contained herein are for reference purposes only. The terms of this Grant Contract shall be construed according to their plain meaning, and not strictly construed for or against either Party hereto. The Grant Recipient hereby submits to the jurisdiction of the State and Federal courts located in North Carolina and agree that the NCLWF may, at its option, enforce its rights under the Grant Contract in such courts. The Parties intend this document to be an instrument executed under seal. The NCLWF and any Party that is an individual, partnership, or limited liability company hereby adopts the word "SEAL" following his/her signature and the name of the NCLWF or partnership or limited liability company as his/her/its legal seal.



10. **Savings Clause.** Invalidation of any one or more of the provisions of this Grant Contract, or portion thereof, shall in no way affect any of the other provisions hereof and portions thereof which shall remain in full force and effect.
11. **Additional Remedies.** Except as otherwise specifically set forth herein, the rights and remedies provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available in connection with this Grant Contract.
12. **Survival.** Where any representations, warranties, covenants, indemnities, or other provisions contained in this Grant Contract by its context or otherwise evidences the intent of the Parties that such provisions should survive the termination of this Grant Contract or any Closing, the provisions shall survive any termination or Closing. Without limiting the generality of the foregoing, the Parties specifically acknowledge and agree that the provisions of **Exhibit E, Exhibit F**, and the conditions shown in **Exhibit A** shall survive any termination of this Grant Contract as well as any Closing.
13. **Entire Grant Contract: Incorporation of Exhibits.** This Grant Contract constitutes the entire Grant Contract between the Parties with respect to the subject matter hereof. All recitals, exhibits, schedules, and other attachments hereto are incorporated herein by reference.
14. **Headings.** The headings of the various sections of this Grant Contract have been inserted for convenience only and shall not modify, define, limit, or expand the express provisions of this Grant Contract.
15. **Time of the Essence.** Time is of the essence in the performance of this Grant.

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**EXHIBIT F**  
**CONSERVATION EASEMENTS**

1. As used in this Exhibit, “Conservation Easement” refers to the more general term “Conservation Agreement” as defined in NCGS Chapter 121, Article 4.
2. Conservation Easements obtained and recorded in connection with this Project shall be patterned after the NCLWF’s template Deed of Conservation Easement for Restoration Purposes (“Restoration Easement”).
3. Conservation Easements obtained and recorded in connection with this Project shall be held by a party satisfactory to the NCLWF.
4. Before disbursement of any construction funds under this Grant Contract, the NCLWF must review and approve the Conservation Easements, and said Conservation Easements must be recorded in the official land records of the appropriate county.
5. The acquisition of the Conservation Easements may herein also be referred to as the “Closing.”
6. “Donated Conservation Easements” are Conservation Easements for which neither the NCLWF nor the Grant Recipient has expended or will expend any funds to obtain property interest.
7. Conservation easements for stream restoration riparian buffers may not be purchased using Grant funds. Conservation easements for stream restoration riparian buffers must be donated easements, be purchased with matching funds, and/or be purchased with funds not included in the project budget in **Exhibit B**.
8. The following requirements apply to all Conservation Easements obtained and recorded in connection with this Project:
  - (a) Conservation Easements shall have good and marketable title;
  - (b) the terms of Conservation Easements shall provide a third party right of enforcement to the State of North Carolina, such that in the event the easement holder satisfactory to the NCLWF fails to enforce any of the terms of Conservation Easements, the State shall have the independent right to enforce the terms of Conservation Easements through any and all authorities available under State law;
  - (c) donated Conservation Easements shall be conveyed as an absolute gift to the easement holder satisfactory to the NCLWF subject to an executory interest in the State such that in the event that the easement holder satisfactory to the NCLWF attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests in a Conservation Easement without the prior written consent of the State, then all rights, title, or interest in the Conservation Easement shall automatically vest in the State;
  - (d) Conservation Easements shall provide that, in the event the easement holder satisfactory to the NCLWF transfers or assigns the Conservation Easement to a third party, the organization receiving the interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code, which is organized or operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code, and that the transferee or assignee will further covenant and agree that the terms of the transfer or assignment will require it to continue to carry out in perpetuity the conservation purposes that the contribution was originally intended to advance. Specifically, Conservation Easements shall provide that, in the event the easement holder satisfactory to the NCLWF transfers the Conservation Easement, the easement holder satisfactory to the NCLWF shall covenant and agree to continue to monitor and observe the Conservation Easement in perpetuity with the State for such purposes as are described in the Conservation Easement and this Grant Contract and to report to the State and the NCLWF any observed violations thereof. The easement holder satisfactory to the NCLWF may

be released from the obligation to monitor the Conservation Easement only with prior written approval of the State and the NCLWF; and

- (e) any specific terms and conditions set forth in **Exhibit A**.

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