

**STATE OF NORTH CAROLINA  
CLEAN WATER MANAGEMENT TRUST FUND  
GRANT CONTRACT  
(RESTORATION OF DEGRADED LANDS)**

**CWMTF PROJECT NUMBER:** 2014-403

**GRANTOR:** North Carolina Clean Water Management Trust Fund (“Fund” or “CWMTF”), an independent agency of the State of North Carolina (“State”) acting through its Board of Trustees solely in its official capacity pursuant to Article 18, Chapter 113A, of the North Carolina General Statutes (“NCGS”)

**CONTRACT ADMINISTRATOR:** Larry Horton, P.E.  
Clean Water Management Trust Fund  
1651 Mail Service Center  
Raleigh, NC 27699-1651  
Phone: 919.707.9128; Fax: 919.715.0397  
Email: larry.horton@ncdenr.gov

**GRANT RECIPIENT:** City of Greensboro, a North Carolina Municipal Corporation (“Grant Recipient”)

**CONTRACT ADMINISTRATOR:** David Phlegar, Stormwater Manager  
Stormwater Management Division  
City of Greensboro  
2602 South Elm-Eugene Street  
Greensboro, NC 27406  
phone: (336)373-2707  
email: [david.phlegar@greensboro-nc.gov](mailto:david.phlegar@greensboro-nc.gov)

**FEDERAL I.D. NUMBER:** 56-6000-230

**FISCAL YEAR END DATE:** June 30

**GRANT AWARD DATE:** September 16, 2014 (the “Award Date”)

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

**CONSTRUCTION CONTRACT DATE:** September 16, 2015

**CONTRACT EXPIRATION DATE:** October 31, 2016 (the “Expiration Date”)

**REIMBURSEMENT DATE:** November 14, 2016

**GRANT AMOUNT:** up to \$332,600 (the “Grant”)

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

**WITNESSETH:**

**WHEREAS**, the Fund is authorized by NCGS Chapter 113A, Article 18 to, among other actions and activities, restore previously degraded lands to reestablish their ability to protect water quality, and acquire conservation easements or other interests in real property for protecting and conserving surface waters and drinking water supplies.

**WHEREAS**, the Grant Recipient is a qualified applicant as that term is defined in NCGS Chapter 113A, Article 254(a).

**WHEREAS**, the Grant Recipient submitted to the Fund an application requesting financial assistance to engage in a project for restoring degraded lands in order to protect the quality of surface waters.

**WHEREAS**, at its meeting on the Award Date, the Fund’s Board of Trustees approved a project based on the Grant Recipient’s application, and the Fund is willing to provide financial assistance (the “Grant”) to the Grant Recipient pursuant to the terms and conditions set forth in this Grant Contract.

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

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

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

1. **Grant Documents.** The documents described below are hereinafter collectively referred to as the “Grant Documents.” In the case of conflict between any of these documents, each shall have priority over all others in the order listed below. Upon execution and delivery of this Grant Contract, it and the other Grant Documents and items required hereunder will constitute a valid and binding agreement between the Parties, enforceable in accordance with the terms thereof. The Grant Contract constitutes the entire agreement between the Parties, superseding all prior oral and written statements or agreements. Only changes deemed non-material in type at the discretion of the Fund’s Executive Director may be made to the Grant Contract without the consent of the Fund’s Board of Trustees.

2. The Grant Documents consist of:
  - a. Cover page
  - b. Grant Contract
  - c. Exhibit A – Project Description, Water Quality Benefits, Scope of Work, Special Contract Conditions, and Schedule
  - d. Exhibit B – Project Budget
  - e. Exhibit C – CWMTF Pre-Disbursement Checklist
  - f. Exhibit D – CWMTF Progress Report Form and CWMTF Grant Contract Final Report Form
  - g. Exhibit E – CWMTF Invoice Form
  - h. Exhibit F – *does not apply*
  - i. Exhibit G – Additional Definitions
  - j. Exhibit H – General Terms and Conditions
  - k. Exhibit I – Conservation Easements

Upon execution and delivery of the Grant Contract, and once the Department of Environment and Natural Resources has notified the Fund that funds for the Grant 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 sheet of the Grant Contract, then the Grant Contract will constitute a valid and binding agreement between the Parties, enforceable with the terms thereof.

3. **Purpose.** The purpose of the Grant is for restoring degraded lands in order to protect the quality of surface waters, more particularly described on Exhibit A (the “Project”). The Grant may be for Project design, permitting, construction, construction observation, construction contingency, and/or the Grant Recipient’s administrative costs. Grant funds may not be used for the purchase of improvements or debris on any property, or for the removal of improvements or debris on any property, or for any other purpose not set forth herein. Further, Grant funds may not be used for any eminent domain litigation or any action or expenditure related to eminent domain, unless approved by the Fund’s Board of Trustees in writing prior to the action. The Board of Trustees shall review requests to use Grant funds for eminent domain action on a case-by-case basis. The Grant Recipient shall provide such requests in writing.

4. **Fund’s Duties.** Subject to the appropriation, allocation, and availability to CWMTF of funds for the Project, CWMTF hereby agrees to pay the Grant funds to the Grant Recipient in accordance with the payment procedures set forth herein.

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

6. **Contract Period.** The Fund’s commitment to disburse Grant funds under this Grant Contract shall cease on the Reimbursement Date. It is the responsibility of the Grant Recipient to ensure that the Project is completed by the Expiration Date and that all costs to be reimbursed have been submitted to the Fund by the Reimbursement Date. After the Expiration Date, any Grant monies remaining under this Grant contract no longer will be available to the Grant Recipient except to pay proper invoices for budgeted costs incurred by the Expiration Date. The

burden is on the Grant Recipient to request an extension of the Grant Contract if the Grant Recipient anticipates that the Project will not be completed by the Expiration Date. The request for an extension must be made in a writing addressed to the Fund, explaining why an extension is needed and proposing a new expiration date for the Grant Contract. This written request must reach the Fund's office at least 60 days before the Expiration Date. The Fund may or may not approve the extension, based on Project performance and other factors. The Fund is not responsible for notifying the Grant Recipient of an approaching Expiration Date.

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

a. Projects for Which Property Protections are Required. Real property on which CWMTF funds are to be used for construction must be protected permanently by legal instruments conforming to NCGS Chapter 121, Article 4, and NCGS Chapter 113A, Article 18. The Grant Recipient shall so restrict, or cause to be restricted, uses of and activities on such real property by way of one or more permanent conservation agreements or by other instruments of property interest approved in writing by the Fund. Such instruments of property interest must encumber real property essential to the Project, including necessary easements and rights of way. Real property essential to the Project, including necessary easements and rights of way, hereinafter is collectively referred to as the "Project Site," being the properties given in Schedule of Properties for Legal Protection of Riparian Buffers in Exhibit A.

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

(i) Property interests shall assure undisturbed use and possession of the properties of the Project Site for the purpose of construction and operation of the Project and include other such restrictions as the Fund deems necessary and satisfactory, in its sole discretion.

(ii) Property interests shall be permanent.

(iii) Property interests shall be approved as to form and content by the Fund in writing.

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

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

**8. Pre-Disbursement Requirements.** Prior to the disbursement of Grant funds under this Grant Contract, the Grant Recipient shall deliver to the Fund all documentation described on Exhibits C.

**9. Disbursement of Grant Funds.**

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

b. Requests for Payment. The Fund will disburse Grant funds following receipt by the Fund's Contract Administrator of the Grant Recipient's requests for payment. Each request for payment shall include a progress report, using the Progress Report form in Exhibit D, describing work accomplished on the Project and progress toward completing the Project Scope of Work, and a completed and signed Payment Request form, using the template Payment Request form in Exhibit E. Payment requests shall conform to the following:

(i) Exclusion of sales tax. 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 State Department of Revenue. The Fund will not reimburse the Grant Recipient for such amounts.

(ii) Supporting documentation. 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.

c. Alternate Disbursement of Grant Funds. The Fund may, upon request by the Grant Recipient, disburse Grant funds prior to the Grant Recipient's actual payment to its vendors if such expenditures are documented by vendors' third-party invoices. In order for the Fund to disburse Grant funds to the Grant Recipient based on unpaid third-party invoices, the Grant Recipient must: (a) indicate to the Fund in writing that it has reviewed and approved such unpaid invoices, (b) certify to the Fund in writing that it will make payment on all such unpaid invoices within three banking days of receipt of funds corresponding to the unpaid invoices, and (c) confirm in writing to the Fund that it has made such payments within three banking days of receipt of funds corresponding to the unpaid invoices.

d. Limited Grant Funds Disbursement in January, June, July, and December. Funds will not be disbursed during the first week of January, the last three weeks of June, the first week of July, and the last two weeks of December.

e. Certification by Licensed Professional. At the option of the Fund, payments may be made only on the certificate and seal of an appropriately qualified licensed professional (e.g., licensed Professional Engineer) that the work for which the payment is requested has been completed in accordance with approved plans and specifications, to which certificate shall be attached an estimate by the construction contractor setting forth items to be paid out of the proceeds of each such payment. The Fund, 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 Fund and according to applicable standards and requirements. However, the Fund may, at its discretion, make payments without requiring such certificates or construction contractor's estimate, in which event the Grant Recipient shall furnish the Fund a list of and the amounts of items to be paid out of the payment, or such other evidence as the Fund 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 Grant Recipient fails to make progress on the Project satisfactory to the Fund. Amounts withheld shall be reimbursed with subsequent payments in the event that Grant Recipient is able to demonstrate an ability to resume satisfactory progress toward completion of the Project.

g. Proof of Payment. The Grant Recipient agrees to pay, as the work progresses, all bills for expenses incurred on the Project and agrees to submit to the Fund 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 the Fund, to furnish adequate proof of payment of all indebtedness incurred on the Project.

h. The Fund Retaining Portion of Funds until Project Completion. The Fund will withhold payment from the Grant Recipient in the amount of **\$25,000** of the Grant until the Grant Recipient has satisfactorily submitted its grant contract final report.

i. No Excess Costs. The Fund agrees to pay or reimburse the Grant Recipient only for costs actually incurred by the Grant Recipient that do not exceed the funds budgeted for the Project on Exhibit B.

j. Period for Incurring Expenditures. The Fund will reimburse the Grant Recipient for allowable Project expenditures that are incurred by the Grant Recipient or its vendors only during the period between the Award Date and the Expiration Date of the Grant Contract. The Fund will not reimburse the Grant Recipient for Project expenditures that are not incurred during this period.

k. Costs of Project Administration. The Fund 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 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) pay to the Grant Recipient's payroll employees, plus the Grant Recipient's cost of paying benefits on such pay (usually employees' pay times an audited or auditable benefits multiplier); (b) pay to contract employees of the Grant Recipient (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 labor contracted by the Grant Recipient (e.g., engineering firm or consultant), payable at the Grant Recipient's actual cost for that labor.

(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.

**10. Grant Withdrawal for Failure to Enter into a Construction Contract.** Pursuant to NCGS §113A-254(f), if the Project includes construction, this Grant award shall be withdrawn if the Grant Recipient fails to enter into a construction contract for the Project within one year after the Award Date, unless the Fund's Board of Trustees finds that Grant Recipient has good cause for the failure. If the Trustees find good cause for Grant Recipient's failure, the Trustees must set a date by which Grant Recipient must take action or forfeit the Grant.

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

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

b. Reversion of Unexpended Funds. Any unexpended Grant monies shall revert to the Fund upon termination of the Grant Contract.

c. Reduction of the Grant based on Construction Cost less than Budgeted Construction Cost. The Fund may reduce the Grant amount if the Grant Recipient expects actual construction costs to be less than budgeted construction costs, as follows:

(i) The Grant Recipient shall provide to the Fund construction contract pricing information consisting minimally of a statement of the scope of the construction work, agreed-upon constructor or vendor pricing for the construction work, and a total anticipated construction cost based on the pricing.

(ii) The Grant Recipient shall deliver the construction contract pricing information to the Fund's Contract Administrator within 30 days of executing a construction contract for the Project.

(iii) The Fund may, at its discretion after comparing the total anticipated construction cost with the Grant Contract project budget, choose to reduce the Grant. If the Fund chooses to reduce the Grant, the Fund's Contract Administrator will prepare an amendment to the Grant Contract for this purpose, and the Fund will approve requests for reimbursement of the Grant Recipient's construction costs only after the amendment has been signed by both the Grant Recipient and the Fund.

**12. Reporting Requirements.**

a. Project Progress Reports. The Grant Recipient shall submit a written detailed narrative progress report describing the work accomplished on the Project and progress toward meeting the Project objectives to the Fund's Contract Administrator of the Fund, every three months beginning three months from the Effective Date in the format set forth on Exhibit D. Progress reports shall be made on the form set forth on Exhibit D.

b. Grant Contract Final Report. The Grant Recipient shall submit to the Fund's Contract Administrator a grant contract final report providing the information items listed on the contract final report form given in Exhibit D and according to the schedule given in Exhibit A. If the grant contract final report is not acceptable to the fund, the Fund shall return it to the Grant Recipient for revision. Final payment will not be made until the grant contract final report is acceptable to the Fund.

c. Other Required Reporting. In addition to the reporting requirements contained herein, NCGS §143-6.2 and 09 North Carolina Administrative Code 03M may place certain reporting requirements on local governments or other political subdivisions of the State of North Carolina, or a combination of such entities, which receive State funds through the disbursement of special appropriations. All such required reports shall be filed in the format required by the Office of the State Auditor, and shall be forwarded as follows:

(i) One copy to: North Carolina Office of the State Auditor, 20601 Mail Service Center, Raleigh, NC 27699-0601

(ii) One copy to: DENR/Office of the Controller, 1606 Mail Service Center, Raleigh, NC 27699-1606

(iii) One copy to: Administrative Officer, North Carolina Clean Water Management Trust Fund, 1651 Mail Service Center, Raleigh, NC 27699-1651

13. **Notice; Contract Administrators.** All notices, requests or other communications permitted or required to be made under this Grant Contract or the other Grant Documents shall be given to the respective Contract Administrator. Notice shall be in writing, signed by the party giving such notice. Notice shall be deemed given three business days next following the date when deposited in the mail.

14. **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 the Fund have executed this Grant Contract in two originals as of the Effective Date. One original shall be retained by each Party. If there is any controversy among the documents, the document on file in the Fund's office shall control.

**GRANT RECIPIENT:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SEAL]

**ATTEST:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

**FUND:**

By: \_\_\_\_\_ (SEAL)  
Name: Troy Kickler, Ph.D  
Title: Chairman, Board of Trustees

**EXHIBIT A**  
**CWMTF Project No. 2014-403**

**Stream of the Project Site:** South Buffalo Creek and tributaries  
**Water bodies downstream:** Buffalo Creek, Reedy Fork, Haw River, Jordan Lake, Cape Fear River  
**River basin:** Cape Fear  
**County:** Guilford  
**Amount requested from CWMTF:** \$332,600  
**CWMTF approved grant amount:** up to \$332,600  
**Total matching contributions:** \$332,600  
**Total project budget:** \$665,200  
**% match (total matching contributions/total project budget):** 50%  
**Grant award date:** September 16, 2014  
**Related CWMTF-funded projects:** CWMTF 2008-404, which is complete and closed out, contributed up to \$325,000 toward design, permitting and easement recordation for a larger South Buffalo Creek restoration project that included design for the CWMTF 2012-434, 2013-405 projects and this 2014-403 project. As a part of the 2008-404 project, the City prepared and executed a declaration of covenants of land-use restrictions for each property; recorded each executed declaration with the Guilford County Register of Deeds; and provided a copy of the declarations to CWMTF. All of the properties that require a declaration to permanently restrict uses in the riparian buffer area are owned by the City of Greensboro. The CWMTF 2012-434 Phase 1 project constructed wetland and stream restoration features on the north side of South Buffalo Creek, including a wetland slough with depressional wetlands, 1,250 linear feet of new and relocated stream channel to restore habitat function and reconnect Kersey Tributary to the floodplain, and 1,000 linear feet of streambank stabilization along South Buffalo Creek and Piedmont Creek. The CWMTF 2013-405 Phase 2 project constructed wetland and stream restoration features on the south side of South Buffalo Creek and an unnamed tributary between Farragut Street and Randleman Road and consisted of approximately 1,200 linear feet of stream.

**Project Site:**

The Project Site is South Buffalo Creek and two unnamed tributaries between Farragut Street and Randleman Rd in Greensboro, which will include approximately 2,325 linear feet of stream. This work will be the third phase of a three phase project.

**Project Summary:**

This project will construct enhancement and stream restoration features on the south side of South Buffalo Creek and two unnamed tributaries consisting of restoration of 475 linear feet (LF) of Unnamed Tributary 2; restoration of 100 LF Unnamed Tributary 3; enhancement Level 1 of 1000 LF on the south side of South Buffalo Creek; and create 750 LF of sloughs. The proposed work will include new floodplain; bench construction; reconnection to exist floodplain; construct new channel; creation or enhancement of floodplain wetlands or ponds; local bank stabilization; riparian buffer & stream bank plantings & removal of invasive species; revetments; vanes; lifts; and root wads.

**Site Conditions and Water Quality Objectives:**

The Grant Recipient has developed information indicating that the stream at the Project Site has straightened, relocated, and incised stream channels, bank erosion, and high flows lack access to the floodplain. Successful implementation of the project will increase frequency of flow access to floodplains, reduce bank erosion and sediment loss, reduce nutrient transport, increase density of native bank vegetation, restore aquatic habitat.

**Scope of Work:**

The Grant Recipient shall conduct and complete the activities given below.

No.	Activity	Funding Source	
		CWMTF Funds	Matching Funds
1	Construct the stream restoration for the stream of the Project Site per the Phase 3 portion of the engineering design completed under CWMTF 2008-404, including entering into a construction contract, accomplishing the construction, administering the construction contract, and observing and documenting conformance of the construction to the construction contract documents and approved changes.	X	X
2	Construction administration/observation	X	X

**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. Stream restoration, enhancement, and stabilization designs and their implementation must provide for permanently vegetated riparian buffers and permanent legal protection of the riparian buffers in accordance with the following:
  - a. Riparian buffer widths, areas, and vegetation: Except as otherwise provided in these Special Contract Conditions, riparian buffers must be vegetated with protected existing vegetation and/or new planted vegetation established to become permanent over the entire buffer area in accordance with the following:
    - i. Widths and areas of riparian buffers: Estimated widths and areas of vegetated riparian buffers are given in the Schedule of Properties for Legal Protection of Riparian Buffers.
    - 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 20 feet perpendicular to the streambank.
3. The Grant Recipient shall secure applicable Federal and State permits before the start of construction and submit copies of the permits to the Fund. The Fund shall approve requests for payment of the Grant Recipient’s construction costs only after receiving copies of applicable Federal and State permits.

4. In accordance with Water Quality Certification No. 3495, 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 Quality (DWQ) 401 Certification Program for review. The Grant Recipient shall follow the latest guidelines on DWQ's website (<http://h2o.enr.state.nc.us/ncwetlands/index.html>) and contained in the Internal Technical Guide for Stream Work in North Carolina (DWQ and DLR, April 2001 or latest version (<http://h2o.enr.state.nc.us/ncwetlands/strmgide.html>) for the types of information to submit to DWQ for review. The Grant Recipient shall name the Fund as the "agent" on the PCN form and shall send a copy of the PCN form to the Fund at the same time the form is sent to DWQ.
5. In conducting this Project, the Grant Recipient shall employ principles for restoring streams established by the DWQ 401 Certification Program. The Grant Recipient shall work with staff of the DWQ 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 Fund will release funds for reimbursing the Grant Recipient for construction only after receiving a letter from the DWQ 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 DWQ 401 Certification Program restoration of the full stream reach is not practicable, the Project design is capable of enhancing portions of the reach that cannot be restored. If DWQ does not provide such a letter within 30 days from receiving the PCN and Project design (plans and specifications) from the Grant Recipient, then the Fund will deem the design to meet the requirements of the DWQ 401 Water Quality Certification Program. Definitions used by the DWQ 401 Certification Program are given in Exhibit G.
6. The following General Terms and Conditions in Exhibit H do not apply to this Grant Contract: Paragraph A.8, Conservation Easement or Other Land Use Restriction

**Project Schedule:**

1. **Construction Contract Date: September 16, 2015 (one year after the Contract Award Date).** Enter into a construction contract by this date for the work identified as construction in Exhibit A. Failure to enter into a construction contract by this date will result in withdrawal of the Grant, unless the Fund's Board of Trustees has found the Grant Recipient had good cause for such failure and the Board of Trustees has set a date by which the Grant Recipient must take action.
2. **Contract Expiration Date: October 31, 2016.** Complete the Project Scope of Work and submit the Grant Contract Final Report (Grant Contract paragraph 12b and as otherwise specified in Exhibit A) by this date. The Fund will not reimburse the Grant Recipient for Project costs incurred after this date.
3. **Reimbursement Date: November 14, 2016.** The Fund must receive the Final Request for Payment for the Project by this date. The Fund will not accept or process for payment any request for payment received after this date. The Fund will not reimburse the Grant Recipient for costs incurred after the Contract Expiration Date.

**EXHIBIT B**  
**CWMTF Project No. 2014-403**

Project Budget

Item	CWMTF Grant Funds <sup>(1)</sup>	Matching Funds <sup>(2)</sup>	Total Item Budget
1. Construction administration/observation	\$38,400	\$38,400	\$76,800
2. Construction	\$267,450	\$267,450	\$534,900
3. Construction contingency <sup>(3)</sup>	\$26,750	\$26,750	\$53,500
<b>Total Project Budget</b>	<b>\$332,600</b>	<b>\$332,600</b>	<b>\$665,200</b>
<b>% of Total Project Budget</b>	<b>50%</b>	<b>50%</b>	<b>100%</b>

Notes:

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

(2) Matching funds are: Cash: \$332,600 as cash from the City of Greensboro.

(3) Construction contingency funds allow the project to cover unanticipated construction costs, often resulting from unexpected conditions encountered during construction. Construction contingency funds are not intended to 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 Fund 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.

**EXHIBIT C**  
**CWMTF Project No. 2014-403**

**Pre Fund Disbursement Checklist**

**Documents to Be Submitted to CWMTF Before any Funds will be Disbursed under the Grant**

REQUIREMENT		DESCRIPTION/WHAT TO SUBMIT
<b>Submit before first request for payment</b>		
1	Authorization to Obligate	Written authorization from the governing board or other appropriate authority stating that it agrees to the obligations of Grant Recipient set out in this Grant Contract. (*See note below.)
2	Matching Funds	Proof of availability of matching funds included in the project budget. (**See note below.)
3	Easements and/or Declarations of Covenants	<i>[The following items apply only to projects whose scope of work includes preparation/recording of conservation agreements and/or CWMTF-funded construction on properties with conservation agreements.]</i>
		Letters of intent from property owners. <i>[Letters of intent are required from owners of all properties of the Project Site, except letters are not required: - For properties owned by the Grant Recipient and properties owned by the State of North Carolina, or - If a copy of the recorded instrument (typically a conservation agreement) that creates the property interest already has been provided to and accepted by the Fund.]</i>
		Letter from the holder of the easements stating that it accepts this role and its responsibilities. <i>[A letter from the holder is not required if a copy of the recorded instrument (typically a conservation agreement) that creates the property interest already has been provided to and accepted by the Fund.]</i>
4	Documents in Exhibit A	Documents as identified in Exhibit A “Special Contract Conditions” (if any) as required prior to the release of CWMTF funds.
<b>Submit before first request for construction payment</b>		
5	Easements and/or Declarations of Covenants	Copies recorded easements and/or declarations of covenants for the properties in Schedule of Properties for Legal Protection of Riparian Buffers in Exhibit A. Each easement and each declaration of covenants is subject to review and acceptance by CWMTF.
6	Construction Permits	Provide a copy of each applicable Federal or State permit issued for construction, or written documentation from the appropriate State agency that construction of the Project does not require a Federal or State permit.
7	Construction Contract Pricing Information	Within 30 days of executing a construction contract for the Project, submit construction contract pricing information consisting minimally of a statement of the scope of the construction work, agreed-upon constructor or vendor pricing for the construction work, and a total anticipated construction cost based on the pricing. (Refer to paragraph 11 of the Grant Contract.)
8	Documents in Exhibit A	Documents as identified in Exhibit A “Special Contract Conditions” (if any) as required prior to the release of CWMTF funds.
<b>Submit before or accompanying request for final payment</b>		
9	Grant Contract Final Report	Report per Grant Contract paragraph 12b.

10	Easements and/or Declarations of Covenants	Copies recorded easements and/or declarations of covenants for the properties in Schedule of Properties for Legal Protection of Riparian Buffers in Exhibit A. Each easement and each declaration of covenants is subject to review and acceptance by CWMTF.
11	Construction Permit(s)	Provide a copy of applicable Federal or State permits issued for construction, or written documentation from the appropriate State agency that construction of the Project does not require a Federal or State permit.
12	Documents in Exhibit A	Documents as identified in Exhibit A “Special Contract Conditions” (if any) as required prior to the release of CWMTF funds.

\* Examples of proof of authorization to obligate include:

- Resolution of the governing board to obligate.
- Certified copy of board meeting minutes documenting giving of authority to obligate.

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

- Grants from other sources:
  - Copy of grant agreement.
  - Copy of grant award letter.
- Local agency matching funds:
  - Resolution of the governing board.
  - Budget showing allocation of matching funds to the Project, accompanied by a certified copy of board meeting minutes approving the budget or by a certified copy of board meeting minutes authorizing use of local matching funds for the Project.
  - Certified copy of board meeting minutes attesting to the use and amount of local funds for match.
  - Letters from other sources of matching funds attesting to contribution of the funds.
- Value of conservation easements to be donated:
  - Current properties’ fair market tax valuations assessed by the county tax assessor’s office, prorated to apply only to the areas of the permanent conservation easements to be recorded for this project, or
  - Appraisals, prepared and signed by a North Carolina-licensed appraiser, of the diminution of properties’ fair market values as a result of being encumbered by permanent conservation easements required for this project.

**EXHIBIT D**

**CWMTF PROGRESS REPORT FORM AND  
CWMTF GRANT CONTRACT FINAL REPORT FORM**

*See following pages.*







# North Carolina Clean Water Management Trust Fund

## Grant Contract Final Report Form (restoration project)

***This report must be submitted by the date given under Schedule in Exhibit A in order for CWMTF to release final payment.***

CWMTF project no.: **2014-403**  
 Contract expiration date: **April 30, 2016** Date prepared:  
 Project name/description: **South Buffalo Creek Habitat & Water Quality Improvement, Phase 3 (construction)**

Grant Recipient: **City of Greensboro**  
 Primary contact: **David Phlegar, Stormwater Manager**  
 Stormwater Management Division, City of Greensboro  
 2602 South Elm-Eugene Street, Greensboro, NC 27406  
 phone: (336)373-2707 email: [david.phlegar@greensboro-nc.gov](mailto:david.phlegar@greensboro-nc.gov)

Submit progress report to:  
 Larry Horton  
 CWMTF  
 1651 Mail Service Center  
 Raleigh, NC 27699-1651  
[larry.horton@ncdenr.gov](mailto:larry.horton@ncdenr.gov)

**Status of project deliverables and outputs:**

Deliverable or output item	Status at project's completion	Date completed
Property-owner letters of intent*		
Permits*		
Design plans, specifications and bid documents		
Recorded conservation agreements*		
Stream restoration construction		

\* Indicates items to be submitted to CWMTF, per the grant contract.

**a. Project summary and evaluation:**

Project's original objectives, any changes, and explanation for changes:

Project's original scope of work, any changes, and explanation for changes:

Any changes to the project budget and explanation for changes:

Work accomplished on the project:

Lessons learned during the project/would do differently next time:

**b. Describe and discuss water quality benefits achieved or to be achieved because of the project:**

**c. Provide an estimate of reduction in the rate of streambank erosion because of the project (attach calculations and identify sources of input):**

**d. Provide a map showing the Project Site and identifying stream sections as having been restored, enhanced, or stabilized as defined in Exhibit A (identify and attach a map no larger than 11"x17"):**

<b>e. Categories and costs of stream restoration (complete the following table):</b>			
Category per DWQ 401 Certification Program (see Exhibit G)	Total Length in the Project (LF)	Unit Cost of Project Design and Permitting (\$/LF)	Unit Cost of Project Construction (\$/LF)
Restoration			
Enhancement			
Stabilization			
Total length			
<b>f. Provide a geo-referenced shapefile (includes a .prj file) of the easement area boundary. Where multiple deeds of easement are recorded, include a separate polygon for each easement area. For accuracy, the shapefile should be derived from a survey of the easement area. If the easement area is not surveyed, the easement area boundary may be derived from mapping software (e.g., digitized in ArcMap).</b>			
<b>g. Provide project reports, plans, photographs, or other documents that verify the project's completion (attach or reference items already provided to CWMTF):</b>			
<b>h. Describe participation in the project by local partners or stakeholders (funding, in-kind contributions, and/or other):</b>			
<b>i. Provide an Engineer's Certification of Completion (attach if applicable):</b>			

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## EXHIBIT E

### CWMTF REQUEST FOR REIMBURSEMENT FORM

#### Exhibit E: CWMTF Cost Report and Payment Request

Complete Parts 1, 2, 3, and 4 and send, along with backup, to: Clean Water Management Trust Fund 1651 Mail Service Center Raleigh NC 27699-1651 Direct questions to the CWMTF Project Administrator, Larry Horton, at larry.horton@ncdenr.gov or (919) 707-9128.	Grant Recipient: <b>City of Greensboro</b> Project Name: <b>South Buffalo Creek, Phase 3</b> CWMTF No. <b>2014-403</b> Expiration Date: <b>10/31/16</b> Request no.      Request date:
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

CWMTF FUNDS      budget: \$332,600      remaining: \$332,600.00				
Item	a CWMTF funds budget	b Payments previously approved	c Payment requested	d Payments approved + Payment requested
<b>CONTRACTED PROFESSIONAL SERVICES</b>				
<i>Construction administration/observation and as-built plans*</i>	\$38,400			\$0.00
<b>CONTRACTED CONSTRUCTION</b>				
<i>Construction and plantings</i>	\$267,450			\$0.00
<b>CONSTRUCTION CONTINGENCY</b>	\$26,750			\$0.00
<b>TOTAL CWMTF-FUNDED ITEMS</b>	\$332,600	\$0.00	\$0.00	\$0.00
<b>as % of Total Project Funds**</b>	50.0%	#DIV/0!	#DIV/0!	#DIV/0!
* Italics indicate the item is co-funded (with both CWMTF funds and matching funds).			\$0.00	← Total payment ← requested

MATCHING FUNDS      budget: \$332,600      remaining: \$332,600.00				
Item	e Matching funds budget	f Spending previously approved	g Spending requested for approval	h Spending approved + Spending requested
<b>CONTRACTED PROFESSIONAL SERVICES</b>				
<i>Construction administration/observation and as-built plans</i>	\$38,400			\$0.00
<b>CONTRACTED CONSTRUCTION</b>				
<i>Construction and plantings</i>	\$267,450			\$0.00
<b>CONSTRUCTION CONTINGENCY</b>	\$26,750			\$0.00
<b>TOTAL MATCH-FUNDED ITEMS</b>	\$332,600	\$0.00	\$0.00	\$0.00
<b>as % of Total Project Funds**</b>	50.0%	#DIV/0!	#DIV/0!	#DIV/0!

<b>**TOTAL PROJECT FUNDS (CWMTF + MATCH)</b>	\$665,200	\$0.00	\$0.00	\$0.00
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\_\_\_\_\_ Initial indicating that a completed CWMTF Progress Report Form and backup substantiating spent amounts are attached.

\_\_\_\_\_ Initial indicating that applicable pre-disbursement documents (see Exhibit C) have been submitted.

I certify that, to the best of my knowledge and belief, the amounts in this payment request for which payment by CWMTF is requested were incurred according to the terms of the Grant Contract and that these amounts have not previously been requested for payment.

I further certify that (check one):

\_\_\_\_\_ This invoice includes one or more expenditures incurred by a vendor(s) of the Grant Recipient for which the Grant Recipient has not yet paid its vendors, in which case the Grant Recipient agrees to: (1) pay its vendors for such expenditures within three banking days after receiving corresponding payment from CWMTF, and (2) confirm in writing to the Fund that all such previously unpaid vendor invoices have been paid; or

\_\_\_\_\_ This invoice includes no expenditures incurred by a vendor of the Grant Recipient that have not yet been paid by the Grant Recipient and therefore is entirely for reimbursement by the Fund for payments already made by the Grant Recipient to its vendors.

Signature: \_\_\_\_\_

Submitted by: \_\_\_\_\_ Title: \_\_\_\_\_

email address: \_\_\_\_\_ Telephone number: \_\_\_\_\_

- Notes:**
- (1) To obtain payment, the Grant Recipient must submit itemized documentation substantiating costs incurred in implementing the project.
  - (2) The value of a conservation easement (or other legal instrument acceptable to the Fund) donated to the project by a property owner may be claimed as matching funds contributed to the project only after the Grant Recipient has provided to the Fund all of the following information for that donated easement: (a) calculated area of the easement, (b) copy of the easement document as recorded by the county register of deeds, and (c) basis for the claimed value of the easement, which may be in the form of appraisal summaries, if recent appraisals have been prepared, or current property tax valuation assessed by the county tax assessor's office showing total value of land and/or improvements, if any, with indicated year of the actual assessment.
  - (3) The CWMTF Grant Amount portion of funds in the Construction Contingency line item may be made available to other budget line items only after the Grant Recipient has demonstrated to the Fund that it has expended 100 percent of local matching funds and at least 90 percent of all other matching funds, including matching grant funds.

**EXHIBIT F**

*Does not apply to this grant contract.*

## EXHIBIT G

### ADDITIONAL DEFINITIONS

Unless indicated otherwise from context, the following terms shall have as their meanings in this Grant Contract the definitions set forth below.

1. “Grant Contract” means a legal instrument that is used to reflect a relationship between the Grantor 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” means State funds disbursed by the Clean Water Management Trust Fund to a Grant Recipient to conduct activities described in this Grant Contract.
5. “Grant Recipient” shall mean one of the entities identified as a party to this Contract. Likewise, “Grantee” shall mean a party to a deed or other instrument of conveyance that is vested with a real property interest by said instrument.
6. “Grantor,” as used in this Grant Contract, means the Fund in its capacity as provider Grant funds for the Grant Recipient’s use in conducting the Project.
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.

## EXHIBIT H

### GENERAL TERMS AND CONDITIONS

#### A. Affirmative Covenants

1. Compliance with Laws. 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.
2. 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. Grant Recipient will ensure that all contractors furnish adequate payment and performance bonds.
3. No Mitigation. Grant Recipient shall not use a property(ies) of the Project Site or any portion thereof to satisfy compensation mitigation requirements under 33 U.S.C. § 1344 or N.C.G.S. 143-214.11.
4. No Pollution Credits. If the Project enables the Grant Recipient to reduce the discharge of phosphorus, nitrogen, or any other nutrient or pollutant below, or further below, applicable regulatory limits (“Pollution Credits”), Grant Recipient shall not sell, trade or give to another person or entity that percentage of any resulting credits achieved by the Project corresponding to the percentage of the Project costs provided by the Fund.
5. Right of Entry and Inspections. The Grant Recipient shall permit representatives of the Fund to visit the property(ies) of the Project Site and to review the activities of the Grant Recipient pursuant to the Grant, including books and records in any way related to the Grant or the Project.
6. Retention, Operation, Maintenance and Use.
  - (a) Grant Recipient agrees to complete the Project as approved by the Fund. The descriptions, purpose, schedules, scope of work and budgets set out in Exhibits A and B, and accompanying or related plans, specifications, estimates, procedures and maps submitted to the Fund by the Grant Recipient are the foundation of this Grant Contract. Only changes deemed non-material in type at the discretion of the Executive Director may be made without the consent of the Fund’s Board of Trustees.
  - (b) For a period of ten (10) years after Project completion, 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, with additional inspections following major storm events and shall make all necessary repairs to return the infrastructure to its full function within 2 weeks or as soon as possible thereafter.
  - (c) Property acquired, developed or improved with grant assistance from the Fund shall be retained and used for the purposes identified in Exhibit A, and Grant Recipient hereby

agrees to file or record such restrictions as may be required to assure such continued use and such restrictions shall be in form and substance satisfactory to the Fund.

(d) If at some future date, the Fund and the Grant Recipient agree that the Project should no longer continue on a property(ies) of the Project Site, then Grant Recipient will abandon the Project and allow such property to return to its natural state.

7. Material Modifications. Any proposed material modification of the Project shall be subject to approval by the Fund.

8. Conservation Easement or Other Land Use Restrictions. Grant Recipient shall obtain permanent Conservation Easements or other perpetual land use restrictions for this Project satisfactory to the Fund in its sole discretion.

9. Signs for Visibility. Grant Recipient shall post signs on publicly visible areas of properties that have public access and/or where private property owners are amenable to signage. The Fund will provide the signs or, if the Grant Recipient prefers, the Fund will provide artwork and specifications for signs fabricated and posted by the Grant Recipient. Signs must acknowledge the Fund as a source of funding for the Project.

10. Boundary Marking of Riparian Buffer Easement Areas. 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.

11. Publicity. To the extent possible, the Grant Recipient will use its best efforts to appropriately publicize the Project's water quality benefits to the general public, local government and state representatives, including the role of the Fund in the funding and development of the Project.

12. Conflicts of Interest. Grant Recipient shall at all times comply with its conflict of interest policy.

13. Additional Requirements. Grant Recipient shall comply with all legal requirements applicable to the use of the Grant.

14. Tax Exempt Status. 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 thereof) and the regulations promulgated there under (the "Code") and shall notify the Fund upon any change in its status under the Code prior to all Grant funds being disbursed to Grant Recipient.

15. If the Fund 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.



## B. Representations and Warranties

In order to induce the Fund to enter into this Grant Contract and to make the Grant as herein provided, the Grant Recipient after reasonable inquiry makes the following representations, warranties and covenants, which shall remain in effect after the execution and delivery of this Grant Contract and any other documents required hereunder, any inspection or examinations at any time made by or on behalf of the Fund, 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 which might affect the Grant Recipient's ability to observe and perform its obligations under this Grant Contract.
2. Validity of Grant Documents. Upon execution and delivery of items required hereunder, this Grant Contract and the other grant documents and items required hereunder will be valid and binding agreements, enforceable in accordance with the terms thereof.
3. No Untrue Statements. Neither this Grant Contract nor any information, certificate, statement, or other document furnished by Grant Recipient in connection with the Grant, contains any untrue statement of a material fact or omits disclosure of a material fact which affects a property(ies) of the Project Site, the Conservation Easement or the ability of the Grant Recipient to perform this Grant Contract.
4. Additional Requirements. Grant Recipient shall comply with all legal requirements applicable to the use of the Grant funds.
5. Books and Records. The Grant Recipient agrees to maintain and make available to the Fund at all reasonable times all documents, books, and records of all expenditures for costs applicable to this Grant Contract, and to submit properly certified billings for such costs on forms prescribed by the Fund and supported by detailed data sheets which will facilitate the audit of the Grant Recipient's records.

## C. Termination by Mutual Consent

The Parties may terminate this Contract by mutual written consent with 60 days prior written notice to the Contract Administrators, or as otherwise provided by law.

## D. Termination for Cause; Events of Default

The happening of any of the following, after the expiration of any applicable cure period without the cure thereof, shall constitute an event of default ("Event(s) of Default") by the Grant Recipient of its obligations to the Fund, and shall entitle the Fund to exercise all rights and remedies under this Grant Contract and as otherwise available at law or equity:

1. Property Unsuitable. A determination by the Fund, 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.
2. 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.
3. 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.
4. 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.
5. Eligibility of Grant Recipient. If Grant Recipient ceases to be qualified to receive Grant funds or is dissolved or otherwise ceases to exist.
6. Abandonment of the Project. If Grant Recipient abandons or otherwise ceases to continue to make reasonable progress towards completion of the Project.

#### E. Fund's Rights and Remedies

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

1. Project Termination. If an Event of Default occurs, the Fund may, at its discretion suspend and/or terminate all obligations of the Fund hereunder. If, in the judgment of the Fund, such failure was due to no fault of the Grant Recipient, amounts required to resolve at minimum costs any irrevocable obligations properly incurred by Grant Recipient shall, in the discretion of the Fund, be eligible for assistance under this Grant Contract.
2. Additional Remedies. If an Event of Default occurs, the Fund shall have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Project by any acts which 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 Grant Recipient's obligations under this Grant Contract, (d) to obtain return of all Grant Funds, including equipment if applicable and/or (e) to seek damages from any appropriate person or entity. The Fund, or its designee, may also, at the Fund's sole discretion, continue to complete the Project, or any portion thereof deemed appropriate by the Fund, and the Grant Recipient shall cooperate in the completion of the Project. The Fund shall be under no obligation to complete the Project.

3. Nonwaiver. No delay, forbearance, waiver, or omission of the Fund 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 Fund may be exercised from time to time and as often as may be deemed expedient by the Fund.

#### F. Miscellaneous

1. Modification. This Grant Contract may be rescinded, modified or amended only by written agreement executed by all parties hereto.

2. Benefit. This Grant Contract is made and entered into for the sole protection and benefit of the Fund, the State and the Grant Recipient, and their respective successors and assigns, subject always to the provisions of paragraph F.8 of this Exhibit H. Except for the State, there shall be no third party beneficiaries to this Grant Contract.

3. Further Assurance. In connection with and after the disbursement of Grant funds under this Grant Contract, upon the reasonable request of the Fund, 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 Fund 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, 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 neither this Grant Contract nor any provision of it or any of the Grant Documents shall be deemed to create a partnership or joint venture between the Parties. Further, neither the Grant Contract nor any of the Grant Documents shall in any way be interpreted or construed as making the Grant Recipient, its agents or employees, agents or representatives of the Fund. The Grant Recipient is and shall be an independent contractor in the performance of this Contract and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. In no event shall the Fund 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 Contract. Such employees shall not be employees of, nor have any individual contractual relationship with, the Fund.

6. Indemnity. The Grant Recipient agrees, to the fullest extent permitted by law, to release, defend, protect, indemnify and hold harmless the State, the Fund, its Trustees, employees and agents against claims, losses, liabilities, damages, and costs, including reasonable attorney fees, which result from or arise out of: (a) damages or injuries to persons or property caused by the negligent acts or omissions of Grant Recipient, its employees, or agents in use or management of the Project; or (b) use or presence of any hazardous substance, waste or other regulated material in, under or on a property(ies) of the Project Site. The obligations under this paragraph 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 assure 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 hereto; 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 Fund, 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.

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

13. Incorporation of Exhibits. All exhibits attached to this Contract are fully incorporated as if set forth herein.

14. Entire Agreement. This Grant Contract constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. All recitals, exhibits, schedules and other attachments hereto are incorporated herein by reference.

15. 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.

16. Time of the Essence. Time is of the essence in the performance of this Grant Contract.