

**Hyde County Board of Commissioners  
AGENDA ITEM SUMMARY SHEET**

**Meeting Date:** November 4, 2019  
**Presenter:** Lauren Swain  
**Attachment:** No

**ITEM TITLE:** Trillium Health Resources

**SUMMARY:** Lauren Swain of Trillium Health Resources will present Trillium's Back At Home Program.

**RECOMMEND:** Discussion

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MOTION MADE BY:  PUGH  
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MOTION SECONDED BY:  PUGH  
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VOTE:  PUGH  
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**Hyde County Board of Commissioners  
AGENDA ITEM SUMMARY SHEET**

**Meeting Date:** November 4, 2019  
**Presenter:** Sheriff's Department  
**Attachment:** No

**ITEM TITLE:** Juvenile Jail

**SUMMARY:** Sheriff's Department staff will present update on the Hyde County Juvenile Jail Project.

**RECOMMEND:** Discussion

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MOTION SECONDED BY:  PUGH  
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VOTE:  PUGH  
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**Hyde County Board of Commissioners  
AGENDA ITEM SUMMARY SHEET**

**Meeting Date:** November 4, 2019  
**Presenter:** County Manager Kris Noble  
**Attachment:** No

**ITEM TITLE:** EMPLOYEE/VOLUNTEER/FRIEND OF THE MONTH

**SUMMARY:** Manager Kris Noble will introduce Bianca Torres the Hyde County Volunteer for the month of September, 2019.

Bianca Torres, a student at Mattamuskeet Early College High School will be traveling to the NCACC Youth Voice Program August 24-25 to meet with county commissioners from all across the state to learn about leadership and county operations.

Miss Torres is required to submit a photo of herself with the Hyde County Commissioners and report back about her experiences at the conference.

**RECOMMEND:** Congratulations.

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**Hyde County Board of Commissioners**  
**AGENDA ITEM SUMMARY SHEET**

**Meeting Date:** November 4, 2019  
**Presenter:** Citizens  
**Attachment:** No

**ITEM TITLE:** PUBLIC COMMENTS

**SUMMARY:** Citizens are afforded an opportunity at this time to comment on issues they feel may be of importance to the Commissioners and to their fellow citizens.

Comments should be kept to (3) minutes and directed to the entire Board, not just one individual Commissioner, staff member or to a member of the audience.

Time for one person cannot be used by another person.

Comments that reflect the need for additional assistance will be directed to the County Manager or referred to a future meeting agenda.

**RECOMMEND:** Receive comments.

**Hyde County Board of Commissioners  
AGENDA ITEM SUMMARY SHEET**

**Meeting Date:** November 4, 2019  
**Presenter:** County Manager Kris Cahoon Noble  
**Attachment:** Yes

**ITEM TITLE:** RESOLUTION TO RATIFY BOARD ACTION  
RELATED TO HURRICANE DORIAN

**SUMMARY:** Proclamation to lift the curfew for Ocracoke adopted on October 30, 2019  
  
Resolution to ratify Amendment No. Eight into Board action taken by the  
Chairman during Hurricane Dorian recovery dated November 4, 2019.

**RECOMMEND:** Adopt.

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**MOTION MADE BY:** \_\_\_ PUGH  
\_\_\_ PAHL  
\_\_\_ SIMMONS  
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**MOTION SECONDED BY:** \_\_\_ PUGH  
\_\_\_ PAHL  
\_\_\_ SIMMONS  
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\_\_\_ TOPPING

**VOTE:** \_\_\_ PUGH  
\_\_\_ PAHL  
\_\_\_ SIMMONS  
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**BOARD OF COMMISSIONERS  
OF THE COUNTY OF HYDE,  
NORTH CAROLINA**

**HYDE COUNTY STATE OF EMERGENCY PROCLAMATION  
AMENDMENT NO. EIGHT  
LIFTING THE CURFEW FOR OCRACOCKE  
OCTOBER 30, 2019**

**HURRICANE DORIAN**

**WHEREAS**, Pursuant to Hyde County Ordinances, Chapter 166A of the North Carolina General Statutes and Article 36A of Chapter 14 of the North Carolina General Statutes, I have determined that a State of Emergency continues in Hyde County; and,

**WHEREAS**, I formally proclaimed and established the existence of a State of Emergency in Hyde County effective on Monday, September 2, 2019 at 5:00 a.m.; and,

**WHEREAS**, I previously ordered the mandatory evacuation of Ocracoke visitors effective on Tuesday, September 3, 2019, at 5:00 a.m. and Ocracoke residents effective on Wednesday, September 4, 2019, at 5:00 a.m.; and,

**WHEREAS**, I further ordered the expansion of the mandatory evacuation to include Mainland Hyde County effective on Wednesday, September 4, 2019, at 5:00 a.m.; and,

**WHEREAS**, I exercised my authority to ban the sale of alcohol on Ocracoke Island at 4:00 p.m. beginning on Wednesday, September 4, 2019 and within Mainland Hyde County beginning on Thursday, September 5, 2019, at 4:00 p.m.; and,

**WHEREAS**, I determined the mandatory evacuation order and ban on the sale of alcohol for Mainland Hyde County were no longer necessary; and,

**WHEREAS**, the mandatory evacuation ordered for Ocracoke residents was terminated on Sunday, September 8, 2019; and,

**WHEREAS**, the mandatory evacuation ordered for Ocracoke non-resident property owners was terminated on Tuesday, September 10, 2019; and

**WHEREAS**, on Monday, October 14, 2019, the ban on the sale of alcohol issued for Ocracoke Island was lifted and the curfew was modified to be enforced from 11:00 p.m. to 6:00 a.m.; and

**WHEREAS**, in consultation with the Hyde County Sheriff I have determined the curfew can be lifted for Ocracoke and will be terminated on Wednesday, October 30, 2019, effective immediately; and,

**WHEREAS**, the infrastructure is not at full capacity and does not support unrestricted entry or re-entry to Ocracoke; and,

**WHEREAS**, I order the continued enforcement of a prioritization system to gain access to the emergency area, Ocracoke Island; and,

**WHEREAS**, the mandatory evacuation order for visitors of Ocracoke Island remains in effect; and,

**WHEREAS**, I hereby direct all county law enforcement officers, county employees, public safety personnel, and all emergency management personnel, subject to my control, to cooperate in the enforcement and implementation of the provisions of the emergency as may be necessary or convenient; and

**WHEREAS**, I specifically authorize and direct all applicable department heads and their employees to take such steps and to make such applications as may be necessary, useful, or convenient to mitigate the effects of damage to life or property located within Hyde County and arising from Hurricane Dorian or its associated weather conditions; and

**NOW THEREFORE**, This proclamation is signed on this date, Wednesday, October 30, 2019, and becomes effective immediately,

**ATTEST:**

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Earl Pugh, Jr., Chairman  
Hyde County Board of Commissioners

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Lois Stotesberry, CMC, NCCCC  
Clerk, Hyde County Board of  
Commissioners



BOARD OF COMMISSIONERS  
THE COUNTY OF HYDE  
NORTH CAROLINA

**RESOLUTION**  
**TO RATIFY BOARD ACTION RELATED TO HURRICANE DORIAN**

**WHEREAS**, the Board of County Commissioners of Hyde County, North Carolina ratified the immediate actions taken by the Chairman on behalf of the Board during a declared State of Emergency related to Hurricane Dorian at its last regular meeting of the Board on October 7, 2019, and;

- **Proclamation – State of Emergency for Hyde County Hurricane Dorian**
- **Amended Proclamation – State of Emergency for Hyde County – Mandatory Evacuation of Ocracoke Island**
- **Amended Proclamation - State of Emergency for Hyde County – Mandatory Evacuation of Hyde County**
- **Amended Proclamation - State of Emergency for Hyde County – Termination of The Mainland Hyde County Evacuation**
- **Amended Proclamation - State of Emergency for Hyde County – Termination of The Mandatory Evacuation for Ocracoke Residents**

**WHEREAS**, the Board of County Commissioners of Hyde County, North Carolina also ratified the immediate action taken by the Chairman on behalf of the Board during a declared State of Emergency related to Hurricane Dorian at its last regular meeting of the Board on October 7, 2019, and

- **Amended Proclamation – State of Emergency for Hyde County – Termination of The Mandatory Evacuation for Non-Resident Property Owners**

**WHEREAS**, the Board of County Commissioners of Hyde County, North Carolina adopted Resolution to ratify proclamations enacted during Hurricane Dorian at its last regular meeting of the Board on October 7, 2019; and,

- **Resolution to ratify proclamations enacted by Chairman Pugh on behalf of the Hyde County Board of Commissioners during a declared “State of Emergency – Hurricane Dorian”.**

**NOW, THEREFORE, BE IT RESOLVED** that the Hyde County Board of Commissioners hereby adopts Amendment No. Eight –

- **Amended Proclamation – State of Emergency for Hyde County – Lifting The Curfew for Ocracoke – October 30, 2019**

Duly adopted the 4<sup>th</sup> day of November, 2019.

**Attested by:** \_\_\_\_\_

Lois Stotesberry, Clerk  
Hyde County Board of Commissioners

\_\_\_\_\_  
Earl Pugh, Jr., Chair  
Hyde County Board of Commissioners

**Hyde County Board of Commissioners  
AGENDA ITEM SUMMARY SHEET**

**Meeting Date:** November 4, 2019  
**Presenter:** County Manager Kris Cahoon Noble  
**Attachment:** Yes

**ITEM TITLE:** SELECTION OF COMPLETE COUNT COMMITTEE MEMBERS FOR THE 2020 CENSUS

**SUMMARY:** Five individuals were appointed at the October meeting. These individuals are in regular contact with the undercounted populations:

Luana Gibbs (or designee), Hyde County Health Department  
Teresa Pugh, Hyde County Health Department Spanish Interpreter  
Laurie Potter (or designee), Hyde County Dept. of Social Services  
Stephen Basnight (or designee), Hyde County Schools  
Darlene Berry (or designee), Hyde County Senior Center

The CCC Committee will also need to consist of 3 members from each voting district. These positions will be filled by the recommendations that each board member provides from their respective townships.

**RECOMMEND:** APPROVE 15 APPOINTMENTS TO COMPLETE THE FORMATION OF HYDE COUNTY'S COMPLETE COUNT COMMITTEE

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MOTION SECONDED BY:  PUGH  
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VOTE:  PUGH  
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**Hyde County Board of Commissioners  
AGENDA ITEM SUMMARY SHEET**

**Meeting Date:** November 4, 2019  
**Presenter:** Luana Gibbs, Interim Health Director  
**Attachment:** No

**ITEM TITLE:** Appointment to Board of Health

**SUMMARY:** The Board of Health is recommending Lauren Swindell Gibbs as the Registered Nurse designee to said Board. Mrs. Gibbs is interested in this appointment. The Board of Health met and discussed this recommendation at the September 17, 2019 meeting.

**RECOMMEND:** APPROVAL

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**Hyde County Board of Commissioners  
AGENDA ITEM SUMMARY SHEET**

**Meeting Date:** November 4, 2019  
**Presenter:** Luana Gibbs, Interim Health Director  
**Attachment:** No

**ITEM TITLE:** Re-appointment to Board of Health

**SUMMARY:** The Board of Health is recommending re-appointment of Randy Hignite to his third term (3 year term) on the Hyde County Board of Health. The Board of Health met and discussed this recommendation at the September 17, 2019 meeting.

**RECOMMEND:** APPROVAL

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MOTION MADE BY: ___ PUGH	MOTION SECONDED BY: ___ PUGH	VOTE: ___ PUGH
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**RESOLUTION**  
**DESIGNATION OF APPLICANT'S AGENT**  
 North Carolina Division of Emergency Management

Organization Name (hereafter named Organization) Disaster Number:  
 County of Hyde 4465

Applicant's State Cognizant Agency for Single Audit purposes (If Cognizant Agency is not assigned, please indicate):

Applicant's Fiscal Year (FY) Start 07 Month: 01 Day:

Applicant's Federal Employer's Identification Number  
 56-6000308

Applicant's Federal Information Processing Standards (FIPS) Number  
 37095

PRIMARY AGENT	SECONDARY AGENT
Agent's Name Carrinne Gibbs	Agent's Name Justin Gibbs
Organization County of Hyde	Organization County of Hyde
Official Position Finance Director	Official Position EM Director
Mailing Address PO Box 188 / 30 Oyster Creek Rd	Mailing Address PO Box 188 / 30 Oyster Creek Rd
City, State, Zip Swan Quarter NC 27885	City, State, Zip Swan Quarter NC 27885
Daytime Telephone 252 926 4192	Daytime Telephone 252 926 4199
Facsimile Number 252 926 3701	Facsimile Number 252 926 3709
Pager or Cellular Number 252 945 0710	Pager or Cellular Number 252 542 0806

BE IT RESOLVED BY the governing body of the Organization (a public entity duly organized under the laws of the State of North Carolina) that the above-named Primary and Secondary Agents are hereby authorized to execute and file applications for federal and/or state assistance on behalf of the Organization for the purpose of obtaining certain state and federal financial assistance under the Robert T. Stafford Disaster Relief & Emergency Assistance Act, (Public Law 93-288 as amended) or as otherwise available. BE IT FURTHER RESOLVED that the above-named agents are authorized to represent and act for the Organization in all dealings with the State of North Carolina and the Federal Emergency Management Agency for all matters pertaining to such disaster assistance required by the grant agreements and the assurances printed on the reverse side hereof. BE IT FINALLY RESOLVED THAT the above-named agents are authorized to act severally. PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GOVERNING BODY	CERTIFYING OFFICIAL
Name and Title	Name
Name and Title	Official Position
Name and Title	Daytime Telephone

**CERTIFICATION**

I, \_\_\_\_\_, (Name) duly appointed and \_\_\_\_\_ (Title) of the Governing Body, do hereby certify that the above is a true and correct copy of a resolution passed and approved by the Governing Body of \_\_\_\_\_ (Organization) on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

## APPLICANT ASSURANCES

The applicant hereby assures and certifies that it will comply with the FEMA regulations, policies, guidelines and requirements including OMB's Circulars No. A-95 and A-102, and FMC 74-4, as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also, the Applicant gives assurance and certifies with respect to and as a condition for the grant that:

1. It possesses legal authority to apply for the grant, and to finance and construct the proposed facilities; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. It will comply with the provisions of: Executive Order 11988, relating to Floodplain Management and Executive Order 11990, relating to Protection of Wetlands.
3. It will have sufficient funds available to meet the non-Federal share of the cost for construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purpose constructed.
4. It will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the grant program(s) have been met.
5. It will provide and maintain competent and adequate architectural engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as the Federal grantor agency may need.
6. It will operate and maintain the facility in accordance with the minimum standards as may be required or prescribed by the applicable Federal, State and local agencies for the maintenance and operation of such facilities.
7. It will give the grantor agency and the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the grant.
8. It will require the facility to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped," Number A117.1-1961, as modified (41 CFR 101-17-7031). The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.
9. It will cause work on the project to be commenced within a reasonable time after receipt of notification from the approving Federal agency that funds have been approved and will see that work on the project will be prosecuted to completion with reasonable diligence.
10. It will not dispose of or encumber its title or other interests in the site and facilities during the period of Federal interest or while the Government holds bonds, whichever is the longer.
11. It agrees to comply with Section 311, P.L. 93-288 and with Title VI of the Civil Rights Act of 1964 (P.L. 83-352) and in accordance with Title VI of the Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement. If any real property or structure is provided or improved with the aid of Federal financial assistance extended to the Applicant, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.
12. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
13. It will comply with the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and Federally assisted programs.
14. It will comply with all requirements imposed by the Federal grantor agency concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with OMB Circular A-102, P.L. 93-288 as amended, and applicable Federal Regulations.
15. It will comply with the provisions of the Hatch Act which limit the political activity of employees.
16. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of State and local governments.
17. (To the best of his/her knowledge and belief) the disaster relief work described on each Federal Emergency Management Agency (FEMA) Project Application for which Federal Financial assistance is requested is eligible in accordance with the criteria contained in 44 Code of Federal Regulations, Part 206, and applicable FEMA Handbooks.
18. The emergency or disaster relief work therein described for which Federal Assistance is requested hereunder does not or will not duplicate benefits received for the same loss from another source.
19. It will (1) provide without cost to the United States all lands, easements and rights-of-way necessary for accomplishments of the approved work; (2) hold and save the United States free from damages due to the approved work or Federal funding.
20. This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, reimbursements, advances, contracts, property, discounts of other Federal financial assistance extended after the date hereof to the Applicant by FEMA, that such Federal Financial assistance will be extended in reliance on the representations and agreements made in this assurance and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear on the reverse as authorized to sign this assurance on behalf of the applicant.
21. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1973. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Director, Federal Emergency Management Agency as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.
22. It will comply with the insurance requirements of Section 314, PL 93-288, to obtain and maintain any other insurance as may be reasonable, adequate, and necessary to protect against further loss to any property which was replaced, restored, repaired, or constructed with this assistance.
23. It will defer funding of any projects involving flexible funding until FEMA makes a favorable environmental clearance, if this is required.
24. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.
25. It will, for any repairs or construction financed herewith, comply with applicable standards of safety, decency and sanitation and in conformity with applicable codes, specifications and standards; and, will evaluate the natural hazards in areas in which the proceeds of the grant or loan are to be used and take appropriate action to mitigate such hazards, including safe land use and construction practices.

## STATE ASSURANCES

The State agrees to take any necessary action within State capabilities to require compliance with these assurances and agreements by the applicant or to assume responsibility to the Federal government for any deficiencies not resolved to the satisfaction of the Regional Director.

**Hyde County Board of Commissioners  
AGENDA ITEM SUMMARY SHEET**

**Meeting Date:** November 4<sup>th</sup>, 2019  
**Presenter:** Daniel Brinn  
**Attachment:** Yes

**ITEM TITLE:** Grant Contract Agreement Between Hyde County and the North Carolina Clean Water Management Trust Fund

**SUMMARY:** On September 16, 2019 Hyde County was notified it had been awarded \$158804.00 in grant funding by NCCWMTF. Hyde County is prepared to develop engineered plans for active water management of the Lake Mattamuskeet watershed to improve water quality within the lake and reduce flooding throughout the watershed using this grant. The design work is intended to be sufficient to secure permits for a future project. The project would complete a watershed-scale hydrologic and hydraulic (H&H) model and develop cost estimates and identify preferred engineering alternative identified upon the completion of this project.

**RECOMMEND:**

**AUTHORIZE THE COUNTY MANAGER TO WORK WITH THE COUNTY ATTORNEY TO REVIEW AND EXECUTE THE ATTACHED GRANT CONTRACT.**

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Motion Made By:  Earl Pugh, Jr.  
 Barry Swindell  
 Dick Tunnell  
 Ben Simmons  
 Tom Pahl

Motion Seconded By:  Earl Pugh, Jr.  
 Barry Swindell  
 Dick Tunnell  
 Ben Simmons  
 Tom Pahl

Vote:  Earl Pugh, Jr.  
 Barry Swindell  
 Dick Tunnell  
 Ben Simmons  
 Tom Pahl



Roy Cooper  
Governor  
Susi Hamilton  
Secretary  
Walter Clark  
Director, Land and Water Stewardship  
Executive Director, Clean Water Management Trust Fund

September 16, 2019

Rosemary Johnson  
HYDE COUNTY  
PO BOX 188  
SWAN QUARTER NC 27885-0188

Re: 2019-804 - Hyde County, Lake Mattamuskee

Dear Rosemary Johnson,

Congratulations! I am writing on behalf of the Clean Water Management Trust Fund (CWMTF) Board of Trustees to advise you that your project referenced above has been approved and funded. Grant funds in the amount up to \$ 158804.00 will be available for the project.

The CWMTF staff will prepare and send to you a draft contract for your project in the near future. Funds for the project cannot be encumbered until contracts have been signed by both you and the CWMTF.

Our partnership to safeguard our state's water supplies, natural heritage, military mission and cultural & historic resources is critical to protect North Carolina's environment and economic vitality. Thank you for your hard work to help us accomplish our mission and reach these shared goals.

The North Carolina General Assembly appropriates funds to CWMTF annually so we can assist you and other communities. We encourage you to thank your local legislative delegates and make sure they are aware of your project.

If you have any questions or need additional information, please do not hesitate to contact me, the program manager or your local CWMTF field representative.

Sincerely,  
Walter Clark  
Executive Director  
919-707-9123

**STATE OF NORTH CAROLINA  
CLEAN WATER MANAGEMENT TRUST FUND  
GRANT AGREEMENT  
(RESTORATION PLANNING GRANT)**

CWMTF PROJECT NUMBER: 2019-804

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

CONTRACT ADMINISTRATOR:  
Stephen Bevington  
Clean Water Management Trust Fund  
1651 Mail Service Center  
Raleigh, NC 27699-1651  
Phone: 919.707.9128  
Email: [steve.bevington@ncdcr.gov](mailto:steve.bevington@ncdcr.gov)

GRANT RECIPIENT: Hyde County, a North Carolina Local Government Unit (“**Grant Recipient**”)

CONTRACT ADMINISTRATOR:  
Kris Noble, County Manager  
Hyde County  
PO Box 188  
Swan Quarter, NC 27885  
Phone: (252)926-4178  
Email: [knoble@hydecountync.gov](mailto:knoble@hydecountync.gov)

GRANT AWARD DATE: September 12, 2019 (the “**Award Date**”)

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

CONTRACT EXPIRATION DATE: October 31, 2020 (the “**Expiration Date**”)

REIMBURSEMENT DATE: November 15, 2020

GRANT AMOUNT: Up to \$158,804 (the “**Grant**”)

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

**WITNESSETH:**

WHEREAS, Grant Recipient submitted to CWMTF an application for a grant of funds (the “**Grant Application**”) to undertake a project to engage in planning for restoration of degraded lands for their ability to protect the quality of surface waters.

WHEREAS, N.C.G.S. Chapter 143B, Article 2, Part 41 authorizes CWMT to, among other things, restore previously degraded lands to reestablish their ability to protect water quality and to acquire conservation easements and other interests in real property to protect and conserve surface waters and drinking water supplies.

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

WHEREAS, at its meeting on the Award Date, CWMTF approved Grant Recipient’s application on the terms and conditions in this Grant Contract.

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

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

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

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

The Grant Contract Documents consist of:

- a. Cover page
- b. The main body of the Grant Contract
- c. **Exhibit A** – Project Summary
- d. **Exhibit B** – Project Budget
- e. **Exhibit C** – CWMTF Pre-Disbursement Checklist
- f. **Exhibit C.1** – Statement of No Overdue Tax Debts
- g. **Exhibit C.2** – Assurances for Non-Federally Funded Contracts
- h. **Exhibit D** – Additional Definitions
- i. **Exhibit E** – General Terms and Conditions

2. Purpose. The purpose of the Grant is to restore degraded streams to protect the quality of surface waters as particularly described on **Exhibit A**. Grant funds may not be used for the purchase of improvements or

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

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

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

5. Contract Period. CWMTF's commitment to disburse Grant funds under this Grant Contract shall cease on the Reimbursement Date. Grant Recipient is responsible to ensure that the Project is completed by the Expiration Date and that all costs to be reimbursed have been submitted to CWMTF by the Reimbursement Date. After the Expiration Date, any Grant monies remaining under this Grant Contract will no longer be available to Grant Recipient except to pay proper invoices for budgeted costs incurred by the Expiration Date and which are submitted to CWMTF no later than the Reimbursement Date. **The burden is on Grant Recipient to request an extension of the Grant Contract if Grant Recipient anticipates that the Project will not be completed by the Expiration Date.** The request for an extension must give complete details of the reasons why an extension is needed, propose a new expiration date for the Grant Contract, and be submitted online via CWMTF's online grants management system. This request must be submitted to and received by CWMTF at least **60 days** prior to the Expiration Date. Approval of any requested extension is at the sole discretion of CWMTF. The approval or denial of the requested extension will be based upon Project performance, among other factors. **CWMTF is not obligated to send reminders or other notification of an approaching Expiration Date.**

6. Pre-Disbursement Requirements. Prior to the disbursement of **any** Grant monies under this Grant Contract, Grant Recipient shall deliver to CWMTF all of the documentation described on **Exhibits C, C.1 and C.2.**

7. Disbursement of Grant Funds.

a. Proportionate Spending of Matching Funds. Grant monies are awarded based on a commitment of matching funds to the Project. CWMTF'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.** Grant Recipient must demonstrate expenditure of matching funds as payments by CWMTF are requested.

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

i. Appropriate itemized documentation supporting all expenses claimed and clearly identifying each expenditure for which payment is requested. Supporting documentation must be organized in a manner that clearly relates expenditures in the supporting documentation to the line items in the project budget. Any request for payment that does not clearly identify each expenditure or does not

relate each expenditure to the line items on the payment request form will not be processed and will be returned to Grant Recipient for correction and resubmittal.

- ii. Identification of all amounts of sales tax for which Grant Recipient and/or its vendors have or will obtain payment from the North Carolina Department of Revenue. CWMTF will not reimburse Grant Recipient for such amounts.
- iii. A written report containing a detailed narrative of the progress of the Project submitted within three (3) months prior to the reimbursement request.
- iv. A completed request for reimbursement via CWMTF's online grants management system, stating that Grant Recipient complied with all terms of this Grant Contract in incurring the expenses.

c. Alternate Disbursement of Grant Funds. CWMTF may, upon request by Grant Recipient, disburse Grant funds prior to Grant Recipient's actual payment to its vendors if such expenditures are documented by vendors' third-party invoices. In order for CWMTF to disburse Grant funds to Grant Recipient based on unpaid third-party invoices, Grant Recipient must submit the following documentation via CWMTF's online grants management system and the appropriate forms contained thereon:

- i. Appropriate itemized documentation supporting all expenses claimed and clearly identifying each expenditure for which payment is requested. Supporting documentation must be organized in a manner that clearly relates expenditures in the supporting documentation to the line items in the project budget. Any request for payment that does not clearly identify each expenditure or does not relate each expenditure to the line items on the payment request form will not be processed and will be returned to Grant Recipient for correction and resubmittal.
- ii. Identification of all amounts of sales tax for which Grant Recipient and/or its vendors have or will obtain payment from the North Carolina Department of Revenue. CWMTF will not reimburse Grant Recipient for such amounts.
- iii. A written report containing a detailed narrative of the progress of the Project submitted within three (3) months prior to the reimbursement request.
- iv. A completed request for reimbursement, stating that Grant Recipient complied with all terms of this Grant Contract in incurring the expense, reviewed and has approved the unpaid third-party invoice, and certifies to CWMTF that the unpaid third-party invoice will be paid within three (3) working days of receipt of the disbursed Grant fund.

Grant Recipient will confirm in writing to CWMTF, via the appropriate form provided on CWMTF's online grant management system, that the required payment has been made within thirty (30) days of payment.

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

e. Certification by Licensed Professional. At the option of CWMTF, 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. CWMTF, 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 CWMTF and according to applicable standards and requirements. However, CWMTF may, at its discretion, make payments without requiring such certificates or construction contractor's estimate, in which event Grant Recipient shall furnish CWMTF a list of and the amounts of items to be paid out of the payment, or such other evidence as CWMTF may require.

f. Payment Based on Progress. 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 CWMTF. 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. Grant Recipient agrees to pay, as the work progresses, all bills for expenses incurred on the Project and agrees to submit to CWMTF 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 CWMTF, to furnish adequate proof of payment of all indebtedness incurred on the Project.

h. CWMTF's Retaining Portion of Funds until Project Completion. CWMTF will withhold payment from Grant Recipient in the amount of **\$15,000** of the Grant until Grant Recipient has satisfactorily submitted its grant contract final report.

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

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

k. Costs of Project Administration. CWMTF agrees to reimburse Grant Recipient for administrative costs consisting only of costs of labor for administrative work conducted exclusively on this Project. 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 Grant Recipient's employees, plus Grant Recipient's cost of paying benefits on such compensation (i.e., employees' pay times an audited or auditable benefits multiplier);
  - b) Compensation to Grant Recipient's independent contractors (e.g., temporary office support), payable at Grant Recipient's actual cost, without application of a benefits multiplier; and/or
  - c) Cost of professional services contracted by Grant Recipient (e.g., engineering firm or consultant), payable at Grant Recipient's actual cost.
- ii. Costs of any other work described in the Project Scope of Work in **Exhibit A** are not allowable under the Project Administration line item.

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

a. Refunds. Grant Recipient shall repay to CWMTF 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 CWMTF upon termination of the Grant Contract.

9. Reporting Requirements. Beginning three (3) months after the Effective Date, Grant Recipient must submit to CWMTF a quarterly report on the status of the Project, via the appropriate form provided on CWMTF's online grant management system. In addition, N.C.G.S. Chapter §143C, Article 6, Part 3 and Title 09, Subchapter 3M of the North Carolina Administrative Code (N.C.A.C.) require each Grant Recipient of State funds to comply with certain reporting requirements, as applicable. Grant Recipient must also provide the required documentation as set forth on **Exhibits C, C.1, and C.2**. Grant Recipient shall submit to CWMTF's Contract Administrator a Grant Contract final report via the appropriate form available on CWMTF's website and on the CWMTF grant management system (GMS). If the Grant Contract final report is not acceptable to CWMTF, CWMTF shall return it to Grant Recipient for revision. Final payment will not be made until the Grant Contract final report is acceptable to CWMTF.

10. Notice; Contract Administrators. All notices, requests or other communications permitted or required to be made under this Grant Contract shall be given to the respective Contract Administrator. Notice shall be in writing, signed by the Party giving such notice. Notice shall be deemed given on the third business day after the date when deposited in the mail, postage prepaid, registered or certified mail, return receipt requested, unless another form is otherwise noted herein.

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

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

**GRANT RECIPIENT:**

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

[SEAL]

ATTEST:

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
County Attorney

**CWMTF:**

**NORTH CAROLINA CLEAN WATER MANAGEMENT TRUST FUND**

By: \_\_\_\_\_  
Name: E. Greer Cawood  
Title: Chairman, Board of Trustees

By: \_\_\_\_\_  
Name: Walter Clark  
Title: Executive Director

**EXHIBIT A**  
**CWMTF Project No. 2019-804**

**Stream of the Project site:** Lake Mattamuskeet

**Water bodies downstream:** Pamlico River

**River basin:** Tar-Pamlico

**County:** Hyde

**Amount requested from CWMTF:** \$158,804

**CWMTF approved grant amount:** up to \$158,804

**Total matching contributions:** \$75,000

**Total project budget:** \$233,804

**Percent match:** 32%

**Grant award date:** September 12, 2019

**Related CWMTF-funded projects:** 20\_\_\_\_ provided \$\_\_\_\_,000 for design to \_\_\_\_\_

**Project Site:** Lake Mattamuskeet and its watershed; the largest naturally-formed lake in the state is located in eastern North Carolina on the Albemarle-Pamlico Peninsula in Hyde County.

**Project Summary:** Hyde County is prepared to design engineered plans for active water management of the Lake Mattamuskeet watershed to improve water quality within the lake and reduce flooding throughout the watershed. The design work is intended to be sufficient to secure permits for a future project. The project would complete a watershed-scale hydrologic and hydraulic (H&H) model and develop cost estimates and identify preferred engineering alternative identified upon the completion of this project.

**Water Quality Objectives:** Primary objectives of the project are to design engineered plans for active water management of the Lake Mattamuskeet watershed to improve water quality within the lake and reduce flooding throughout the watershed. This will eventually allow for management of the lake level so as to restore natural levels of submerged aquatic vegetation which is the base for the lake's ecology and supports important fisheries and native waterfowl including Tundra Swans.

**Scope of Work:**

CWMTF funds and matching funds will be used to:

- Conduct Hydrologic and Hydraulic Modeling
- Complete a Critical Pool Elevation Analysis
- Identify the Service District Boundary
- Complete Wetland Siting and Capacity Analysis
- Produce Engineering Design for the Project
- Administer project and report to the Fund

**Special Contract Conditions:**

1. Grant Recipient shall provide or otherwise ensure that the matching funds identified in **Exhibit B** are

provided to the project.

2. As part of or along with quarterly progress reports and/or the Grant Contract Final Report, Grant Recipient shall provide to the CWMTF a copy of each of the following reports or other documents resulting from this project, as given under Scope of Work in **Exhibit A**: watershed-scale hydrologic and hydraulic (H&H) model summary report and a preferred alternatives plan.
3. Other conditions special to this grant. *None*

**Project Schedule:**

1. **Contract Expiration Date: October 31, 2020. Grant Recipient shall** complete the Project Scope of Work and submit the Grant Contract Final Report (Grant Contract **Section 9** and as otherwise specified in **Exhibit A**) by this date. CWMTF will not reimburse Grant Recipient for Project costs incurred after this date.
2. **Reimbursement Date: November 15, 2020.** CWMTF must receive the Final Request for Payment for the Project by this date. CWMTF will not accept or process for payment any request for payment received after this date. CWMTF will not reimburse Grant Recipient for costs incurred after the Contract Expiration Date.

**EXHIBIT B**  
**CWMTF Project No. 2019-804**  
**Project Budget**

Item	CWMTF Grant Funds <sup>(1)</sup>	Matching Funds <sup>(2)</sup>	Total Item Budget
1. Labor (salary and benefits – does not include overhead)	\$151,504	\$75,000	\$226,504
2. Outside Consulting, including all expenses	\$0	\$0	\$0
3. Mapping/GIS expenses	\$0	\$0	\$0
4. Supplies	\$3,500	\$0	\$0
5. Project Administration	\$3,800	\$0	\$0
<b>Total Project Budget</b>	<b>\$158,804</b>	<b>\$75,000</b>	<b>\$233,804</b>
<b>% of Total Project Budget</b>	<b>68%</b>	<b>32%</b>	<b>100%</b>

Notes:

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

(2) Matching funds are contributed by: US Fish & Wildlife Service, \$30,000  
NC Wildlife Resources Commission, \$30,000  
Hyde County, \$15,000

**EXHIBIT C**  
**CWMTF Project No. 2019-804**

***Pre CWMTF 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.)
2a	Articles of Incorporation and Bylaws	Does not apply to this grant
2b	Conflict of Interest Policy	Does not apply to this grant
2c	Tax-exempt Status	Does not apply to this grant
3	Matching Funds	Proof of availability of matching funds included in the project budget. [**See note below.]
4	Documents in Exhibit A	Documents as identified in <b>Exhibit A “Special Contract Conditions”</b> (if any) as required prior to the release of CWMTF funds.
<b>Submit before or accompanying request for final payment</b>		
5	Grant Contract Final Report	Report per Grant Contract <b>Section 9</b> .
6	Documents in Exhibit A	Documents as identified in <b>Exhibit A “Special Contract Conditions”</b> (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.

**EXHIBIT C.1**

**NOT APPLICABLE**

**EXHIBIT C.2**

**NOT APPLICABLE**

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## EXHIBIT D

### ADDITIONAL DEFINITIONS

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

1. “Grant Contract” means a legal instrument that is used to reflect a relationship between the Grantor and Grant Recipient and is used interchangeably herein with the term “Contract”.
2. “Construction contract” means a legally binding agreement between 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 Grant Recipient and another party for the construction work described in the project scope of work given in **Exhibit A**.
4. “Grant” and “grant funds” as defined in N.C.G.S. §143C-6-23 means State funds disbursed as a grant by a State agency; however, the terms do not include any payment made by the Medicaid program, the State Health Plan for Teachers' and State Employees, or other similar medical programs. For purposes of this Grant Contract, both “grant” and “grant funds” shall be referred as the Grant which is provided to Grant Recipient to carry out the objectives of the Grant Contract.
5. “Grantee” as defined in the N.C.G.S. § 143C-6-23 means a non-State entity that receives State funds as a grant from a State agency but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission. For purposes of this Grant Contract however, a “grantee” as defined in N.C.G.S. §143C-6-23 shall be referred to as Grant Recipient and the term “grantee” shall mean and refer to an entity that is the recipient of an interest in real property.
6. “Grantor” means an entity that provides resources, generally financial, to another entity in order to achieve a specified goal or objective. For purposes of this Grant Contract, the Grantor is Clean Water Management Trust Fund.
7. “Stream enhancement” means the process of implementing certain stream rehabilitation practices in order to improve water quality and/or ecological function. These practices typically are conducted on the stream bank or in the flood prone area. An enhancement procedure may include fencing cattle out of a stream and re-establishing vegetation in order to provide streambank stability. These types of practices should be conducted only on a stream reach that is not experiencing severe aggradation or erosion. Enhancement also may include placing in-stream habitat structures, provided that the in-stream structures do not affect the overall dimension, pattern, or profile of a stream that is in dynamic equilibrium.

8. “Stream restoration” means the process of converting an unstable, altered, or degraded stream corridor including adjacent riparian zone and flood prone areas, to its natural or referenced, stable conditions considering recent and future watershed conditions. This process also includes restoring the geomorphic dimension, pattern, and profile and biological and chemical integrity, including transport of water and sediment produced by the stream’s watershed in order to achieve dynamic equilibrium.
9. “Stream stabilization” means the in-place stabilization of a severely eroding streambank. Stabilization techniques that include “soft” methods or natural materials (such as root wads, rock vanes, and vegetated crib walls) may be considered as part of a restoration design. However, stream stabilization techniques that rely heavily on “hard” engineering, such as concrete-lined channels, rip rap, or gabions to stabilize streambanks will not be considered to be stream restoration or stream enhancement.
10. “State agency” shall mean a unit of the executive, legislative, or judicial branch of State government, such as a department, institution, division, commission, board, council, or The University of North Carolina. The term does not include a unit of local government or a public authority. For purposes of this Grant Contract, both the North Carolina Department of Natural and Cultural Resources and the Clean Water Management Trust Fund are State agencies.
11. For purposes of this Grant Contract, a "Subgrantee," as defined in N.C.G.S. §143C-6-23, and “Subrecipient,” as defined in 09 NCAC 03M .0102 and applicable to 09 N.C.A.C. 03M, shall be referred to as a “Sub-grant Recipient.”

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

A. Affirmative Covenants

1. Title. If the property right to be acquired is fee title, Grant Recipient shall acquire good and marketable title to the Property free and clear of any liens, other charges or encumbrances that would materially affect the use of the Property as intended under this Grant Contract.
2. No Mitigation. Grant Recipient shall not use the Property or any portion thereof to satisfy compensatory mitigation requirements under 33 USC § 1344 or N.C.G.S. §143-214.11.
3. Right of Entry and Inspections. Grant Recipient shall permit CWMTF's representatives to enter the Property for inspection of the Property and to enter any other premises of Grant Recipient associated with the activities of Grant Recipient pursuant to the Grant, including to review books and records in any way related to the Grant or the Property.
4. Retention, Operation, Maintenance and Use.
  - (a) Grant Recipient agrees to complete the Project as approved by CWMTF. 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 CWMTF by Grant Recipient are the foundation of this Grant Contract. Only changes deemed non-material in type by the Executive Director may be made without the consent of CWMTF'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. Grant Recipient shall inspect the Project on a routine basis and make routine repairs to restore the infrastructure to its full function within two (2) weeks of the need for the repair. The Grant Recipient shall make additional inspections following major storm events and shall make all necessary repairs to return the infrastructure to its full function within the sooner of four (4) months after the major storm event or as soon as is commercially practicable after the major storm event.
  - (c) Property acquired, developed or improved with grant assistance from CWMTF 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 CWMTF.
  - (d) If at some future date, CWMTF and Grant Recipient agree in writing that the Project should no longer continue on as property(ies) of the Project Site, then Grant Recipient will abandon the Project and allow such property to return to its natural state.
5. Signage. If funds are available in the Grant Contract at the end of the Project, Grant Recipient agrees to post signs, acknowledging CWMTF as the source of monies for conservation of the Property, on publicly visible areas of those Properties that have public access and/or where private property owners are amenable to signage.

6. Publicity. To the extent possible, 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 CWMTF in the funding and development of the project.
7. Conflicts of Interest. Grant Recipient shall at all times comply with Grant Recipient's conflict of interest policy.
8. Compliance with Reporting Requirements. Grant Recipient shall comply with the reporting requirements contained in **Section 9** of the Grant Contract, and in N.C.G.S. Chapter 143C, Article 6, Part 3, and 09 N.C.A.C. Subchapter 03M-Uniform Administration of State Grants, including audit oversight by the Office of the State Auditor, the provision of access to the accounting records by both the funding entity and the Office of the State Auditor in accordance with N.C.G.S. §147-64.7, and availability of audit work papers in the possession of any auditor of any recipient of State funding. If a grant recipient has not met these reporting requirements and fails to submit revised reports in accordance with a grantor agency determination letter, the grantor agency shall suspend further payments to the grant recipient and report the grant recipient to the Office of the State Auditor and the Office of the State Controller.
9. Books and Records. Grant Recipient agrees to maintain and make available for inspection by CWMTF, 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 CWMTF and supported by detailed data sheets which will facilitate the audit of Grant Recipient's records. Further, Grant Recipient shall maintain all Grant records for a period of five (5) years or until all audit exceptions have been resolved, whichever is longer.
10. Additional Requirements. Grant Recipient shall comply with all legal requirements applicable to the use of the Grant funds.
11. Permits and Approvals. Grant Recipient has or shall obtain all required regulatory approvals to use the Property and the Conservation Easement area in accordance with **Exhibit A**.
12. Compliance with Laws. 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. Grant Recipient agrees to take reasonable steps to advise Project participants that they shall comply in the same manner.
13. Insurance. 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.
14. No Pollution Credits. If the Project enables Grant Recipient to qualify for pollution credits by reducing the discharge of phosphorus, nitrogen, or any other nutrient or pollutant below, or further below, applicable regulatory limits, or otherwise ("Pollution Credits"), Grant Recipient shall not sell, trade or give to another person or entity that percentage of any resulting Pollution Credits achieved by the Project corresponding to the percentage of the Project costs provided by CWMTF.
15. Material Modifications. Any proposed material modification of the Project shall be subject to approval by CWMTF.

16. Data Requests. If CWMTF so requests, Grant Recipient shall provide data to the North Carolina Rural Economic Development Center's Water Resources Inventory and Data Management Project and/or to the North Carolina Geographic Information Coordinating Council's NC One Map Project.

17. Conservation Easement or Other Land Use Restrictions. Grant Recipient shall obtain Conservation Easements or other land use restrictions for this Project satisfactory to CWMTF in its sole discretion.

18. 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.

### B. Representations and Warranties

In order to induce CWMTF to enter into this Grant Contract and to make the Grant as herein provided, 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 CWMTF, and the completion of the Project by Grant Recipient:

1. No Actions. There are no actions, suits, or proceedings pending, or to the knowledge of Grant Recipient threatened against or affecting Grant Recipient before any court, arbitrator, or governmental or administrative body or agency which might affect 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 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 Grant Recipient to perform this Grant Contract.

3. Validity of Grant. Upon execution and delivery of this Grant Contract, it will be a valid and binding agreement, enforceable in accordance with the terms thereof.

4. Zoning. The present and proposed use of the Property, including, without limitation, the purpose of the Conservation Easement, is in compliance with all applicable zoning ordinances, and all applicable municipal and other governmental and regulatory approvals have been or will be obtained for the use and for operation of the Property according to this Grant Contract.

5. Tax Exempt Status. As applicable, Grant Recipient shall maintain tax-exempt status under Section 501(c) (3) of the Internal Revenue Code of 1986, as amended (or any successor section) and the regulations promulgated there under (the "Code") and shall notify CWMTF within thirty (30) days upon any change in its status under the Code.

### C. Termination; Events of Default

1. Termination by Mutual Consent. The Parties may terminate this Grant Contract by mutual written consent with sixty (60) days prior notice, or as otherwise provided by law.

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

- (a) Property Unsuitable. A determination by CWMTF, prior to the disbursement of the Grant funds, that a property(ies) of the Project Site is unsuitable for the purposes of the Grant Contract.
- (b) Unsuitable Use. A property(ies) of the Project Site is used in a manner materially inconsistent with the purposes of this Grant Contract or the Project.
- (c) Default in Performance. The default by 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 Grant Recipient has been given written notice of the default and 30 days to cure have elapsed.
- (d) Misrepresentation. If any representation or warranty made by Grant Recipient in connection with the Grant or any information, certificate, statement or report heretofore or hereafter made shall be untrue or misleading in any material respect at the time made.
- (e) Eligibility of Grant Recipient. If Grant Recipient ceases to be qualified to receive Grant funds, is dissolved, or otherwise ceases to exist.
- (f) Failure to Monitor Conservation Easement. If Grant Recipient fails to notify CWMTF of any potential violation of the Conservation Easement, which is known or reasonably should be known by Grant Recipient, within a reasonable period of time so as to avert or cure any potential violation.
- (g) Abandonment of the Project. If Grant Recipient abandons or otherwise ceases to continue to make reasonable progress towards completion of the Project.

#### D. CWMTF's Rights and Remedies

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

1. Project Termination. If an Event of Default occurs, CWMTF may, at its discretion suspend and/or terminate all obligations of CWMTF hereunder. If, in the judgment of CWMTF, such failure was due to no fault of Grant Recipient, amounts required to resolve, at the minimum cost practical, any irrevocable obligations properly incurred by Grant Recipient shall, in the discretion of CWMTF, be eligible for assistance under this Grant Contract.

2. Additional Remedies. If an Event of Default occurs, CWMTF 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. CWMTF, or its designee, may also, at CWMTF's sole discretion, continue to complete the Project, or any portion thereof deemed appropriate by CWMTF, and Grant Recipient shall cooperate in the completion of the Project. CWMTF shall be under no obligation to complete the Project.

3. Non-waiver. No delay, forbearance, waiver, or omission of CWMTF 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 CWMTF may be exercised at any time and as often as may be deemed expedient by CWMTF.

#### E. Miscellaneous

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

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

3. Further Assurance. In connection with and after the payment of Grant funds under this Grant Contract, upon the reasonable request of CWMTF, 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 CWMTF 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. 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 Grant Recipient to a sub-grant recipient of any duty or obligation hereunder does not relieve 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 Grant Recipient to comply with the terms of this Grant Contract. Any such delegation of duties or obligations shall be in writing, signed by Grant Recipient and sub-grant recipient, shall be in accordance with **paragraph E.8** of this **Exhibit E**, and shall contain an affirmative covenant by the sub-grant recipient that it shall abide by the rules set forth in Title 09, Subchapter 03M of the North Carolina Administrative Code.

5. Independent Status of the Parties. The Parties are independent entities and this Grant Contract shall not create a partnership or joint venture between the Parties. Further, the Grant Contract shall not in any way be interpreted or construed as making Grant Recipient, its agents or employees, to be agents or representatives of CWMTF. Grant Recipient is and shall be an independent contractor in the performance of this Grant Contract and as such shall be wholly responsible for the work to be performed and for the supervision of its agents and employees. In no event shall CWMTF be liable for debts or claims accruing or arising against Grant Recipient. Grant Recipient represents that it has, or shall secure at its own expense, all

personnel required in the performance of this Grant Contract. Such employees shall not be employees of, nor have any individual contractual relationship with, CWMTF.

6. Indemnity. Grant Recipient agrees, to the fullest extent permitted by law, to release, protect, indemnify and hold harmless the State, CWMTF, its Trustees, employees, agents and assigns against any and all 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, agents, or assigns in use or management of the Property; (b) use or presence of any hazardous substance, waste or other regulated material in, under or on the Property; or (c) the performance of Grant Recipient's duties under this Grant Contract. The obligations under this Section are independent of all other rights or obligations set forth herein. This indemnity shall survive the disbursement of the Grant funds, as well as any termination of this Grant Contract.

7. No Discrimination. 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; provided, however, that 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 CWMTF, which may be withheld for any reason and that any such assignment (whether voluntary or by operation of law) without said consent shall be void. In the event assignment is allowed, neither 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 Grant Recipient to comply with this Grant Contract.

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

10. Savings Clause. Invalidation of any one or more of the provisions of this Grant Contract, or portion thereof, shall in no way affect any of the other provisions hereof and portions thereof which shall remain in full force and effect.

11. Additional Remedies. Except as otherwise specifically set forth herein, the rights and remedies provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available in connection with this Grant Contract.

12. Survival. Where any representations, warranties, covenants, indemnities or other provisions contained in this Grant Contract by its context or otherwise, evidences the intent of the parties that such provisions should survive the termination of this Grant Contract or any Closing, the provisions shall survive any termination or Closing. Without limiting the generality of the foregoing, the Parties specifically acknowledge and agree that the provisions of **Exhibit E** and the conditions shown on **Exhibit A** shall survive any termination of this Grant Contract as well as any Closing.
13. Entire Grant Contract; Incorporation of Exhibits. This Grant Contract constitutes the entire Grant Contract between the Parties with respect to the subject matter hereof. All recitals, exhibits, schedules and other attachments hereto are incorporated herein by reference.
14. Headings. The headings of the various sections of this Grant Contract have been inserted for convenience only and shall not modify, define, limit or expand the express provisions of this Grant Contract.
15. Time of the Essence. Time is of the essence in the performance of this Grant.