

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: May 18, 2022

SUBJECT: Stream Resilience Subgrants

PRESENTER: Charles Russell Burrell

ATTACHMENT(S): Subgrant Agreements (2)

SUMMARY OF REQUEST:

The 2021 North Carolina budget included two grants to Henderson County for stream resilience projects, one for the French Broad River near Pleasant Grove and one for Bat Fork Creek. Neither grant requires any County match.

These projects were awarded based on requests of Conserving Carolina. Attached are proposed subgrant agreements with Conserving Carolina for both projects. Once these are approved, County staff can give final execution to the State grant document (which is attached to the proposed subgrant agreement).

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Approval of the agreements

If the Board is so inclined, the following motion is suggested:

I move that the Board approve the proposed agreements and direct staff to execute the same and the State grants on behalf of the County.

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

SUBGRANT AGREEMENT

This Agreement is entered into between the County of Henderson, a body corporate and politic of the State of North Carolina (the "County") and Conserving Carolina, a North Carolina non-profit corporation ("Conserving Carolina").

Background

A. North Carolina's budget for fiscal year 2021-22 (North Carolina Session Law 2021-180) provides for "the Bat Fork stream restoration and flood resilience project" (the "Project"), and allocates to the County the sum of \$950,000 (the "Allocation") for the same.

B. North Carolina and the County have entered into an agreement (North Carolina Department of Public Safety agreement #HENDERSONCO BATFORK 2021-2023, hereafter the "DPS Agreement", which is attached hereto and incorporated herein by reference) in furtherance of the Project and the Allocation.

C. The parties acknowledge that the Allocation is all of the funding to be provided for the Project, and that Conserving Carolina will receive 97.5% of the Allocation for the Project, and that the County will be entitled to the remaining 2.5% for administering the Project under this Subgrant Agreement.

D. This Subgrant Agreement (the "Agreement") is done in furtherance of the Project and the Allocation.

E. Both parties acknowledge and understand that DPS Agreement as received from the North Carolina Department of Public Safety contains neither "Attachment A" nor "Attachment B" referred to in the DPS Agreement.

Agreement

1. Conserving Carolina shall provide and/or provide for the provision of all the services covered by the DPS Agreement. These services shall specifically accomplish the Project as provided in Attachment A of the DPS Agreement, and as further provided in Exhibit 1 to this Agreement.

2. Conserving Carolina shall provide to the County all the documentation provided for the DPS Agreement, as follows:

A. W-9/Electronic Payment/Vendor Verification form.

B. Conflict of interest statement pursuant to N.C. Gen. Stat. §143C-6-23(b).

C. No Overdue Tax Debt Certification pursuant to N.C. Gen. Stat. §143C-6-23(c).

3. Conserving Carolina shall provide to the County at least monthly verified documentation of all expenditures of time and money for the Project, including but not limited to the following:

A. All documentation required of a "subgrantee" pursuant to N.C. Gen. Stat. §143C-6-23 and regulations adopted thereunder.

B. All documentation needed for the County to be deemed (by the North Carolina Department of Public Safety, and any other department or subdivision of the State of North Carolina exercising oversight over the DPS Agreement) to be in compliance with the provisions of the DPS Agreement and the Allocation, including those required in paragraph 3 of the DPS Agreement.

C. Full and complete documentation of all expenditures made pursuant to this Agreement in such month.

4. The County will receive the quarterly payments referred to in paragraph 2 (subparagraph entitled "Agency's Duties & Payment Provisions") of the DPS Agreement, and shall make the following payments to Conserving Carolina:

A. Monthly reimbursement to Conserving Carolina of their expenditures reflected in the documentation required in 3., above, up to a total amount of \$237,500 per calendar quarter in each the first three quarters after the first payment to the County under the DPS Agreement, and up to a total amount of \$213,750 in the fourth (and final) quarter.

B. Under no circumstances shall total payments to Conserving Carolina under this Agreement exceed 97.5% of the payments made to the County from the Allocation under the DPS Agreement.

5. The County shall retain an administration fee of two and one-half percent (2½%) of the Allocation.

6. Fund management by Conserving Carolina shall be as stated in paragraph 4 of the DPS Agreement.

7. Conserving Carolina agrees that, from and after the date of execution of this Agreement and for five (5) years following its termination, the books, records, documents and facilities of Conserving Carolina are subject to being audited, inspected and monitored at any time by the County and North Carolina upon request (whether in writing or otherwise). Conserving Carolina further agrees to provide County and North Carolina Department of Public Safety staff, and staff of the Office of State Auditor with access to financial and accounting records to support internal audit, financial reporting and related requirements. Conserving Carolina acknowledges and agrees that, regarding the grant funds, it will be subject to the audit and reporting requirements prescribed in N.C. Gen. Stat. §159-34, and all rules and regulations adopted thereunder. Such audit and reporting requirements may vary depending upon the amount and source of grant funding received by Conserving Carolina and are subject to change.

8. The County and Conserving Carolina together incorporate by reference paragraphs 7 through 14 of the DPS Agreement herein by reference, and further agree that they Conserving Carolina will comply with all provisions contained therein as duties or responsibilities of "RECIPIENT".

9. To the extent that they apply to this transaction, and to the extent they are not directly contradicted by the provisions hereof, this transaction shall be performed in accordance and compliance with the County's standard Terms and Conditions, Exhibit 2 hereto, which is incorporated herein by reference.

10. Conserving Carolina shall indemnify the County and hold it harmless, including reasonable attorneys' fees, from any liability under the DPS Agreement for any failure to comply with the terms hereof.

11. The term and expiry of this Agreement shall coincide with that of the DPS Agreement.

The parties have executed the same, the date and year appearing next to the signature of their duly and expressly authorized agent, below.

COUNTY OF HENDERSON

By: _____
JOHN MITCHELL
County Manager

Date: _____

CONSERVING CAROLINA

Kieran Roe

Kieran Roe (May 11, 2022 17:52 EDT)

By: _____
KIERAN ROE
Executive Director

May 11, 2022
Date: _____

EXHIBIT 1

Bat Fork Creek Property Restoration Scope of Work

Conserving Carolina will oversee design, permitting and implementation of stream, wetland and floodplain restoration on the Dodd Meadows property along Bat Fork Creek in Henderson County. Restoration practices will include:

- Wetland restoration, preservation, and enhancement,
- Stream restoration, preservation, and enhancement,
- Aquatic habitat restoration,
- Native riparian and floodplain buffer planting,
- Invasive plant control and removal,
- Selective floodplain berm removal to promote floodplain access and flood water storage, and
- Streambank stabilization.

Deliverables:

1. Develop Preliminary Restoration Design Plans based on Ecological Objectives and Property Constraints
2. Develop 60% Engineering Design Plans for Permitting
3. Develop Hydraulic Model Flood Studies for No-Rise/No-Impact Floodplain Permits
4. Submit Applications for USACE/DWR 401/404, NCDEMLR ESC Plan, NCDEQ Stormwater, and Henderson County Floodplain Permits
5. Develop 100% Construction Drawings Following Permit Approvals
6. Implement Restoration Construction and Plantings in Compliance with Permit Conditions
7. Obtain Conservation Easements on the Three Restoration Sites
8. Design and Construct Sustainable Recreational Trails
9. Provide Quarterly Programmatic and Financial Reports to the County

Project Budget:

Expense	
Design and Engineering	\$80,000
Permitting	\$55,000
Construction	\$550,000
Vegetation and Plantings	\$60,000
Trail Design and Construction	\$25,000
Educational Signage	\$5,000
Long-Term Trail and Habitat Management	\$45,000
Long-Term Conservation	\$41,250
Project Management	\$65,000
County Administration Fee	\$23,750
Total Expense	\$950,000

North Carolina Department of Public Safety

Agreement #HENDERSONCO BATFORK 2021-2023

This Agreement is hereby entered into by and between the Department of Public Safety (the "AGENCY") and the Henderson County (the "RECIPIENT") (referred to collectively as the "Parties"). The RECIPIENT's federal tax identification number is 566000307.

1. EFFECTIVE TERM

This agreement shall be effective starting November 18, 2021 and this agreement shall terminate on June 30, 2023.

2. RECIPIENT'S DUTIES

The RECIPIENT shall provide the services as described below:

The RECIPIENT is authorized to use funds by this agreement for for the Bat Fork stream restoration and flood resilience project as directed by the NC General Assembly in Session law 2021-180 (House Bill-105).

The RECIPIENT's scope of work is a complete and concise scope of goods or services supported by this agreement and consistent with language in Session Law 2021-180. See Attachment A.

The RECIPIENT agrees to use the funds in the amounts allocated for the budget cost items set forth in the RECIPIENT's Budget. RECIPIENT may reallocate and/or redistribute among budgeted items up to 10% in overall budget costs without the express written permission of the AGENCY. RECIPIENT agrees that it will not reallocate and/or redistribute any overall budget costs that will exceed 10% on any annual basis without first obtaining the express authorization of the AGENCY in writing.

The RECIPIENT understands and acknowledges that total funding level available under this agreement will not exceed \$950,000. Attachment A provides scope of work and payment amounts to be paid to RECIPIENT. RECIPIENT agrees to complete all sections of the Quarterly or Periodic Status Report & Accounting (Attachment B) following each quarter, and provide all supporting documentation when the quarterly Accounting is submitted.

The RECIPIENT shall provide the following forms: W-9/Electronic Payment/Vendor Verification form (09 NCAC 03M.002), Conflict of Interest Statement (N.C.G.S. 143C- 6-23.(b)). and No Overdue Tax Debt Certification (N.C.G.S. 143C-6-23.(c)) to the Agency.

Pursuant to N.C.G.S 143C-6-8, the RECIPIENT understands and agrees that agreement funding shall be subject to the availability of appropriated funds. However, in the event of agreement termination due to lack of adequate appropriated funds, the AGENCY will ensure that it will pay for services and goods acquired and obligated on or before the notice of agreement termination.

Directed grants to nonprofit organizations are for nonsectarian, nonreligious purposes only (S.L. 2021-180, Sec. 5.2 (b)5). State funds for any one employee of a nonprofit are capped at \$120,000.00 (S.L. 2021-180, Sec. 5.3). Funds shall not revert until June 30, 2023 (S.L. 2021-180, Sec. 5.2).

The RECIPIENT understands and acknowledges required compliance with all statutory provisions outlined in N.C.G.S. 143C-6-22 Use of State funds by non-State, and 09 NCAC 03M .0205, Minimum reporting requirement recipient and subrecipient.

AGENCY'S DUTIES & PAYMENT PROVISIONS

The AGENCY shall ensure that funds allocated and disbursed pursuant to Session Law 2021-180, comply with the intent and guidance found in this Session Law and ensure compliance with related state statutes and financial management standards.

The AGENCY shall pay the RECIPIENT a total not to exceed \$950,000. The appropriation shall be distributed on a quarterly basis from North Carolina General Fund for \$237,500 and submit to the AGENCY, along with all required documentation. Once the AGENCY is satisfied that the RECIPIENT has provided all the required documentation, the requested distributions can be processed for payment. The distributions of funds will be coded to 536637 2E50-1175

3. QUARTERLY STATUS REPORTING

The RECIPIENT agrees to provide quarterly, or 90-day project status reports to be sent electronically from the RECIPIENT to the AGENCY and shall at a minimum include:

- a. Period stating beginning balance of the Project Fund.
 - i. Total expenses disbursed (aggregate totals) by the following project uses:
 - a. Employee Expenses (e.g program related staffing).
 - b. Service and Contract expenses (e.g. utilities, telephone, data, lease related expenses).
 - c. Goods (e.g. supplies and equipment) expenses.
 - d. Administration Expenses (e.g overhead & project management).
 - e. Other expenses (e.g. related charges not assigned above and described by recipient).
 - ii. Period ending balance of the RECIPIENT funding disbursed pursuant to this agreement.
 - iii. A descriptive summary of how the funds were used including outcomes and specific deliverables or accomplishments to date

ATTACHMENT B is a copy of the quarterly status tracking report.

- b. Quarterly project status reports shall be emailed to Nancy Gemma; nancy.gemma@ncdps.gov

4. FUNDS MANAGEMENT

The RECIPIENT agrees that funds paid through this contract shall be accounted for in a separate fund and accounting structure within the RECIPIENT's central accounting and grant management system. The RECIPIENT agrees to manage all accounts payable disbursements, check register disbursements and related transactions in a detailed manner that supports fully transparent accounting of all financial transactions associated with this funding allocations described in Section 3 above. Expenditures for travel mileage, meals, lodging and other travel expenses incurred in the performance of this Contract shall be reasonable and supported by documentation. State rates should be used as guidelines. International travel shall not be eligible under this Contract. If eligible, the Recipient and all subrecipients shall: (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this Contract, pursuant to N.C.G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their quarterly project status reports.

5. AGREEMENT ADMINISTRATORS

All notices permitted or required to be given by one Party to the other and all questions about the Agreement from one Party to the other shall be addressed and delivered to the other Party's Agreement Administrator. The name, post office address, street address, telephone number, fax number, and email address of the Parties' respective initial Agreement Administrators are set out below. Either Party may change the name, post office

address, street address, telephone number, fax number, or email address of its Agreement Administrator by giving timely written notice to the other Party.

For the AGENCY	
IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Tara Williams-Brown, Controller NC Department of Public Safety 4220 Mail Service Center Raleigh, NC 27699-4220 Telephone: 919-324-1409 Fax: 919-324-6240 Email: tara.williams-brown@ncdps.gov	Tara Williams-Brown, Controller NC Department of Public Safety 2020 Yonkers Road Raleigh, NC 27604 Telephone: 919-324-1409 Fax: 919-324-6240 Email: tara.williams-brown@ncdps.gov

For the RECIPIENT	
IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Jimmy Brissie, Director Henderson County 113 N Main St Hendersonville, NC 28792 Telephone: 828-697-4821 Fax: 828-692-9855 Email: jbrissie@hendersoncountync.gov	Jimmy Brissie, Director Henderson County 113 N Main St Hendersonville, NC 28792 Telephone: 828-697-4821 Fax: 828-692-9855 Email: jbrissie@hendersoncountync.gov

6. MONITORING AND AUDITING

The RECIPIENT acknowledges and agrees that, from and after the date of execution of this Agreement and for five (5) years following its termination, the books, records, documents and facilities of the RECIPIENT are subject to being audited, inspected and monitored at any time by the AGENCY upon its request (whether in writing or otherwise). The RECIPIENT further agrees to provide AGENCY staff and staff of the Office of State Auditor with access to financial and accounting records to support internal audit, financial reporting and related requirements.

The RECIPIENT acknowledges and agrees that, regarding the grant funds, it will be subject to the audit and reporting requirements prescribed in N.C.G.S. 159-34, Local Government Finance Act – Annual Independent Audit, rules and regulations. Such audit and reporting requirements may vary depending upon the amount and source of grant funding received by the RECIPIENT and are subject to change.

7. TAXES

The RECIPIENT shall be considered to be an independent RECIPIENT and as such shall be responsible for all taxes. The RECIPIENT agrees to provide the AGENCY with the RECIPIENT'S correct taxpayer identification number upon the execution of this Agreement. The RECIPIENT agrees that failure to provide the AGENCY

with a correct taxpayer identification number authorizes the AGENCY to withhold any amount due and payable under this Agreement.

8. SITUS

This Agreement shall be governed by the laws of North Carolina and any claim for breach or enforcement of this Agreement shall be filed in State court in Wake County, North Carolina.

9. SUBCONTRACTING AND ASSIGNMENT

The RECIPIENT agrees that by assigning or subcontracting any work related to the contract to a subcontractor or SUB-RECIPIENT, that such entities shall comply with the following:

- (a) The RECIPIENT or SUB-RECIPIENT is not relieved of any of the duties and responsibilities of the original contract; and
- (b) The SUB-RECIPIENT agrees to abide by the standards contained in this contract and to shall provide all information to allow the RECIPIENT to comply with these standards.

RECIPIENT agrees that all SUB-RECIPIENTS to this agreement shall comply with the following provisions of the North Carolina Administrative Code: "09 NCAC 03M .0203 SUB-RECIPIENT RESPONSIBILITIES."

10. ADVERTISING

RECIPIENT agrees not to use the existence of this contract, the name of the AGENCY, the or the name of the State of North Carolina as part of any commercial advertising, without prior written approval of the AGENCY.

11. COMPLIANCE WITH LAW

The RECIPIENT shall remain an independent RECIPIENT and as such shall be wholly responsible for the scope of work to be performed under this Agreement and for the supervision of his employees and assistants. The RECIPIENT represents that it has, or will secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with the AGENCY. The RECIPIENT shall be responsible for compliance with all laws, ordinances, codes, rules, regulations, licensing requirements and other regulatory matters that are applicable to the conduct of his business and work performance under this Agreement, including those of Federal, State, and local agencies having appropriate jurisdiction.

The Recipient acknowledges and agrees that, in its conduct under this Contract and in connection with any and all expenditures of grant funds made by it, it shall comply with the cost principles enunciated in the Code of Federal Regulations, 2 CFR, Part 200. The Recipient further acknowledges and agrees that, if it grants any of the grant funds awarded hereunder to one or more sub-recipients or sub-sub-recipients, the Recipient shall, by contract, ensure that said cost principles are made applicable to and binding upon any and all such sub-recipients, sub-sub-recipients, etc. in their handling, use and expenditure of the funds awarded to the Recipient hereunder.

12. TERMINATION OF AGREEMENT

This agreement may be terminated by mutual consent upon sixty (60) days written notice to the other party, or as otherwise provided by law. As soon as reasonably possible following termination of this agreement, the amount of any residual unexpended funds shall be transferred to the AGENCY.

13. AMENDMENTS

This Agreement may be amended in writing which documents approval of changes by both the AGENCY and the RECIPIENT.

14. AGREEMENT CLOSE-OUT PROCESS

The RECIPIENT agrees to submit to the AGENCY a complete performance and expenditure status report (final report) within ninety (90) days after expiration of this agreement June 30, 2023:

- 1) A complete accounting of how the appropriated funds were used;
- 2) A complete performance status report; and
- 3) A Certification stating the funds were used for the purpose appropriated (AGENCY will supply template).

The above noted reports shall include RECIPIENT and SUB-RECIPIENT reporting information related to the above noted quantitative results and accomplishments. RECIPIENT and any SUB-RECIPIENTS agree that all program activity results information reported shall be subject to review and authentication as described in Paragraph 7 and RECIPIENT will provide access to work papers, receipts, invoices and reporting records, if requested by the AGENCY, as the AGENCY executes any audit internal audit responsibilities.

RECIPIENT will be deemed noncompliant if its final report is not submitted within the 90-day period stated above. Once the complete final performance and financial status report package has been received and evaluated by the AGENCY, the RECIPIENT will receive official notification of agreement close-out. The letter will inform the RECIPIENT that the AGENCY is officially closing the agreement and retaining all agreement files and related material for a period of five (5) years or until all audit exceptions have been resolved, whichever is longer.

15. AUTHORIZED SIGNATURE WARRANTY

The undersigned represent and warrant that they are authorized to bind their principals to the terms of this agreement. **In Witness Whereof**, the RECIPIENT and the AGENCY have executed this Agreement in duplicate originals, with one original being retained by each party.

HENDERSON COUNTY

Signature	Date
Jimmy Brissie	Director
Printed Name	Title

NC DEPARTMENT OF PUBLIC SAFETY

Signature	Date
Tara Williams-Brown	Controller
Printed Name	Title

**Henderson County
Terms and Conditions**

By acceptance of a purchase order with Henderson County, or by entering into the contract or agreement with Henderson County to which this "Terms and Conditions" is attached, the vendor to Henderson County or contractor with Henderson County (as the situation may be, hereinafter referred to as the "seller"), declares that all supplies, materials, equipment, apparatus and services furnished to Henderson County pursuant to the purchase order or contract/agreement will be furnished according to the following terms and conditions, which terms and conditions shall supersede any language to the contrary in any other documentation of such purchase order or contract/agreement.

1. **QUESTIONS CONCERNING THE PURCHASE ORDER:** Contact the **Ship to Department** shown.
2. **PURCHASE ORDER NUMBER:** The purchase order number must appear on all invoices, packing slips, correspondence, and bills of lading.
3. **PRICE:** All goods and/or services must be billed to Henderson County (County) at prices and quantities not to exceed those stated on the purchase order. All invoices, packages, shipping notices or the like affecting this order shall contain the applicable purchase order number. All prices are quoted F.O.B. Destination unless specifically indicated otherwise.
4. **INVOICES:** Invoices for partial shipments will be accepted and final invoices should indicate completion of order.
5. **CASH DISCOUNTS:** All cash discounts will be effective from the date of actual receipt of a correct and approved invoice by the ordering department.
6. **PAYMENT TERMS:** The County agrees to pay all approved invoices Net Thirty (30) days from the date received and approved. The County does not agree to the payment of late charges or finance charges assessed by the seller for any reason. Invoices are payable in U.S. funds.
7. **TAXES: Henderson County is NOT Sales Tax-Exempt.** Prices shown on the County's purchase orders do not include tax; however, all applicable taxes shall be paid by the County. Seller shall itemize taxes on the seller's invoice. It should be noted that the County is exempt from Federal Excise Tax except as required to be paid by law.
8. **AGREEMENT TERMS:** Absent a negotiated contract, this purchase order is limited to the terms and conditions contained on the face and back hereof. Any additional or different terms in the Seller's form are hereby deemed to be material alterations and notice of objection to them and rejection of them is hereby given. All delivery of goods and/or services shall conform to specifications, price, terms and conditions as set forth in this instrument. This purchase order including all contracts, references and/or insertions, with the stated terms and conditions thereon shall constitute the complete agreement between the County and the Seller. The terms and conditions of this order shall not be modified by any verbal understanding and shall only be binding if agreed to in writing by the County.
9. **DELIVERY/ACCEPTANCE OF GOODS:** All quotations are solicited on a delivered price basis. When the County accepts a quotation not including all shipping charges, your claim for reimbursement must be itemized on the invoice and supported with a copy of the original freight bill. The packing list shall be enclosed in each box or package. All items shall be prepared and packed for shipment in a manner that will prevent damage in transit. All deliveries on this order must be in full accordance with specifications, properly identified with the purchase order number and must not exceed the quantities specified. The County shall have the right to inspect and test all items supplied under the order before making acceptance. Risk of loss and title to all goods received shall remain with the Seller until the County has made acceptance. Rejected goods shall be returned to the Seller at Seller's risk and expense. Payment for supplies shall not constitute acceptance and is without prejudice to claims that the County may have against the seller.
10. **SERVICES PERFORMED:** All services rendered under this agreement will be performed at the Seller's own risk and the Seller expressly agrees to indemnify and hold harmless the County, its officers, agents, and employees from any and all liability, loss or damage that they may suffer as a result of claims, demands, actions, damages or injuries of any kind or nature whatsoever by or to any and all persons or property.
11. **INSURANCE:** This purchase order shall be considered a written contract and requires the County to be endorsed as additional insured for General Liability, Automobile Liability, and Umbrella Liability Insurance Policies. Contractor shall maintain at its own expense (a) Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence limit/\$2,000,000 aggregate limit for bodily injury, property damage, or personal injury; (b) Professional Liability Insurance in an amount not less than \$1,000,000 per occurrence (if providing professional services); (c) Worker's Compensation Insurance as required by the State of North Carolina General Statutes; (d) Commercial Automobile Insurance applicable to bodily injury and property damage covering all owned, non-owned, and hired vehicles, in an amount not less than \$1,000,000 combined single limit. Negotiated written contracts may require additional insurance coverage. A Certificate of Insurance shall be furnished prior to the commencement of services. The Certificate Holder shall be County of Henderson, Attn: Finance Dept., 113 N Main Street, Hendersonville, NC 28792.
12. **APPLICABLE LAWS:** By acceptance of this order, seller represents that the goods covered by this order are in full compliance with all applicable local, state, or federal laws and regulations and agrees to indemnify and defend the County against any loss, cost, liability, or damage by reason of seller's violation of any laws.
13. **E-VERIFY:** North Carolina General Statute §143-133.3 prohibits the County from entering into contracts with contractors and subcontractors who have not complied with the requirement of Article 2 of Chapter 64 of the North Carolina General Statutes. Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if contractor utilizes a subcontractor, contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.
14. **IRAN DIVESTMENT:** By acceptance of this purchase order, vendors, contractors, and/or subcontractors certify they are not listed and will not utilize a subcontractor listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 147-86.59, Iran Divestment Act Certification.
15. **FEDERAL FUNDS:** The following provisions are required and apply when federal funds are expended by Henderson County for any contract resulting from this procurement process.
 - A. Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

When federal funds are expended by Henderson County, Henderson County reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.
 - B. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be affected and the basis for settlement. (All contracts in excess of \$10,000)

When federal funds are expended by Henderson County, Henderson County reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor, in the event vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. Henderson County also reserves the right to terminate the contract immediately, with written notice to vendor, for convenience, if Henderson County believes, in its sole discretion that it is in the best interest of Henderson County to do so. The vendor will be compensated for work performed and accepted and goods accepted by Henderson County as of the termination date if the contract is terminated for convenience of Henderson County. Any award under this procurement process is not exclusive and Henderson County reserves the right to purchase goods and services from other vendors when it is in the best interest of Henderson County.
 - C. If the source of funds for this contract is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable):

**Henderson County
Terms and Conditions**

Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland "Anti-Kickback" Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2 CFR § 200.324); Huawei/ZTE Ban (2 C.F.R. 200.216); Domestic Preference Clause (2 C.F.R. 200.322). To the extent these provisions apply and conflict with provisions of North Carolina law, these provisions shall control. It shall be the responsibility of the contractor to determine whether these provisions apply.

16. **FEMA PROVISIONS:** The following provisions are required and apply when federal funds are expended by Henderson County for any contract resulting from this procurement process.

- A. **Changes:** Changes or modifications to the original contract will only be allowed if the following provisions are met:
1. The change is within the scope of its grant or cooperative agreement
 2. The amount of the change has budgetary funds available
 3. The change does not fundamentally modify the project and
 4. The change is reasonable for the completion of the project

- B. **Access to Records:** The contractor agrees to provide Henderson County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcripts.

The Contractor agrees to permit any of the forgoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to work being completed under the contract.

- C. **DHS, Seal, Logo, and Flags:** The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likeness of DHS agency officials without specific FEMA approval
- D. **Compliance with Federal Law, Regulations, and Executive Orders:** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- E. **No Obligation by Federal Government:** The Federal government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- F. **Program Fraud and False or Fraudulent or Related Acts:** The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

17. **CANCELLATION:** The County reserves the right to cancel this order, or any part thereof, at any time without penalty. Such cancellation may be based upon failure of the seller to comply with the terms and conditions of this transaction, failure to perform the work with promptness and diligence, failure to make shipment within the time specified or for any other reason which causes the seller not to perform as agreed.

18. **WARRANTY:** The seller expressly warrants that goods, covered by this order will conform to the specifications, drawings, or samples furnished by the County and shall be free from defects in material and/or workmanship and shall be merchantable. This warranty shall survive any inspection, delivery acceptance, or payment by the County. The seller also warrants that the goods do not infringe any patent,

registered trademark or copyright and agrees to hold the County harmless in the event of any infringement or claim thereof. Additionally, seller warrants that the goods are free and clear of all liens and encumbrances and that seller has a good and marketable title to the same.

19. **HAZARDOUS CHEMICALS:** The seller shall ensure that each container of a hazardous chemical is labeled, tagged or marked with information required by OSHA's Hazard Communication Standard, Department of Transportation requirements, and any applicable EPA requirements. The seller shall ensure that the County is provided an appropriate current Material Safety Data Sheets (MSDS) with or prior to the initial shipment of a hazardous chemical, and with or prior to the first shipment after the MSDS is updated.

20. **NON-DISCRIMINATION:** The County does not discriminate on the basis of race, color, sex, national origin, religion, age or disability. Any contractors or vendors who provide services, programs or goods to the County are expected to fully comply with the County's non-discrimination policies.

21. **VERBAL AGREEMENT:** The County will not be bound by any verbal agreements.

22. **INDEPENDENT CONTRACTOR:** It is mutually understood and agreed the seller is an independent contractor and not an agent of the County, and as such, seller, his or her agents and employees shall not be entitled to any County employment benefits, such as but not limited to vacation, sick leave, insurance, worker's compensation, pension, or retirement benefits.

23. **GOVERNING LAW:** All terms and conditions shall be interpreted in accordance with the laws of the State of North Carolina. Any legal actions arising from default of this contract shall be brought only in the County of Henderson, State of North Carolina.

24. **PUBLIC RECORDS.** The seller acknowledges that notwithstanding any other provision to the contrary (including any statements regarding confidential information), this agreement, the confidential information and any documents, memorandum, data, reports, analyses, compilations, records, pricing and evaluation of all or any portion of the transactions contemplated by this agreement may be deemed public records and subject to disclosure, in whole or in part, pursuant to the North Carolina Public Records Law. The County will provide the seller with reasonably prompt notice of any intended disclosures or requests for disclosure pursuant to the North Carolina Public Records Law. The seller may then choose to seek judicial protection of the confidential information consistent with all applicable laws and regulations. Should a public records request be made for information the seller claims are proprietary in nature, the County will, within a reasonable time, notify the seller of such public records request. The seller shall, within five (5) business days of said notification, provide notice to the County that it does or does not object to the County disclosing the requested information pursuant to the subject public records request. If the seller objects to the disclosure of the requested information, the seller agrees that it shall be solely responsible for the defense of and the cost of defending any claim or complaint against the County for its refusal to disclose confidential information. The seller agrees that if any such complaint or claim is filed it will indemnify the County and will reimburse the County for any and all damages awarded against the County its refusal to disclose the requested information. The seller agrees that it releases the County from all loss, liability, claims or expense, including attorney's fees, arising out of or related to the release or disclosure or failure by the County to release or disclose confidential information. The seller further agrees that it waives the right to file any court action for any such release, disclosure, or failure to release or disclose confidential information.

25. **NON-APPROPRIATION:** No provision of any agreement between the County and the seller (the "Agreement") shall be construed or interpreted as creating a pledge of the faith and credit of the County within the meaning of any Constitutional debt limitation. No provision of the Agreement shall be construed or interpreted as creating a delegation of governmental powers nor as a donation by or a lending of the credit of the County within the meaning of the Constitution of North Carolina. The Agreement shall not directly or contingently obligate the County to make any payments beyond those appropriated in the sole discretion of the County for any fiscal year in which the Agreement is in effect, provided, however, that any failure or refusal by the County to appropriate funds which results in the failure by the County to make any payment coming due under the Agreement will in no way obviate the occurrence of the event of default resulting from such nonpayment. No deficiency judgment may be rendered against the County in any action for breach of a contractual obligation under this Agreement, and the taxing power

**Henderson County
Terms and Conditions**

of the County is not and may not be pledged directly or indirectly or contingently to secure any moneys due under this Agreement. No provision of the Agreement shall be construed to pledge or create a lien of any class or source of the County's moneys, nor shall any provision of the Agreement restrict the future issuance of any of the County's bonds or obligations payable from any class or source of the County's moneys. To the extent of any conflict this provision and any other provision of the Agreement, this provision shall take priority and control.

00263934

Final Audit Report

2022-05-11

Created:	2022-05-11
By:	Charles Russell Burrell (rburrell@hendersoncountync.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAeMamo7SRozYjMnN3ynT8Lg7P5uC5KIZR

"00263934" History

-  Document created by Charles Russell Burrell (rburrell@hendersoncountync.gov)
2022-05-11 - 6:09:22 PM GMT
-  Document emailed to Kieran Roe (kieran@conservingcarolina.org) for signature
2022-05-11 - 6:10:11 PM GMT
-  Email viewed by Kieran Roe (kieran@conservingcarolina.org)
2022-05-11 - 9:48:52 PM GMT
-  Document e-signed by Kieran Roe (kieran@conservingcarolina.org)
Signature Date: 2022-05-11 - 9:52:05 PM GMT - Time Source: server
-  Agreement completed.
2022-05-11 - 9:52:05 PM GMT

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

SUBGRANT AGREEMENT

This Agreement is entered into between the County of Henderson, a body corporate and politic of the State of North Carolina (the "County") and Conserving Carolina, a North Carolina non-profit corporation ("Conserving Carolina").

Background

A. North Carolina's budget for fiscal year 2021-22 (North Carolina Session Law 2021-180) provides for a "flood resilience project on the French Broad River at Pleasant Grove" (the "Project"), and allocates to the County the sum of \$1,000,000 (the "Allocation") for the same.

B. North Carolina and the County have entered into an agreement (North Carolina Department of Public Safety agreement #HENDERSONCO 2021-2023, hereafter the "DPS Agreement", which is attached hereto and incorporated herein by reference) in furtherance of the Project and the Allocation.

C. The parties acknowledge that the Allocation is all of the funding to be provided for the Project, and that Conserving Carolina will receive 97.5% of the Allocation for the Project, and that the County will be entitled to the remaining 2.5% for administering the Project under this Subgrant Agreement.

D. This Subgrant Agreement (the "Agreement") is done in furtherance of the Project and the Allocation.

E. Both parties acknowledge and understand that DPS Agreement as received from the North Carolina Department of Public Safety contains neither "Attachment A" nor "Attachment B" referred to in the DPS Agreement.

Agreement

1. Conserving Carolina shall provide and/or provide for the provision of all the services covered by the DPS Agreement. These services shall specifically accomplish the Project as provided in Attachment A of the DPS Agreement, and as further provided in Exhibit I to this Agreement.

2. Conserving Carolina shall provide to the County all the documentation provided for the DPS Agreement, as follows:

A. W-9/Electronic Payment/Vendor Verification form.

B. Conflict of interest statement pursuant to N.C. Gen. Stat. §143C-6-23(b).

C. No Overdue Tax Debt Certification pursuant to N.C. Gen. Stat. §143C-6-23(c).

3. Conserving Carolina shall provide to the County at least monthly verified documentation of all expenditures of time and money for the Project, including but not limited to the following:

A. All documentation required of a "subgrantee" pursuant to N.C. Gen. Stat. §143C-6-23 and regulations adopted thereunder.

B. All documentation needed for the County to be deemed (by the North Carolina Department of Public Safety, and any other department or subdivision of the State of North Carolina exercising oversight over the DPS Agreement) to be in compliance with the provisions of the DPS Agreement and the Allocation, including those required in paragraph 3 of the DPS Agreement.

C. Full and complete documentation of all expenditures made pursuant to this Agreement in such month.

4. The County will receive the quarterly payments referred to in paragraph 2 (subparagraph entitled "Agency's Duties & Payment Provisions") of the DPS Agreement, and shall make the following payments to Conserving Carolina:

A. Monthly reimbursement to Conserving Carolina of their expenditures reflected in the documentation required in 3., above, up to a total amount of \$250,000 per calendar quarter in each the first three quarters after the first payment to the County under the DPS Agreement, and up to a total amount of \$225,000 in the fourth (and final) quarter.

B. Under no circumstances shall total payments to Conserving Carolina under this Agreement exceed 97.5% of the payments made to the County from the Allocation under the DPS Agreement.

5. The County shall retain an administration fee of two and one-half percent (2½%) of the Allocation.

6. Fund management by Conserving Carolina shall be as stated in paragraph 4 of the DPS Agreement.

7. Conserving Carolina agrees that, from and after the date of execution of this Agreement and for five (5) years following its termination, the books, records, documents and facilities of Conserving Carolina are subject to being audited, inspected and monitored at any time by the County and North Carolina upon request (whether in writing or otherwise). Conserving Carolina further agrees to provide County and North Carolina Department of Public Safety staff, and staff of the Office of State Auditor with access to financial and accounting records to support internal audit, financial reporting and related requirements. Conserving Carolina acknowledges and agrees that, regarding the grant funds, it will be subject to the audit and reporting requirements prescribed in N.C. Gen. Stat. §159-34, and all rules and regulations adopted thereunder. Such audit and reporting requirements may vary depending upon the amount and source of grant funding received by Conserving Carolina and are subject to change.

8. The County and Conserving Carolina together incorporate by reference paragraphs 7 through 14 of the DPS Agreement herein by reference, and further agree that they Conserving Carolina will comply with all provisions contained therein as duties or responsibilities of "RECIPIENT".

9. To the extent that they apply to this transaction, and to the extent they are not directly contradicted by the provisions hereof, this transaction shall be performed in accordance and compliance with the County's standard Terms and Conditions, Exhibit 2 hereto, which is incorporated herein by reference.

10. Conserving Carolina shall indemnify the County and hold it harmless, including reasonable attorneys' fees, from any liability under the DPS Agreement for any failure to comply with the terms hereof.

11. The term and expiry of this Agreement shall coincide with that of the DPS Agreement.

The parties have executed the same, the date and year appearing next to the signature of their duly and expressly authorized agent, below.

COUNTY OF HENDERSON

By: _____
JOHN MITCHELL
County Manager

Date: _____

CONSERVING CAROLINA

Kieran Roe
Kieran Roe (May 11, 2022 17:56 EDT)
By: _____
KIERAN ROE
Executive Director

May 11, 2022
Date: _____

EXHIBIT 1

Pleasant Grove Area Property Restoration Scope of Work

Conserving Carolina will oversee design, permitting and implementation of stream, wetland and floodplain restoration on three tracts along the French Broad River in the Pleasant Grove community of Etowah.

Restoration practices will include:

- Wetland restoration, preservation, and enhancement,
- Stream restoration, preservation, and enhancement,
- Aquatic habitat restoration,
- Native riparian and floodplain buffer planting,
- Invasive plant control and removal,
- Selective floodplain berm removal to promote floodplain access and flood water storage, and
- Streambank stabilization.

Deliverables:

1. Develop Preliminary Restoration Design Plans based on Ecological Objectives and Property Constraints
2. Develop 60% Engineering Design Plans for Permitting
3. Develop Hydraulic Model Flood Studies for No-Rise/No-Impact Floodplain Permits
4. Submit Applications for USACE/DWR 401/404, NCDEMLR ESC Plan, NCDEQ Stormwater, and Henderson County Floodplain Permits
5. Develop 100% Construction Drawings Following Permit Approvals
6. Implement Restoration Construction and Plantings in Compliance with Permit Conditions
7. Obtain Conservation Easements on the Three Restoration Sites
8. Design and Construct Sustainable Recreational Trails
9. Provide Quarterly Programmatic and Financial Reports to the County

Project Budget:

Expense	
Design and Engineering	\$90,000
Permitting	\$60,000
Construction	\$610,000
Vegetation and Plantings	\$45,000
Trail/River Access Design and Construction	\$30,000
Educational Signage	\$5,000
Long-Term Conservation	\$60,000
Project Management	\$75,000
County Administration Fee	\$25,000
Total Expense	\$1,000,000

North Carolina Department of Public Safety

Agreement #HENDERSONCO 2021-2023

This Agreement is hereby entered into by and between the Department of Public Safety (the "AGENCY") and the Henderson County (the "RECIPIENT") (referred to collectively as the "Parties"). The RECIPIENT's federal tax identification number is 566000307.

1. EFFECTIVE TERM

This agreement shall be effective starting November 18, 2021 and this agreement shall terminate on June 30, 2023.

2. RECIPIENT'S DUTIES

The RECIPIENT shall provide the services as described below:

The RECIPIENT is authorized to use funds by this agreement for flood resilience project on the French Broad River at Pleasant Grove as directed by the NC General Assembly in Session law 2021-180 (House Bill-105).

The RECIPIENT's scope of work is a complete and concise scope of goods or services supported by this agreement and consistent with language in Session Law 2021-180. See Attachment A.

The RECIPIENT agrees to use the funds in the amounts allocated for the budget cost items set forth in the RECIPIENT's Budget. RECIPIENT may reallocate and/or redistribute among budgeted items up to 10% in overall budget costs without the express written permission of the AGENCY. RECIPIENT agrees that it will not reallocate and/or redistribute any overall budget costs that will exceed 10% on any annual basis without first obtaining the express authorization of the AGENCY in writing.

The RECIPIENT understands and acknowledges that total funding level available under this agreement will not exceed \$1,000,000. Attachment A provides scope of work and payment amounts to be paid to RECIPIENT. RECIPIENT agrees to complete all sections of the Quarterly or Periodic Status Report & Accounting (Attachment B) following each quarter, and provide all supporting documentation when the quarterly Accounting is submitted.

The RECIPIENT shall provide the following forms: W-9/Electronic Payment/Vendor Verification form (09 NCAC 03M.002), Conflict of Interest Statement (N.C.G.S. 143C- 6-23.(b)), and No Overdue Tax Debt Certification (N.C.G.S. 143C-6-23.(c)) to the Agency.

Pursuant to N.C.G.S 143C-6-8, the RECIPIENT understands and agrees that agreement funding shall be subject to the availability of appropriated funds. However, in the event of agreement termination due to lack of adequate appropriated funds, the AGENCY will ensure that it will pay for services and goods acquired and obligated on or before the notice of agreement termination.

Directed grants to nonprofit organizations are for nonsectarian, nonreligious purposes only (S.L. 2021-180, Sec. 5.2 (b)5). State funds for any one employee of a nonprofit are capped at \$120,000.00 (S.L. 2021-180, Sec. 5.3). Funds shall not revert until June 30, 2023 (S.L. 2021-180, Sec. 5.2).

The RECIPIENT understands and acknowledges required compliance with all statutory provisions outlined in N.C.G.S. 143C-6-22 Use of State funds by non-State, and 09 NCAC 03M .0205, Minimum reporting requirement recipient and subrecipient.

AGENCY'S DUTIES & PAYMENT PROVISIONS

The AGENCY shall ensure that funds allocated and disbursed pursuant to Session Law 2021-180, comply with the intent and guidance found in this Session Law and ensure compliance with related state statutes and financial management standards.

The AGENCY shall pay the RECIPIENT a total not to exceed \$1,000,000. The appropriation shall be distributed on a quarterly basis from North Carolina General Fund for \$250,000 and submit to the AGENCY, along with all required documentation. Once the AGENCY is satisfied that the RECIPIENT has provided all the required documentation, the requested distributions can be processed for payment. The distributions of funds will be coded to 536G08 2E50-1175.

3. QUARTERLY STATUS REPORTING

The RECIPIENT agrees to provide quarterly, or 90-day project status reports to be sent electronically from the RECIPIENT to the AGENCY and shall at a minimum include:

- a. Period stating beginning balance of the Project Fund.
 - i. Total expenses disbursed (aggregate totals) by the following project uses:
 - a. Employee Expenses (e.g program related staffing).
 - b. Service and Contract expenses (e.g. utilities, telephone, data, lease related expenses).
 - c. Goods (e.g. supplies and equipment) expenses.
 - d. Administration Expenses (e.g overhead & project management).
 - e. Other expenses (e.g. related charges not assigned above and described by recipient).
 - ii. Period ending balance of the RECIPIENT funding disbursed pursuant to this agreement.
 - iii. A descriptive summary of how the funds were used including outcomes and specific deliverables or accomplishments to date

ATTACHMENT B is a copy of the quarterly status tracking report.

- b. Quarterly project status reports shall be emailed to Nancy Gemma; nancy.gemma@ncdps.gov

4. FUNDS MANAGEMENT

The RECIPIENT agrees that funds paid through this contract shall be accounted for in a separate fund and accounting structure within the RECIPIENT's central accounting and grant management system. The RECIPIENT agrees to manage all accounts payable disbursements, check register disbursements and related transactions in a detailed manner that supports fully transparent accounting of all financial transactions associated with this funding allocations described in Section 3 above. Expenditures for travel mileage, meals, lodging and other travel expenses incurred in the performance of this Contract shall be reasonable and supported by documentation. State rates should be used as guidelines. International travel shall not be eligible under this Contract. If eligible, the Recipient and all subrecipients shall: (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this Contract, pursuant to N.C.G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their quarterly project status reports.

5. AGREEMENT ADMINISTRATORS

All notices permitted or required to be given by one Party to the other and all questions about the Agreement from one Party to the other shall be addressed and delivered to the other Party's Agreement Administrator. The name, post office address, street address, telephone number, fax number, and email address of the Parties' respective initial Agreement Administrators are set out below. Either Party may change the name, post office

address, street address, telephone number, fax number, or email address of its Agreement Administrator by giving timely written notice to the other Party.

For the AGENCY	
IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Tara Williams-Brown, Controller NC Department of Public Safety 4220 Mail Service Center Raleigh, NC 27699-4220 Telephone: 919-324-1409 Fax: 919-324-6240 Email: tara.williams-brown@ncdps.gov	Tara Williams-Brown, Controller NC Department of Public Safety 2020 Yonkers Road Raleigh, NC 27604 Telephone: 919-324-1409 Fax: 919-324-6240 Email: tara.williams-brown@ncdps.gov

For the RECIPIENT	
IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Jimmy Brissie, Director Henderson County 113 N Main St Hendersonville, NC 28792 Telephone: 828-697-4821 Fax: 828-692-9855 Email: jbrissie@hendersoncountync.gov	Jimmy Brissie, Director Henderson County 113 N Main St Hendersonville, NC 28792 Telephone: 828-697-4821 Fax: 828-692-9855 Email: jbrissie@hendersoncountync.gov

6. MONITORING AND AUDITING

The RECIPIENT acknowledges and agrees that, from and after the date of execution of this Agreement and for five (5) years following its termination, the books, records, documents and facilities of the RECIPIENT are subject to being audited, inspected and monitored at any time by the AGENCY upon its request (whether in writing or otherwise). The RECIPIENT further agrees to provide AGENCY staff and staff of the Office of State Auditor with access to financial and accounting records to support internal audit, financial reporting and related requirements.

The RECIPIENT acknowledges and agrees that, regarding the grant funds, it will be subject to the audit and reporting requirements prescribed in N.C.G.S. 159-34, Local Government Finance Act – Annual Independent Audit, rules and regulations. Such audit and reporting requirements may vary depending upon the amount and source of grant funding received by the RECIPIENT and are subject to change.

7. TAXES

The RECIPIENT shall be considered to be an independent RECIPIENT and as such shall be responsible for all taxes. The RECIPIENT agrees to provide the AGENCY with the RECIPIENT'S correct taxpayer identification number upon the execution of this Agreement. The RECIPIENT agrees that failure to provide the AGENCY with a correct taxpayer identification number authorizes the AGENCY to withhold any amount due and payable under this Agreement.

8. SITUS

This Agreement shall be governed by the laws of North Carolina and any claim for breach or enforcement of this Agreement shall be filed in State court in Wake County, North Carolina.

9. SUBCONTRACTING AND ASSIGNMENT

The RECIPIENT agrees that by assigning or subcontracting any work related to the contract to a subcontractor or SUB-RECIPIENT, that such entities shall comply with the following:

- (a) The RECIPIENT or SUB-RECIPIENT is not relieved of any of the duties and responsibilities of the original contract; and
- (b) The SUB-RECIPIENT agrees to abide by the standards contained in this contract and to shall provide all information to allow the RECIPIENT to comply with these standards.

RECIPIENT agrees that all SUB-RECIPIENTS to this agreement shall comply with the following provisions of the North Carolina Administrative Code: "09 NCAC 03M .0203 SUB-RECIPIENT RESPONSIBILITIES."

10. ADVERTISING

RECIPIENT agrees not to use the existence of this contract, the name of the AGENCY, the or the name of the State of North Carolina as part of any commercial advertising, without prior written approval of the AGENCY.

11. COMPLIANCE WITH LAW

The RECIPIENT shall remain an independent RECIPIENT and as such shall be wholly responsible for the scope of work to be performed under this Agreement and for the supervision of his employees and assistants. The RECIPIENT represents that it has, or will secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with the AGENCY. The RECIPIENT shall be responsible for compliance with all laws, ordinances, codes, rules, regulations, licensing requirements and other regulatory matters that are applicable to the conduct of his business and work performance under this Agreement, including those of Federal, State, and local agencies having appropriate jurisdiction.

The Recipient acknowledges and agrees that, in its conduct under this Contract and in connection with any and all expenditures of grant funds made by it, it shall comply with the cost principles enunciated in the Code of Federal Regulations, 2 CFR, Part 200. The Recipient further acknowledges and agrees that, if it grants any of the grant funds awarded hereunder to one or more sub-recipients or sub-sub-recipients, the Recipient shall, by contract, ensure that said cost principles are made applicable to and binding upon any and all such sub-recipients, sub-sub-recipients, etc. in their handling, use and expenditure of the funds awarded to the Recipient hereunder.

12. TERMINATION OF AGREEMENT

This agreement may be terminated by mutual consent upon sixty (60) days written notice to the other party, or as otherwise provided by law. As soon as reasonably possible following termination of this agreement, the amount of any residual unexpended funds shall be transferred to the AGENCY.

13. AMENDMENTS

This Agreement may be amended in writing which documents approval of changes by both the AGENCY and the RECIPIENT.

14. AGREEMENT CLOSE-OUT PROCESS

The RECIPIENT agrees to submit to the AGENCY a complete performance and expenditure status report (final report) within ninety (90) days after expiration of this agreement June 30, 2023:

- 1) A complete accounting of how the appropriated funds were used;
- 2) A complete performance status report; and
- 3) A Certification stating the funds were used for the purpose appropriated (AGENCY will supply template).

The above noted reports shall include RECIPIENT and SUB-RECIPIENT reporting information related to the above noted quantitative results and accomplishments. RECIPIENT and any SUB-RECIPIENTS agree that all program activity results information reported shall be subject to review and authentication as described in Paragraph 7 and RECIPIENT will provide access to work papers, receipts, invoices and reporting records, if requested by the AGENCY, as the AGENCY executes any audit internal audit responsibilities.

RECIPIENT will be deemed noncompliant if its final report is not submitted within the 90-day period stated above. Once the complete final performance and financial status report package has been received and evaluated by the AGENCY, the RECIPIENT will receive official notification of agreement close-out. The letter will inform the RECIPIENT that the AGENCY is officially closing the agreement and retaining all agreement files and related material for a period of five (5) years or until all audit exceptions have been resolved, whichever is longer.

15. AUTHORIZED SIGNATURE WARRANTY

The undersigned represent and warrant that they are authorized to bind their principals to the terms of this agreement. **In Witness Whereof**, the RECIPIENT and the AGENCY have executed this Agreement in duplicate originals, with one original being retained by each party.

HENDERSON COUNTY

_____ Signature	_____ Date
Jimmy Brissie	Director
_____ Printed Name	_____ Title

NC DEPARTMENT OF PUBLIC SAFETY

_____ Signature	_____ Date
Tara Williams-Brown	Controller
_____ Printed Name	_____ Title

**Henderson County
Terms and Conditions**

By acceptance of a purchase order with Henderson County, or by entering into the contract or agreement with Henderson County to which this "Terms and Conditions" is attached, the vendor to Henderson County or contractor with Henderson County (as the situation may be, hereinafter referred to as the "seller"), declares that all supplies, materials, equipment, apparatus and services furnished to Henderson County pursuant to the purchase order or contract agreement will be furnished according to the following terms and conditions, which terms and conditions shall supersede any language to the contrary in any other documentation of such purchase order or contract agreement.

1. **QUESTIONS CONCERNING THE PURCHASE ORDER:** Contact the **Ship to Department** shown.
2. **PURCHASE ORDER NUMBER:** The purchase order number must appear on all invoices, packing slips, correspondence, and bills of lading.
3. **PRICE:** All goods and/or services must be billed to Henderson County (County) at prices and quantities not to exceed those stated on the purchase order. All invoices, packages, shipping notices or the like affecting this order shall contain the applicable purchase order number. All prices are quoted F.O.B. Destination unless specifically indicated otherwise.
4. **INVOICES:** Invoices for partial shipments will be accepted and final invoices should indicate completion of order.
5. **CASH DISCOUNTS:** All cash discounts will be effective from the date of actual receipt of a correct and approved invoice by the ordering department.
6. **PAYMENT TERMS:** The County agrees to pay all approved invoices Net Thirty (30) days from the date received and approved. The County does not agree to the payment of late charges or finance charges assessed by the seller for any reason. Invoices are payable in U.S. funds.
7. **TAXES: Henderson County is NOT Sales Tax-Exempt.** Prices shown on the County's purchase orders do not include tax; however, all applicable taxes shall be paid by the County. Seller shall itemize taxes on the seller's invoice. It should be noted that the County is exempt from Federal Excise Tax except as required to be paid by law.
8. **AGREEMENT TERMS:** Absent a negotiated contract, this purchase order is limited to the terms and conditions contained on the face and back hereof. Any additional or different terms in the Seller's form are hereby deemed to be material alterations and notice of objection to them and rejection of them is hereby given. All delivery of goods and/or services shall conform to specifications, price, terms and conditions as set forth in this instrument. This purchase order including all contracts, references and/or insertions, with the stated terms and conditions thereon shall constitute the complete agreement between the County and the Seller. The terms and conditions of this order shall not be modified by any verbal understanding and shall only be binding if agreed to in writing by the County.
9. **DELIVERY/ACCEPTANCE OF GOODS:** All quotations are solicited on a delivered price basis. When the County accepts a quotation not including all shipping charges, your claim for reimbursement must be itemized on the invoice and supported with a copy of the original freight bill. The packing list shall be enclosed in each box or package. All items shall be prepared and packed for shipment in a manner that will prevent damage in transit. All deliveries on this order must be in full accordance with specifications, properly identified with the purchase order number and must not exceed the quantities specified. The County shall have the right to inspect and test all items supplied under the order before making acceptance. Risk of loss and title to all goods received shall remain with the Seller until the County has made acceptance. Rejected goods shall be returned to the Seller at Seller's risk and expense. Payment for supplies shall not constitute acceptance and is without prejudice to claims that the County may have against the seller.
10. **SERVICES PERFORMED:** All services rendered under this agreement will be performed at the Seller's own risk and the Seller expressly agrees to indemnify and hold harmless the County, its officers, agents, and employees from any and all liability, loss or damage that they may suffer as a result of claims, demands, actions, damages or injuries of any kind or nature whatsoever by or to any and all persons or property.
11. **INSURANCE:** This purchase order shall be considered a written contract and requires the County to be endorsed as additional insured for General Liability, Automobile Liability, and Umbrella Liability Insurance Policies. Contractor shall maintain at its own expense (a) Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence limit/\$2,000,000 aggregate limit for bodily injury, property damage, or personal injury; (b) Professional Liability Insurance in an amount not less than \$1,000,000 per occurrence (if providing professional services); (c) Worker's Compensation Insurance as required by the State of North Carolina General Statutes. (d) Commercial Automobile Insurance applicable to bodily injury and property damage covering all owned, non-owned, and hired vehicles, in an amount not less than \$1,000,000 combined single limit. Negotiated written contracts may require additional insurance coverage. A Certificate of Insurance shall be furnished prior to the commencement of services. The Certificate Holder shall be County of Henderson, Attn: Finance Dept., 113 N Main Street, Hendersonville, NC 28792.
12. **APPLICABLE LAWS:** By acceptance of this order, seller represents that the goods covered by this order are in full compliance with all applicable local, state, or federal laws and regulations and agrees to indemnify and defend the County against any loss, cost, liability, or damage by reason of seller's violation of any laws.
13. **E-VERIFY:** North Carolina General Statute §143-133.3 prohibits the County from entering into contracts with contractors and subcontractors who have not complied with the requirement of Article 2 of Chapter 64 of the North Carolina General Statutes. Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if contractor utilizes a subcontractor, contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.
14. **IRAN DIVESTMENT:** By acceptance of this purchase order, vendors, contractors, and/or subcontractors certify they are not listed and will not utilize a subcontractor listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 147-86.59, Iran Divestment Act Certification.
15. **FEDERAL FUNDS:** The following provisions are required and apply when federal funds are expended by Henderson County for any contract resulting from this procurement process.
 - A. Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

When federal funds are expended by Henderson County, Henderson County reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.
 - B. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be affected and the basis for settlement. (All contracts in excess of \$10,000)

When federal funds are expended by Henderson County, Henderson County reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor, in the event vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. Henderson County also reserves the right to terminate the contract immediately, with written notice to vendor, for convenience, if Henderson County believes, in its sole discretion that it is in the best interest of Henderson County to do so. The vendor will be compensated for work performed and accepted and goods accepted by Henderson County as of the termination date if the contract is terminated for convenience of Henderson County. Any award under this procurement process is not exclusive and Henderson County reserves the right to purchase goods and services from other vendors when it is in the best interest of Henderson County.
 - C. If the source of funds for this contract is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable).