

**STATE OF NORTH CAROLINA  
NORTH CAROLINA LAND AND WATER FUND  
GRANT CONTRACT – RESTORATION OF DEGRADED STREAMS OR OTHER WATERS  
(FLOOD RISK REDUCTION WITH LAND ACQUISITION – GOVERNMENT)**

**NCLWF PROJECT:** 2022-FRR24 - Hendersonville - Mud Creek Flood Risk Reduction

**GRANTOR:** North Carolina Land and Water Fund (“NCLWF”), a division of the Department of Natural and Cultural Resources (“DNCR”), 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.”)

**Grantor Contract Administrator:** Steve Bevington  
North Carolina Land and Water Fund  
1651 Mail Service Center  
Raleigh, NC 27699-1651  
Phone: (919) 707-9478  
Email: steve.bevington@ncdcr.gov

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

**Grant Recipient Federal I.D. Number:** 56-6001242

**Grant Recipient Fiscal Year End Date:** June 30

**Grant Recipient Contract Administrator:** Michael Huffman  
City of Hendersonville  
Phone: (828) 697-3013  
Email: mhuffman@hvlnc.gov

**GRANT AWARD DATE:** February 28, 2023 (“Award Date”)

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

**CONSTRUCTION CONTRACT DATE:** \_\_\_\_\_

**CONTRACT EXPIRATION DATE:** \_\_\_\_\_ (“Expiration Date”)

**DEADLINE FOR RECEIPT BY NCLWF OF REIMBURSEMENT/PAYMENT REQUESTS:**  
\_\_\_\_\_ (“Reimbursement Date”)

**GRANT AMOUNT:** up to \$1,120,929 (“Grant”)

**COMPANY:** 4602      **ACCOUNT:** 536403      **CENTER:** 2002

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

**WITNESSETH:**

**WHEREAS**, the NCLWF was established by N.C.G.S. Chapter 143B, Article 2, Part 41 as a special revenue fund to be administered by the North Carolina Department of Natural and Cultural Resources (“NCDNCR”). The NCLWF receives revenue from the following sources and may receive revenue from other sources: (1) annual appropriations, (2) special registration plates under G.S. 20-81.12, (3) other special registration plates under G.S. 20-79.7, and (4) hazard mitigation funds from the Federal Emergency Management Agency and other agencies; and

**WHEREAS**, the NCLWF is authorized by N.C.G.S. Chapter 143B, Article 2, Part 41 to use the revenue in the NCLWF for any of the following purposes: (1) to acquire land for riparian buffers for the purposes of providing environmental protection for surface waters and urban drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses; (2) to acquire conservation easements or other interests in real property for the purpose of protecting and conserving surface waters and drinking water supplies; (3) to coordinate with other public programs involved with lands adjoining water bodies to gain the most public benefit while protecting and improving water quality; (4) to restore previously degraded lands to reestablish their ability to protect water quality; (5) to facilitate planning that targets reductions in surface water pollution; (6) to finance innovative efforts, including pilot projects, to improve stormwater management, to reduce pollutants entering the State’s waterways, to improve water quality, and to research alternative solutions to the State’s water quality problems; (7) to prevent encroachment, provide buffers, and to preserve natural habitats around military installations or military training areas, or for State matching funds of Federal initiatives that provide funds to prevent encroachment, provide buffers, and preserve natural habitats around military installations or military training areas; (8) to acquire land that represents the ecological diversity of North Carolina, including natural features such as riverine, montane, coastal, and geologic systems and other natural areas to ensure their preservation and conservation for recreational, scientific, educational, cultural, and aesthetic purposes; (9) to acquire land that contributes to the development of a balanced State program of historic properties; (12) and to restore floodplains and wetlands for the purpose of storing water, reducing flooding, improving water quality, providing wildlife and aquatic habitat, and providing recreational opportunities. (Note that numerals (10) and (11) have been omitted intentionally as they were repealed by statute. See N.C.G.S. §143B-135.234); and

**WHEREAS**, The North Carolina General Assembly appropriated \$15,000,000 to the NCLWF and directed the Division of Land and Water Stewardship to use the funds to provide grants to counties, municipalities, nonprofit corporations, and other State agencies for projects addressing the purposes specified in N.C.G.S. §143B-135.234(c)(12) (See 2021-180 N.C. Sess. Laws 30); and

**WHEREAS**, the NCLWF uses the revenue in the NCLWF to award grants to eligible grant recipients in order to fulfill its mission, goals and purpose; and

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

**WHEREAS**, the Grant Recipient has submitted to the NCLWF an application requesting a grant of funds (the “Grant Application”) for an authorized NCLWF purpose; and

**WHEREAS**, the NCLWF approved the Grant Recipient's Grant Application on the Award Date and has agreed to make the Grant to the Grant Recipient pursuant to the terms and conditions set forth in this Grant Contract; and

**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.** In the case of conflict, specific and special terms, conditions, and requirements shall control over general terms, conditions, and requirements. The Grant Contract is not a binding agreement on all Parties until (1) all Parties have executed this Grant Contract and all Exhibits that require execution, and (2) the funds for the Grant contemplated herein have been encumbered by the NCDNCR. This Grant Contract is subject to allocation and appropriation of funds to the NCDNCR for the purposes set forth in the contract.

The Grant Recipient agrees that it is subject to and will comply with the terms, promises, and any other requirements appearing either directly or by reference in the following documents, which are attached hereto and incorporated by reference into this Grant Contract:

- (a) Exhibit A – Project Description
- (b) Exhibit B – Project Budget
- (c) Exhibit C – Pre-Disbursement Checklist
- (d) Exhibit D – Does not apply (government)
- (e) Exhibit E – General Terms and Conditions
- (f) Exhibit F – Pre-Closing Checklist
- (g) Exhibit G – Post-Closing Checklist

This Grant Contract constitutes the entire contract between the Parties, superseding all prior oral and written statements or contracts.

2. **Grant Recipient's Duties.** The Grant Recipient agrees to conduct the project approved by the NCLWF for the purposes of and according to the Project Description in **Exhibit A** ("Project"), pursuant to the Budget set forth in the attached **Exhibit B**, in accordance with the terms of this Grant Contract, in accordance with any other applicable statute or rule, and in accordance with the requirements of the NCLWF.
3. **NCLWF's Duties.** Subject to the adherence to the requirements for disbursement, and subject to the appropriation, allocation, and availability to the NCLWF of Grant funds for the Project, the NCLWF hereby agrees to pay the Grant funds to the Grant Recipient in accordance with the Disbursement of Grant Fund Procedures set forth herein.
4. **Contract Period.** 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 funds 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 NCLWF's commitment to disburse Grant funds under this Grant Contract shall cease on the Reimbursement Date.

The Grant Recipient is solely responsible for requesting 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 via the NCLWF's online grants management system. This request must be submitted to and received by the NCLWF at least sixty (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.

5. **Disbursement of Grant Fund Procedures.**

- a. Prior to the disbursement of any Grant funds under this Grant Contract, the Grant Recipient shall deliver to the NCLWF all of the documentation described in **Exhibits C and D**, as applicable.
- b. Grant funds will not be disbursed during the first week of January, the last three (3) weeks of June, the first week of July, or the last two (2) weeks of December. In addition, the State does not process payments on the last business day of any month.
- c. The NCLWF only agrees to pay or reimburse the Grant Recipient for reasonable costs actually incurred by the Grant Recipient that do not exceed the Grant funds budgeted for the Project as shown in **Exhibit B**.
- d. The Grant Recipient may seek reimbursement for allowable Project costs incurred after the Award Date notwithstanding the fact that those costs may have been incurred prior to the Effective Date. The Grant Recipient may not be reimbursed for Project costs incurred prior to the Award Date; however, the Grant Recipient may use such costs toward match requirement if the costs were approved by the NCLWF's Board of Trustees on the Award Date as shown on **Exhibit B**.
- e. Proportionate Spending of Matching Funds. The NCLWF encourages a commitment of matching funds to be contributed to the Project from non-NCLWF sources. Information on the commitment of matching contribution is part of the Grant Application submitted by Grant Recipient. Matching contribution value is then calculated as a percentage of the total project cost and is considered by the NCLWF as a match percentage when awarding Grants. Once an award is made, the matching percentage is incorporated into the Budget on **Exhibit B**. As funds are requested from the NCLWF, the Grant Recipient must provide documentation, sufficient to the NCLWF, showing how a proportionate expenditure of match will occur. The NCLWF will not make a disbursement of funds if the matching percentage falls below the original commitment of matching funds on **Exhibit B**.
- f. 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. For payment requests involving all or a portion of the Property / Conservation Agreement Acquisition Costs shown on Exhibit B, the Acquisition and the recording, at the applicable Register of Deeds, of the General Warranty Deed, Conservation Easement and/or Declaration of Covenants and Restrictions (collectively "Conservation Agreement"), and Assignment, as may be applicable, shall be referred to herein as the

“Closing.” Grant funds may be paid at the time of Closing if the Grant Recipient has complied with all Pre-Closing requirements as set forth in Exhibit F and the NCLWF has received and approved all necessary documentation for the payment.

- 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 any sales tax for which reimbursement has been or will be obtained from the North Carolina Department of Revenue (“NCDOR”). 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 system. The progress report shall describe work accomplished on the Project and progress toward completing the Project Scope of Work in **Exhibit A**.
- g. Alternate Disbursement of Grant Funds. The NCLWF may, upon request by the Grant Recipient, disburse Grant funds, other than those related to the Property / Conservation Agreement Acquisition Costs on Exhibit B, 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 NCDOR. 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 system. The progress report shall describe work accomplished as well as progress toward completing the Project Scope of Work in **Exhibit A**.
  - v. The Grant Recipient shall confirm in writing to the NCLWF within thirty (30) days of the disbursement of Grant funds, via the appropriate form provided on the NCLWF's online grants management system, that the required payment has been made to the third party.
- h. 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. An estimate by the construction contractor setting forth items to be paid out of the proceeds of each such payment shall be attached to the certificate. 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.
- i. 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 by submitting a written report on the NCLWF's online grants management system. 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.
- j. 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 debts incurred on the Project.
- k. NCLWF Retaining Portion of Funds until Project Completion. The NCLWF may withhold payment from the Grant Recipient in the amount of \$100,000 of the Grant until the Grant Recipient has satisfactorily submitted its grant contract final report.
- l. 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 multiplied by 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.
6. **Grant Withdrawal for Failure to Enter into a Construction Contract.** Pursuant to N.C.G.S. §143B-135.238(e), as amended by Session Law 2023-70, if the Project includes a construction component to be completed by a third party, this Grant award shall be withdrawn if the Grant Recipient fails to enter into a construction contract for the Project within one (1) year after the execution of this Grant Contract, 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 shall set a new date by which the Grant Recipient must take action, or the Grant Recipient shall be deemed to have forfeited the Grant and the NCLWF shall be deemed to have no further obligations with regards to the Project.
7. **Reversion of Unexpended Grant Funds.** Any unexpended Grant funds shall revert to the NCLWF on the Reimbursement Date or upon termination of this Grant Contract, whichever occurs first.
8. **Reporting Requirements; Audit; Record Retention.** The Grant Recipient must comply with all reporting requirements of N.C.G.S. §143C-6-21 through 143C-6-23, and Title 09, Subchapter 3M of the North Carolina Administrative Code ("N.C.A.C."), and any revisions thereof. The Grant Recipient must also provide the required documentation as set forth in **Exhibits C and D**, if applicable. All such required reports shall be filed in accordance with the applicable statutes and rules on the forms required by the Office of State Budget and Management ("OSBM") and the Office of the State Auditor ("OSA") and submitted to the NCLWF.

The State Auditor and the NCDNCR Internal Auditors shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in

accordance with N.C.G.S. §. 147-64.7. Additionally, as the State funding authority, the NCDNCR shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions. This access includes but is not limited to: ready access to persons and the ability to examine and copy all books, records, reports, vouchers, correspondence, files, personnel files, investments, and any other documentation of the Grant Recipient. The Grant Recipient shall retain complete accounting records, including original invoices, payrolls, Grant Contracts, working papers, or other documents clearly showing the nature of all costs incurred and expenditures made under this Grant Contract. The Grant Recipient agrees that the NCLWF, NCDNCR and OSA have the right to audit the books and records of the Grant Recipient pertaining to this Grant Contract both prior to Closing and for five (5) years after the completion or termination of this Grant Contract, or until all audit exceptions, if any, have been resolved, or for such a period of time allowed by N.C.G.S. §147-64.7, whichever is longer.

If the Grant Recipient is a State agency, all records shall be retained in accordance with the records retention and disposition schedules issued by the Division of Archives and Records of NCDNCR. The records retention and disposition schedule applicable to the Grant Contract at the time of Effective Date requires that records be retained until five (5) years after submission of the final report or until such time as no audit or litigation is pending or reasonably anticipated, whichever is longer. All such records shall be made accessible to the NCLWF, NCDNCR, OSBM, and OSA upon request.

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 between or among definitions, 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.

- a. For purposes of this Grant Contract, a “Grantee,” as defined in N.C.G.S. §143C-6-23, and “Recipient,” as defined in 09 N.C.A.C. 03M .0102 and applicable to 09 N.C.A.C. 03M, shall also include the “Grant Recipient,” and the term “Grantee” shall mean and refer to an entity that is the recipient of an interest in real property.
- b. For purposes of this Grant Contract, a “Subgrantee,” as defined in N.C.G.S. §143C-6-23, and “Subrecipient,” as defined in 09 N.C.A.C. 03M .0102 and applicable to 09 N.C.A.C. 03M, shall be referred to as a “Sub-grant Recipient.”
- c. “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 school within The University of North Carolina System. 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 North Carolina Land and Water Fund are State agencies.
- d. “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.



- e. “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 North Carolina Land and Water Fund.
- 9. **Notice; Contract Administrators.** All notices, requests, or other communications permitted or required to be made under this Grant Contract shall be directed to the respective Contract Administrator. Notices shall be in writing, signed by the Party giving such notice. Notices shall be deemed received three (3) business days following the date when deposited in the mail, postage prepaid, registered, or certified mail, return receipt requested, unless another form is otherwise noted herein.
- 10. **Signature Warranty.** Each individual signing below warrants that he or she is duly authorized to sign this Grant 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 NCLWF have agreed to conduct the execution of this Grant Contract by electronic means. A final, signed version of the document shall be kept on file by the NCLWF. If there is any controversy as to the terms of the final document, the final signed version of the document kept on file by the NCLWF shall control.

**GRANT RECIPIENT:**

**CITY OF HENDERSONVILLE, a North Carolina Local  
Government Unit**

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

Name: John F. Connet

Title: City Manager

Date: \_\_\_\_\_

**GRANTOR:**

**NORTH CAROLINA LAND AND WATER FUND**

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

Name: John B. Wilson, Jr.

Title: Chairman, Board of Trustees

Date: \_\_\_\_\_

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

Name: William B. Summer

Title: Executive Director

Date: \_\_\_\_\_

**EXHIBIT A**  
**PROJECT DESCRIPTION**

**Stream of the Project Site:** Mud Creek

**Watershed and River Basin:** French Broad

**County:** Henderson

**Amount Requested from NCLWF:** \$1,120,929

**NCLWF approved grant amount up to:** \$1,120,929

**Total Matching Contributions:** \$2,006,524

**Total Project Budget:** \$3,127,453

**Percent Match:** 64%

**Related NCLWF-funded Projects:**

**Grant Award Date:** February 28, 2023

**Project Location:** The project addresses flooding in the Upper Mud Creek sub-watershed (060101050301) along Mud Creek, which flows north around downtown Hendersonville on its way to the French Broad River. There are 75 commercial properties and 18 residential properties with medium to high combined vulnerability and risk for flooding in the project's immediate area of influence.

**Causes of Impairment:** Between 2009-2020, 12 out of 27 flood crests have caused minor to moderate flooding in the project area (see attached Mud Creek Flood Risk Summary for supporting tables and maps). With moderate flooding, Mud Creek is overtopping bridge decks and railroad tracks, inundating S. Grove St., and threatening businesses along several major commercial corridors (S. King, S. Main/Greenville Hwy, and Spartanburg Hwy). With minor flooding, Mud Creek reaches the bottom of multiple bridge decks, and causes backwater effects along Wash Creek inundating an access road. Flooding at the intersection of Spartanburg Highway and Greenville Highway as well as along S. Grove St. and upstream on Erkwood Rd. can also isolate residents on the southside of Hendersonville. Flooding of this area can prevent residents from accessing their homes and also increases travel time from the southside of the city to critical facilities such as Pardee Hospital. Flooding of these streets increases response times for emergency services as well.

**Project Summary:** The City of Hendersonville proposes to acquire three riparian parcels along Mud Creek and to restore floodplain functions on those and other riparian city properties. A total of 63 floodplain and wetland acres would be restored. Artificial berms would be removed to allow flood waters to access floodplains resulting in the storage of 145 acre-ft of stormwater upstream of residential areas.

**Conservation Agreements Required:** In May 2002, the City of Hendersonville and WRP entered into a Memorandum of Understanding to purchase and restore 26 acres of degraded wetlands adjacent to Mud Creek in Hendersonville's Southside (Brevard Church and Wilson sites). The Brevard Church site is protected by a permanent conservation easement that is held by the City of Hendersonville. The Wilson site and additional parcels that have been identified for acquisition will be protected utilizing deed restrictions. These restrictions would be enforced by the City of Hendersonville as the property owner.

**Legal Description of Property:**

Formats for completing the Property Description on this Exhibit A. **Use the one that best fits the Property (or modify further):**

That parcel of land situated \_\_\_\_\_ of \_\_\_\_\_ Road (State Road \_\_\_\_\_) and \_\_\_\_\_ of \_\_\_\_\_ Creek in \_\_\_\_\_ Township, \_\_\_\_\_ County, North Carolina, containing \_\_\_\_\_ acres, more or less, owned now or formerly by \_\_\_\_\_, being that parcel of land identified in the \_\_\_\_\_ County tax records by the parcel identification number \_\_\_\_\_.

Being approximately \_\_\_\_\_ acres of a tract or parcel of land consisting of \_\_\_\_\_ acres described in a deed from \_\_\_\_\_ to \_\_\_\_\_ dated \_\_\_\_\_ and recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_ of the \_\_\_\_\_ County Registry.

Being all of Tracts A, B, and C totaling \_\_\_\_\_ acres, more or less, as shown on that map of record entitled "\_\_\_\_\_" dated \_\_\_\_\_, and recorded in Plat Book \_\_\_\_\_ at Page \_\_\_\_\_ in the \_\_\_\_\_ County Register of Deeds.

**Scope of Work:**

The Grant Recipient shall conduct and complete the activities listed below:

1. Assess potential project sites for feasibility and prioritization of restoration work using hydrological studies.
2. Develop engineering plans and specifications to complete the project, including 30%, 60%, 90%, and final plans for the Wilson and Brevard Church sites.
3. Engage construction firm(s) to complete the project work.
4. Obtain applicable Federal and State permits for the construction of the engineering design.
5. Construct the streambank restoration work per engineering designs and plans, including removal of the levy on Mud Creek within the project area.

6. Obtain and record permanent conservation easements on the project properties.
7. Manage the project in total and report to the NCLWF.

**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. Grant funds may not be used for the purchase of any improvements, removal of debris on the Property, or any other purpose not set forth herein.
3. Outstanding mineral rights are not an acceptable exception to title.
4. There must be by the date of Closing, either (1) legal access to the Property from a public roadway, and access over, upon, and across the Property to and from the Conservation Agreement area or (2) if the Property is surrounded by water, there must be access to the Property from the waters of the State. Access must be deemed satisfactory by the NCLWF.
5. All Property must be restricted by one or more Conservation Agreement(s) that shall convey such rights and establish such restrictions on use and indemnifications deemed satisfactory to the NCLWF.
6. All conservation agreement documents must be approved by the NCLWF before recordation.
7. All Conservation Agreements shall provide third party right of enforcement to the State of North Carolina.
8. The Grant Recipient will monitor the Conservation Agreement area at least annually.
9. Projects must be recombined into one tax parcel prior to or at Closing unless doing so is impracticable.
10. Stream restoration, enhancement, stabilization, and nature-based flood detention 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 below in the Schedule of Properties for Legal Protection of Riparian Buffers.

Schedule of Properties for Legal Protection of Riparian Buffers								
Tract No.	Property Owner	Parcel Identification Number (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								
2								
3								
4								
5								
6								
7								

8								
9								
Totals								
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 fifty (50) feet perpendicular to the streambank.
  - (b) Permanent legal protection of riparian buffers. Property on which vegetated riparian buffers are to be established 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 “Conservation Agreements.” 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.
  - (c) “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 streambank or in the flood prone area. An enhancement procedure may include fencing cattle out of a stream and reestablishing 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.
  - (d) “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.
  - (e) “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.
  - (f) “Nature-based flood detention” means the practice of using natural materials and/or engineered solutions to mimic natural processes or environments to temporarily store flood waters in order to reduce peak flood discharge volume and maximum flood elevations downstream.
11. The Grant Recipient shall engage the **[CONSERVATION AGREEMENT HOLDER NAME]** (“Conservation Agreement Holder”) to 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 Conservation Agreement Holder. 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 for accomplishing and completing the following for these properties:

- i. submit to the NCLWF a Letter of Intent from the Conservation Agreement Holder indicating its intent to enter into permanent land-use restrictions on Conservation Agreement Holder-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 Conservation Agreement Holder intends to enter into permanent land-use restriction to protect land that is part of the Project Site, and shall be signed by the Conservation Agreement Holder. 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 Register of Deeds in the County in which the Property is located; 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.

(b) Properties not owned by the Conservation Agreement Holder. Permanent property restrictions needed to implement the Project shall be in the form of recorded permanent Conservation Easements that provide for the State of North Carolina to have third-party rights of enforcement of the permanent Conservation Easements. The Grant Recipient will accomplish and complete the following for these properties:

- i. engage the Conservation Agreement Holder to be the holder of Conservation Easements acquired for the Project and ensure that the Conservation Agreement Holder is prepared to monitor conditions on the land addressed in the Conservation Agreements at least annually, in perpetuity. The Grant Recipient shall provide to the NCLWF a letter from the Conservation Agreement Holder stating that it accepts this role and associated responsibilities. The NCLWF will approve the Grant Recipient's requests for payment of any costs only after receiving such a letter.

*or, alternatively.....*

- i. the Grant Recipient shall be the holder of Conservation Easements acquired for the Project and shall monitor conditions on the land addressed in the Conservation Easements at least annually, in perpetuity;
- ii. submit to the NCLWF a Letter of Intent from each property owner indicating each owner's intent to enter into a permanent Conservation Easement to protect portions of properties needed to implement this Project. Such letters shall describe the Property and the portions of the Property to be protected, shall state that the owner intends to enter into a permanent Conservation Easement to protect land that is part of the Project Site, and shall be signed by the property owner. The Grant Recipient shall submit the Letters of Intent to the NCLWF. The NCLWF will approve the Grant Recipient's requests for payment of any costs only after receiving such letters;

- iii. prepare and execute a deed of Conservation Easement for each Property and record each executed deed with the Register of Deeds in the County in which the Property is located; and
  - iv. provide a copy of each recorded deed of Conservation Easement to the NCLWF. The NCLWF will approve the Grant Recipient's requests for payment of any costs for construction only after receiving all recorded deeds of Conservation Easement.
12. 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 Grant Recipient shall also be responsible for seeking Environmental Review from the North Carolina Historic Preservation Office Environmental Review Branch. The NCLWF shall approve requests for payment of the Grant Recipient's construction costs only after receiving copies of applicable Federal and State permits and review memos.
13. 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 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.
14. 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. The 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 thirty (30) days from receiving the PCN and Project Design (plans and specifications) from the Grant Recipient, the NCLWF will deem that the Design meets the requirements of the DWR 401 Water Quality Certification Program.
15. Other conditions special to this grant:

Project engineering designs and plans to be provided to the NCLWF at the conceptual design phase (30% to 60% complete).

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**EXHIBIT B**  
**PROJECT BUDGET**

Item	NCLWF Grant Funds <sup>1</sup>	Matching Funds <sup>2</sup>	Total Item Budget
1. Design and Permitting	\$61,982	\$372,160	\$434,142
2. Property / Conservation Agreement Acquisition Costs	\$609,100	\$10,000	\$619,100
3. Construction (Including Observation and Contingency) <sup>3</sup>	\$359,861	\$1,561,888	\$1,921,749
4. Monitoring, Data Collection, Data Evaluation, Analysis	\$15,000	\$0	\$15,000
5. Educational Materials / Signage	\$9,000	\$0	\$9,000
6. Stewardship and/or Maintenance	\$30,000	\$0	\$30,000
7. Project Administration	\$35,986	\$62,476	\$98,462
<b>Total Project Budget</b>	<b>\$1,120,929</b>	<b>\$2,006,524</b>	<b>\$3,127,453</b>
<b>% of Total Project Budget</b>	<b>36%</b>	<b>64%</b>	<b>100%</b>

Retainage: \$100,000

Retainage is the amount of grant funds the NCLWF will withhold from the Grant Recipient until the Grant Recipient has satisfactorily fulfilled the requirements for the final payment shown in the table in Exhibit C below, which typically includes a final report and a final field visit.

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: NC DEQ (\$1,897,236), City of Hendersonville (\$109,288)

<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) must be determined with methods described in Exhibit F.

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**EXHIBIT C**  
**PRE-DISBURSEMENT CHECKLIST**

**The following documents must be submitted to the NCLWF before any funds can be disbursed under this Grant Contract:**

<b>Requirement</b>		<b>Description/What to Submit</b>
<b>Submit before first request for payment</b>		
1.	Matching funds <sup>1</sup>	Proof of availability of the matching funds which are included in the Project Budget. (*See note below.)
2.	Easements, Declarations of Covenants and/or landowner land use contracts	Letters of intent to sign a Conservation Agreement, or a copy of the recorded Conservation Agreement that has been accepted by the NCLWF from all property owners of parcels listed in Schedule of Properties for Legal Protection of Riparian Buffers in <b>Exhibit A</b> , and Letter from the holder of the Conservation Agreement, as identified in <b>Exhibit A</b> , stating that it accepts this role and its responsibilities.
3.	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 Grant funds:
<b>Submit before first request for construction payment</b>		
4.	Easements, Declarations of Covenants and/or landowner land use contracts	Copies of recorded Conservation Agreement(s) for all properties in Schedule of Properties for Legal Protection of Riparian Buffers in <b>Exhibit A</b> . Each Easement and Declaration of Covenants is subject to review and acceptance by the Grant.
5.	Construction contract	A copy of the construction contract signed by the Grant Recipient and the construction company that will complete the Project work. Please note that there is a deadline to have a construction contract in place for this Project, listed on the first page of this document. If this deadline cannot be met, notice should be provided to the NCLWF as soon as possible so that an extension can be discussed.
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 thirty (30) days of executing a construction contract for the Project, submit construction contract pricing information consisting of at least a statement of the scope of the construction work, agreed-upon pricing for the construction work, and a total anticipated construction cost based on the pricing.
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:  Project engineering designs and plans to be provided to the NCLWF at the conceptual design phase (30% to 60% complete).
<b>Submit before or accompanying request for final payment</b>		
9.	Grant contract final report	Project final report detailing Project deliverables and outputs, natural and/or cultural resource benefits achieved, and lessons learned during the Project.
10.	Final closeout site	Coordinate with the appropriate NCLWF Field Representative to perform a final

	visit	closeout site visit. A closeout visit will include walking the Project site and surveying any constructed work, plantings, and signage.
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:

<sup>1</sup>Examples of proof of availability of matching funds include:

- (a) grants from other sources:
  - i. copy of grant agreement
  - ii. copy of grant award letter
- (b) local agency matching funds:
  - i. resolution of the governing board
  - ii. 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
  - iii. certified copy of board meeting minutes attesting to the use and amount of local funds for match
  - iv. letters from other sources of matching funds attesting to contribution of the funds
- (c) value of Conservation Easements to be donated:
  - i. current property’s or 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
  - ii. appraisals as described in Exhibit F.

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**EXHIBIT D**  
**ASSURANCES FOR NON-FEDERALLY FUNDED CONTRACTS**

*Exhibit D only applies to nonprofits and does not apply to this Grant Contract.*

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

(These General Terms and Conditions may be modified by Special Conditions in **Exhibit A**, which should be reviewed for possible modifications to these General Terms and Conditions.)

**A. Affirmative Covenants**

1. **Title.** If the property right to be acquired is fee simple absolute title, the Grant Recipient shall acquire good and marketable title free and clear of any liens, other charges, conditions or encumbrances that would materially affect the purposes of this Grant Contract.
2. **No Mitigation.** The Grant Recipient shall not use the Project or any portion thereof to satisfy compensatory mitigation requirements under 33 U.S.C. § 1344 or N.C.G.S. §143-214.11.
3. **No Open Space Requirements.** The Grant Recipient shall not use the Project or any portion thereof to satisfy open space or density requirements of any cluster or other development scheme or plan.
4. **Right of Entry and Inspections.** The NCLWF's representatives shall have the right to enter the Project area for inspection of the Project 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 Project.
5. **Use and Reliance on Documentation.** To the extent allowed by law, the Grant Recipient gives the NCLWF permission to use Grant documents and accompanying or related plans, specifications, estimates, procedures, maps and any other documents submitted to the NCLWF by the Grant Recipient after Award Date.
6. **Signage.** If the NCLWF's approval of this Project allows public access to and/or public education activities at the Project Site, the Grant Recipient shall post signs at the public areas such as, but not limited to, trailheads, parking areas, kiosks, and boat ramps. The signs shall be posted in number, location, and manner satisfactory to the NCLWF. Signs may be provided by the NCLWF or, if the Grant Recipient wishes to provide its own signs, the signs must acknowledge the NCLWF as a funding partner, conform to the NCLWF's sign guidance posted on its website, and be approved by the NCLWF.
7. **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 the NCLWF in the funding and development of the Project.
8. **Conflicts of Interest.** In accordance with N.C.G.S §143C-6-23, every non-governmental Grant Recipient shall file with the NCLWF a copy of that Grant Recipient's policy addressing conflicts of interest that may arise involving the Grant Recipient's management employees and the members of its board of directors or other governing body. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the Grant Recipient's employees or members of its board or other governing body, from the Grant Recipient's disbursing of State funds, and shall include actions to be taken by the Grant Recipient or the individual, or both, to avoid conflicts of interest and the appearance of impropriety. The policy shall be filed before the NCLWF may disburse the grant funds. The Grant Recipient shall at all times comply with the Grant Recipient's conflict of interest policy.

9. **Compliance with Laws and Legal Requirements.** The Grant Recipient agrees to perform and maintain the Project in compliance with all Federal, State, and local laws and regulations, including, without limitation, required permitting, environmental, zoning, historic preservation, and other land use laws, regulations, and requirements. The Grant Recipient agrees to take reasonable steps to advise Project participants that they shall comply in the same manner. The Grant Recipient shall comply with all legal requirements applicable to the use of the Grant funds. As of the Effective Date of this Grant Contract, the Project area, to the best of the Grant Recipient's knowledge:
- (a) contains no hazardous materials, substances, wastes or environmentally regulated substances (including, without limitation, any materials containing asbestos) located on, in, or under the Project area or used in connection therewith;
  - (b) contains no environmental condition that may prohibit or impede the purposes set forth in this Grant Contract; and
  - (c) will not contain such uses or conditions in the future.
10. **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.
11. **No Pollution Credits.** If the Project enables the Grant Recipient to qualify for 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, assign, transfer 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.

#### 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 the other Grant Documents, any inspection or examinations at any time made by or on behalf of the NCLWF, and the Acquisition 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 the Project, any subsequent Conservation Agreement included in the Project, or the ability of the Grant Recipient to perform under this Grant Contract.
3. **Zoning.** The present and proposed use of the Project, including, without limitation, the purpose of the Conservation Agreement, is in compliance with all zoning ordinances, and all municipal and other governmental and regulatory approvals have been or will be obtained for the use and for operation of the Project according to this Grant Contract.

4. **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 thereunder and shall notify the NCLWF within thirty (30) days upon any change in its status under the Section 501(c)(3) of the Internal Revenue Code of 1986.

#### C. Termination; Events of Default

1. **Termination for Cause.** The happening of any of the following, if not cured within any applicable cure period, 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) **Project Area Unsuitable.** A determination by the NCLWF, prior to disbursement of funds, that the Project area is unsuitable for the purpose for which this Grant Contract is made.
  - (b) **Unsuitable Use.** The Project area is used in a manner materially inconsistent with the purposes of this Grant Contract or the Conservation Agreement contemplated herein.
  - (c) **Default in Performance.** Failure by the Grant Recipient in the observance or performance of any of the terms, conditions, covenants, or requirements of the Grant Contract, including, without limitation, a failure to satisfy any condition precedent to disbursement or reimbursement, provided, however, that the NCLWF shall provide written notice of the default to the Grant Recipient and allow a cure period of thirty (30) days after the date of receipt of written notice of default during which Grant Recipient shall be allowed to cure said default.
  - (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 eligible to receive Grant funds, is dissolved, or otherwise ceases to exist.
  - (f) **Failure to Monitor Conservation Easement.** If the Project includes the conveyance or assignment of a Conservation Easement to the State of North Carolina, and the Grant Recipient fails to notify the NCLWF of any potential violation of the Conservation Easement within a reasonable period of time so as to minimize, 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 toward the completion of the Project.
  - (h) **Unacceptable Conflict of Interest Policy.** A determination by the NCLWF that the Grant Recipient’s Conflict of Interest policy insufficiently protects public monies.



2. **Termination by Mutual Consent.** The Parties may terminate this Grant Contract 1) by mutual written consent, or 2) with sixty (60) days prior written notice by the Party wishing to terminate, or 3) by the NCLWF with written notice to Grant Recipient reporting that an Event of Default by the Grant Recipient has occurred, or 4) as otherwise provided by law.

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

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

1. **Nonwaiver.** 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.
2. **Default Prior to Closing.** If an Event of Default occurs prior to Closing, the NCLWF may, at its discretion, suspend and/or terminate all obligations of the NCLWF hereunder and the Grant Recipient shall immediately refund all money previously paid to the Grant Recipient under this Grant Contract. 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 reimbursement under this Grant Contract.
3. **Default Subsequent to Closing.**
  - (a) If an Event of Default occurs subsequent to Closing on the fee purchase of the Property, the NCLWF shall be entitled to elect either (1) to maintain and enforce its rights under the Grant Contract, in which case the NCLWF shall have no right to receive any reimbursement, refund, or repayment of any money paid to the Grant Recipient under this Grant Contract except for the repayment of costs improperly or mistakenly paid to Grant Recipient, or (2) to require Grant Recipient to refund to the NCLWF the amounts that the NCLWF has paid the Grant Recipient pursuant to the Grant Contract in which case upon receipt by the NCLWF of the refund, the NCLWF shall have no further rights to enforce the post-closing obligations of Grant Recipient.
  - (b) If an Event of Default occurs subsequent to the Closing and the Grant Recipient has received title to the Property, then the Grant Recipient shall convey and transfer to the State or designee all its underlying fee simple title to the Property, by general warranty deed, free and clear of any liens, charges, or encumbrances that would materially affect the use of the Property as set forth in the Conservation Agreement, in which case the NCLWF shall have no right to receive any reimbursement, refund, or repayment of any money paid to the Grant Recipient under this Grant Contract.
  - (c) If an Event of Default occurs subsequent to the Closing and the Grant Recipient holds the Conservation Agreement, the NCLWF and State may seek to obtain title to the Conservation Agreement in order to preserve or protect its interest in the Property, or the NCLWF may suspend and/or terminate all obligations of the NCLWF hereunder, and the Grant Recipient shall immediately return to the NCLWF all money previously paid to the Grant Recipient under this Grant Contract.

- (d) If an Event of Default occurs subsequent to Closing and a third party has received the Conservation Agreement, the NCLWF and the State may seek to obtain title to the Conservation Agreement in order to preserve or protect its interest in the Property, or the NCLWF may suspend and/or terminate all obligations of NCLWF hereunder, and the Grant Recipient shall immediately return to the NCLWF all money previously paid to the Grant Recipient under this Grant Contract.
2. **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.
3. **Additional Remedies.** If an Event of Default occurs, the NCLWF may take any action consistent with its statutory authority including: (a) 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) obtain title to or otherwise preserve or protect its interest in the Project and any property acquired with Grant funds, (c) compel specific performance of any of the Grant Recipient's obligations under this Grant Contract, (d) obtain return of all Grant Funds, including equipment if applicable and (e) 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.

#### E. Miscellaneous

1. **Modification.** This Grant Contract may be rescinded, modified, or amended only by written agreement executed by all Parties. Any proposed modification of the Project shall be subject to approval by the NCLWF and, if applicable, the North Carolina Council of State. 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.
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. 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 Agreement.
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 eligible nonprofit corporation 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 the Sub-grant Recipient, shall

be in accordance with Paragraph 7 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 N.C.A.C.

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 remain 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 secured, 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. **Clean Water Management Trust Fund.** Pursuant to N.C.G.S. §143B-135.234(a), the NCLWF is also known as the Clean Water Management Trust Fund.
7. **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 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.
8. **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, or agents 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.
9. **Due Diligence, Reasonable Care, Other Obligations.** The Grant Recipient agrees (a) that it shall use due diligence and reasonable care, and shall require its employees, contractors, and agents to use due diligence and reasonable care, to avoid acts or omissions that cause damages or injuries to persons or property related to the use, operation, maintenance, or management of the Project area and (b) that it shall be responsible for the use or presence of any hazardous substance, waste, or other regulated material in, under, or on the Project area, and that the NCLWF has not undertaken any responsibility for these things. The obligations under this Section are independent of all other rights or obligations set forth herein and shall survive the disbursement of the Grant funds, as well as any termination of this Grant Contract.

10. **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, national origin, sexual orientation, gender identity, or disability.
11. **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 and shall not modify, define, limit, or expand the express provisions of this Grant Contract. 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 the NCLWF may, at its option, enforce its rights under the Grant Contract in such courts.
12. **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.
13. **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.
14. **Survival.** Where any representations, warranties, covenants, indemnities, or other provisions contained in this Grant Contract and/or any of the Grant Documents, by its context or otherwise, evidence the intent of the Parties that such provisions should survive the Closing, completion, expiration or termination of this Grant Contract, the provisions shall survive the Closing or any such termination. Without limiting the generality of the foregoing, the Parties specifically acknowledge and agree that the provisions of this **Exhibit E** and the conditions shown in **Exhibit A** shall survive any termination of this Grant Contract as well as any Closing.
15. **Time of the Essence.** Time is of the essence in the performance of this Grant Contract.

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**EXHIBIT F**  
**PRE-CLOSING CHECKLIST**

Funds for Acquisition of the Property or Conservation Agreement will not be released until Pre-Closing documents have been reviewed and the Grant Recipient has received a written authorization to Close from the NCLWF Restoration Program Manager. A final Closing date should not be set until the written authorization to Close has been sent to the Grant Recipient.

The documents described below must be submitted for approval and in compliance with Pre-Closing document guidelines available on the NCLWF website. The Grant Recipient takes responsibility for this compliance by reviewing all documents provided by vendors prior to submission to the NCLWF.

1. **Appraisal.** A minimum of one (1) appraisal is required to determine the fair market value of all real property interests being acquired. Two (2) appraisals are required when the value of a real property interest, irrespective of any bargain sale, exceeds or is expected to exceed \$500,000.

Appraisals must meet all of the following criteria:

- Appraisals must be performed by a North Carolina general certified appraiser;
- Appraisals must be summary appraisals in narrative form in accordance with Uniform Standards of Professional Appraisal Practice;
- Appraisals must include permission for use by the State of North Carolina for the NCLWF;
- Appraisals should reflect the market value of the Property or Conservation Agreement at the time of purchase by the Grant Recipient;
- Appraisals of a Conservation Agreement should reflect the “before and after” approach, indicating the value before and after the Conservation Agreement will be recorded on the Property; and
- Property valuations are determined by the State Property Office using submitted appraisals. Acquisition reimbursements are dependent on the receipt of the State Property Office appraisal review memo.

2. **Conservation Agreement(s).** All Conservation Agreement(s) set out in **Exhibit A** shall convey such rights and establish such restrictions on the use of the Property as may be deemed suitable by the NCLWF. Standard templates for Restoration Program Conservation Agreements are available on the NCLWF website. The Grant Recipient is responsible for downloading the template from the NCLWF website for each new draft of a State-held Conservation Agreement. Any changes to the standard template for the State-held Conservation Agreements must be submitted in Word format as redline edits.

3. **General Warranty Deed to Grant Recipient (Fee Simple Acquisitions).** The description of the General Warranty Deed to the Grant Recipient must be either metes and bounds or refer to a recorded plat. The General Warranty Deed must indicate that the Grant Recipient will own and possess fee simple title to the Property, free and clear of any liens, charges, or encumbrances that would materially affect the use of the Property as set forth in the Grant Contract. Special Warranty Deeds may be used to convey title to the Property at the discretion of the NCLWF.

4. **Title Insurance.**

(a) For Fee Simple Acquisitions: The Title Commitment and draft Title Policy must consist of a standard commitment on the form required by the American Land Title Association to issue a title insurance policy and show that title to the Property is vested in fee in the owner of the Property. All

instruments referred to in the Title Commitment must be submitted for the NCLWF review. Per the requirements set forth in the NCLWF Contract Administration Manual, available on the NCLWF website, the Title Commitment and draft Title Policy insuring the State's interest shall:

- list the insured as “The State of North Carolina”;
- afford coverage to the State for the portion of the Grant used to purchase the Property;
- provide affirmative coverage for access over, upon, and across the Property to and from the Conservation Agreement area, and from the Property to a publicly maintained road;
- include issuance of a Closing Protection Letter to the NCLWF pursuant to N.C.G.S. Chapter 58, Article 26 when State funds will be temporarily stored in the closing attorney's trust account;
- not contain exceptions as to matters of survey or for the Conservation Agreement that is being insured; and
- indicate whether the Property is subject to any liens or defects.

(b) For Conservation Agreement-Only Acquisitions: The Title Commitment and draft Title Policy must consist of a standard commitment on the form required by the American Land Title Association to issue a title insurance policy and show that title to the Property is vested in fee in the owner of the Property and insure the Conservation Agreement interest. Per the requirements set forth in the NCLWF Contract Administration Manual, available on the NCLWF website, the Title Commitment and draft Title Policy insuring the State's interest shall:

- list the insured as “The State of North Carolina”;
- afford coverage to the State for the portion of the Grant used to purchase the Conservation Agreement;
- provide affirmative coverage for access over, upon, and across the Property, to and from the Conservation Agreement area, and from the Property to a publicly maintained road;
- include issuance of a Closing Protection Letter to the NCLWF pursuant to N.C.G.S. Chapter 58, Article 26 when State funds will be temporarily stored in the closing attorney's trust account;
- must not contain exceptions as to matters of survey or for the Conservation Agreement that is being insured;
- and indicate whether the Conservation Agreement area is subject to any liens or defects.

5. **Survey Plat.** A recent survey of the Property and/or the Conservation Agreement is required, and the plat must meet the requirements set forth in the NCLWF Contract Administration Manual, available on the NCLWF website.

6. **Phase I Environmental Site Assessment (optional).** The Phase I Environmental Site Assessment (“ESA”) shall conform to the requirements of the latest version of American Society for Testing and Materials (“ASTM”) Standard E-1527. The NCLWF reserves the right to require the Grant Recipient to remedy any concerns prior to or subsequent to Closing. The NCLWF must be included as an authorized user of the ESA.

7. **Baseline Documentation Report (if necessary for future monitoring).** Whether a Baseline Documentation Report is required will be the sole decision of the NCLWF and based on an evaluation of the Project's management and monitoring requirements. The baseline documentation report should be in the format set forth in the NCLWF Contract Administration Manual, available on the NCLWF website.

8. **Settlement Statement.** The Acquisition purchase price must be equal to or less than the State Property Office appraised value(s). Settlement costs may be included on the Settlement Statement for reimbursement from the NCLWF.

9. **Agreements With Other Funders.** The Grant Recipient shall provide the NCLWF with a copy of all agreements with other funders providing assistance for the Project so that the NCLWF is able to ensure that the transaction complies with any requirements imposed by virtue of the other funder's involvement. The NCLWF may, at its sole discretion, require the Grant Recipient to provide the NCLWF with explicit authorization or consent to record any Conservation Agreement from any other funders.

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**EXHIBIT G**  
**POST-CLOSING CHECKLIST**

Within forty-five (45) business days of Closing, the following documents must be submitted to the NCLWF according to instructions provided on the NCLWF website. All documents should be submitted in digital form unless otherwise specifically directed below.

1. Title Policy. The original Title Policy must be furnished to the NCLWF along with the other post-closing documents in its original paper form as well as the digital format. The NCLWF Project number must be included on the cover page.
2. Boundaries of the NCLWF Conservation Agreement area(s) - ArcGIS shapefile and .dwg format.
3. All recorded documents, including but not limited to recorded Survey Plat, General Warranty Deed, Conservation Agreements, Assignments, and Notices. All Conservation Agreements conveyed or assigned to the State must be furnished in its original paper form as well as the digital format.
4. Fully executed Settlement Statement.
5. Final Project Report.