

**STATE OF NORTH CAROLINA
NORTH CAROLINA LAND AND WATER FUND
GRANT AGREEMENT
(PLANNING GRANT)**

NCLWF PROJECT NUMBER: 2021-808

GRANTOR: North Carolina Land and Water Fund (“NCLWF”), 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 North Carolina General Statutes (“N.C.G.S.”) Chapter 143B, Article 2, Part 41

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

GRANT RECIPIENT: City of Hendersonville, a North Carolina Local Government Unit, (“Grant Recipient”)

CONTRACT ADMINISTRATOR: John Connet, City Manager
City of Hendersonville
305 Williams St.
Hendersonville, NC, 28792
Phone: (828) 697-3013
Email: mhuffman@hvlnc.gov

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

CONTRACT EFFECTIVE DATE: _____ (the “Effective Date”)

CONTRACT EXPIRATION DATE: August 31, 2023 (the “Expiration Date”)

REIMBURSEMENT DATE: September 14, 2023

GRANT AMOUNT: Up to \$24,620 (the “Grant”)

THIS GRANT CONTRACT (this “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 submitted to NCLWF an application for a grant of funds (the “Grant Application”) to undertake a project to engage in planning for restoration of degraded lands for their ability to protect the quality of surface waters.

WHEREAS, N.C.G.S. Chapter 143B, Article 2, Part 41 authorizes NCLWF to, among other things, restore previously degraded lands to reestablish their ability to protect water quality and to acquire conservation easements and other interests in real property to protect and conserve 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, at its meeting on the Award Date, NCLWF approved the Grant Recipient’s application on the terms and conditions in this Grant Contract.

WHEREAS, the Grant Recipient agrees to conduct the project approved by NCLWF’s Board of Trustees for the purposes and according to the scope of work, conditions, and schedule in **Exhibit A** (the “Project”) and according 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 consist 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 the Exhibits that require execution, the Grant Contract shall constitute a valid, binding contract between the Parties. 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 NCLWF’s Executive Director may be made to the Grant Contract without the consent of 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

2. **Purpose.** The purpose of the Grant is to restore degraded streams to protect the quality of surface waters as 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 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 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 Grant Contract.

5. **Contract Period.** NCLWF's commitment to disburse Grant funds under this Grant Contract shall cease on the Reimbursement Date. The Grant Recipient is responsible to ensure that the Project is completed by the Expiration Date and that all costs to be reimbursed have been submitted to 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 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 give complete details of the reasons why an extension is needed, propose a new expiration date for the Grant Contract, and be submitted online via NCLWF's online grants management system. This request must be submitted to and received by NCLWF at least **60 days** prior to the Expiration Date. Approval of any requested extension is at the sole discretion of NCLWF. The approval or denial of the requested extension will be based upon Project performance, among other factors. **NCLWF is not obligated to send reminders or other notification of an approaching Expiration Date.**

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

7. **Disbursement of Grant Funds.**

(a) **Proportionate Spending of Matching Funds.** Grant monies are awarded based on a commitment of matching funds to the Project. 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 NCLWF are requested.

(b) **Requests for Payment.** NCLWF will not disburse Grant funds until receipt by the NCLWF Contract Administrator of the following documentation via NCLWF's online grants management system and the appropriate forms contained thereon:

i. 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 in the project budget. 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. Identification of 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. NCLWF will not reimburse the Grant Recipient for such amounts.
 - iii. A written report containing a detailed narrative of the progress of the Project submitted within three (3) months prior to the reimbursement request.
 - iv. A completed request for reimbursement via NCLWF's online grants management system, stating that the Grant Recipient complied with all terms of this Grant Contract in incurring the expenses.
- (c) Alternate Disbursement of Grant Funds. 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 NCLWF to disburse Grant funds to the Grant Recipient based on unpaid third-party invoices, the Grant Recipient must submit the following documentation via NCLWF's online grants management system and the appropriate forms contained thereon.
- i. 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 in the project budget. 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. Identification of 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. NCLWF will not reimburse the Grant Recipient for such amounts.
 - iii. A written report containing a detailed narrative of the progress of the Project submitted within three (3) months prior to the reimbursement request.
 - iv. A completed request for reimbursement, stating that the Grant Recipient complied with all terms of this Grant Contract in incurring the expense, reviewed and has approved the unpaid third-party invoice, and certifies to NCLWF that the unpaid third-party invoice will be paid within three (3) working days of receipt of the disbursed Grant fund.

The Grant Recipient will confirm in writing to NCLWF, via the appropriate form provided on NCLWF's online grant management system, 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 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. 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 NCLWF and according to applicable standards and requirements. However, NCLWF may, at its discretion, make payments without requiring such certificates or construction contractor's estimate, in which event the Grant Recipient shall furnish NCLWF a list of and the amounts of items to be paid out of the payment, or such other evidence as 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 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 NCLWF all such receipts, affidavits, canceled checks, or other evidences of payment as may be requested from time to time and, when and if requested by NCLWF, to furnish adequate proof of payment of all indebtedness incurred on the Project.
- (h) NCLWF's Retaining Portion of Funds until Project Completion. NCLWF will withhold payment from the Grant Recipient in the amount of **\$2,500** of the Grant until the Grant Recipient has satisfactorily submitted its grant contract final report.
 - i. No Excess Costs. 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**.
- (i) Period for Incurring Expenditures. 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. NCLWF will not reimburse the Grant Recipient for Project expenditures that are not incurred during this period.
- (j) Costs of Project Administration. 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.

8. **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 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 NCLWF upon termination of the Grant Contract.

9. **Reporting Requirements.** Beginning three (3) months after the Effective Date, the Grant Recipient must submit to NCLWF a quarterly report on the status of the Project, via the appropriate form provided on NCLWF'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 C**. 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 NCLWF, 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 NCLWF.

10. **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 on the third business day after the date when deposited in the mail, postage prepaid, registered, or certified mail, return receipt requested, unless another form is otherwise noted herein.

11. **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.

(The remainder of this page is intentionally left blank)

IN WITNESS WHEREOF, the Grant Recipient and NCLWF have executed this Grant Contract in one (1) original as of the Effective Date. One original shall be retained by NCLWF 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 NCLWF’s office shall control.

GRANT RECIPIENT:

By: _____

Name: _____

Title: _____

[SEAL]

ATTEST:

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

City 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

EXHIBIT A
NCLWF PROJECT NO. 2021-808

Stream of the Project Site: Mud Creek Stream

Water bodies downstream: French Broad River

River basin: French Broad

County: Henderson

Amount requested from NCLWF: \$24,620

NCLWF approved grant amount: up to \$24,620

Total matching contributions: \$27,000

Total project budget: \$51,620

Percent match: 52%

Grant award date: September 15, 2021

Project Site: The Project sites are three vacant City owned properties in the watershed of Mud Creek. These parcels make up approximately 38 acres near Hendersonville, NC.

Site Conditions and Water Quality Objectives: Many streams in the study are listed by the State as impaired waters. Since destabilizing channel modifications have been made in the past restoration opportunities exist at each of the three sites.

Project Summary: The Mud Creek Stream, Wetland, and Stormwater Planning Project proposes to address water quality issues in the Mud Creek Watershed using ecological restoration and innovative stormwater management at three sites owned by the City of Hendersonville. Two project parcels already have conservation easements on them (Funded by what is now Division of Mitigation Services) but these easements specifically allow for wetland and/or stream restoration. The planning effort will evaluate restoration and acquisition options and deliver conceptual designs.

Scope of Work, NCLWF funds and matching funds will be used to:

1. Conduct Stakeholder meetings
2. Conduct ecological and stream restoration assessments
3. Assess floodplain conditions and on-site hydrology
4. Assess additional conservation opportunities where beneficial to wetland restoration plans
5. Develop conceptual designs and costs analysis for restoration projects at the three locations
6. locations Prioritize projects on one site for development into a 30% design deliverable
7. Administer the Project and report to the Fund.

Special 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. As part of or along with quarterly progress reports and/or the grant contract final report, the Grant Recipient shall provide to the NCLWF a copy of each of the following reports or other documents resulting from this project, as given under Scope of Work in **Exhibit A**: the Mud Creek watershed acquisition plan, and restoration plans for the three Project parcels.
3. Other conditions special to this grant: none.

Project Schedule

1. **Contract Expiration Date: August 31, 2023.** The Grant Recipient shall complete the Project Scope of Work and submit the grant contract final report (Grant Contract Section 9 and as otherwise specified in **Exhibit A**) by this date. NCLWF will not reimburse the Grant Recipient for Project costs incurred after this date.
2. **Reimbursement Date: September 14, 2023.** NCLWF must receive the Final Request for Payment for the Project by this date. NCLWF will not accept or process for payment any request for payment received after this date. NCLWF will not reimburse the Grant Recipient for costs incurred after the Contract Expiration Date.

(The remainder of this page is intentionally left blank)

EXHIBIT B
NCLWF PROJECT NO. 2021-808

PROJECT BUDGET

Item	NCLWF Grant Funds ¹	Matching Funds ²	Total Item Budget
1. Labor (salary and benefits – does not include overhead)	\$0	\$0	\$0
2. Outside consulting, including all expenses	\$24,620	\$25,000	\$49,620
3. Mapping/GIS expenses	\$0	\$0	\$0
4. Supplies	\$0	\$0	\$0
5. Project administration	\$0	\$0	\$2,000
Total Project Budget	\$24,620	\$27,000	\$51,620
% of Total Project Budget	48%	52%	100%

Notes:

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

² Matching funds are contributed by: City of Hendersonville, \$27,000.

(The remainder of this page is intentionally left blank)

EXHIBIT C
NCLWF PROJECT NO. 2021-808

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

Requirement	Description/What to Submit
Submit before first request for payment	
1	Authorization to obligate*
2	Matching funds**
3	Documents in Exhibit A
Submit before or accompanying request for final payment	
4	Grant contract final report
5	Documents in Exhibit A

* 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

EXHIBIT C.1
ASSURANCES FOR NON-FEDERALLY FUNDED CONTRACTS

Does not apply to this Grant Contract.

(The remainder of this page is intentionally left blank)

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.”

(The remainder of this page is intentionally left blank)

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 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 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 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 repair. 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 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 NCLWF.
 - (d) If at some future date, NCLWF and the Grant Recipient agree in writing that the Project should no longer continue on as property(ies) of the Project Site, then the 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, local government, and State representatives, including the role of 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 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 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.** The Grant Recipient has or shall obtain all required regulatory approvals to use the Property and the Conservation Easement area in accordance with **Exhibit A**.
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 NCLWF.
15. **Material Modifications.** Any proposed material modification of the Project shall be subject to approval by NCLWF.
16. **Data Requests.** If 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 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 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 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 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 NCLWF, and shall entitle 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 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 the 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 NCLWF of any potential violation of the Conservation Easement, which is known or reasonably should be known by 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. NCLWF's Rights and Remedies

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

1. **Project Termination.** If an Event of Default occurs, NCLWF may, at its discretion, suspend and/or terminate all obligations of NCLWF hereunder. If, in the judgment of NCLWF, such failure was due to no fault of the Grant Recipient, amounts required to resolve, at the minimum cost practical, any irrevocable obligations properly incurred by the Grant Recipient shall, in the discretion of NCLWF, be eligible for assistance under this Grant Contract.
2. **Additional Remedies.** If an Event of Default occurs, 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. NCLWF, or its designee, may also, at NCLWF's sole discretion, continue to complete the Project, or any portion thereof deemed appropriate by NCLWF, and the Grant Recipient shall cooperate in the completion of the Project. NCLWF shall be under no obligation to complete the Project.
3. **Non-waiver.** No delay, forbearance, waiver, or omission of 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 NCLWF may be exercised at any time and as often as may be deemed expedient by 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 NCLWF, the State, and the Grant Recipient, and their respective successors and assigns, subject always to the provisions of paragraph 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 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 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 paragraph 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 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 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, NCLWF.

6. **Indemnity.** The Grant Recipient agrees, to the fullest extent permitted by law, to release, protect, indemnify, and hold harmless the State, 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 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 agrees that 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. 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 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** 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.

(The remainder of this page is intentionally left blank)