

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: April 1, 2024

SUBJECT: NC State Budget Allocation – Soil and Water

PRESENTERS: Samantha R. Reynolds, Finance Director

ATTACHMENTS: Yes

1. Budget Amendment
2. NCDPS Directed Grant Agreement
3. Scope of Work
4. Subrecipient Agreement

SUMMARY OF REQUEST:

Staff is requesting the Board approve the State Budget allocation for the Henderson County Soil and Water Department in the amount of \$14,000,000. This allocation has been made as directed by the NC General Assembly pursuant to Session Law 2023-134 (House Bill 259) for stream restoration and flood resiliency projects. Staff requests the Board authorize the scope of work, budget amendment and state grant agreement. Staff also requests the Board provide authorization for the County Manager to execute the agreement on behalf of the County.

These stream restoration and flood resiliency projects are intended to be completed via a Sub-Recipient arrangement with Resource Institute, Inc. As such, staff is requesting the Board authorize the attached Subrecipient agreement.

BOARD ACTION REQUESTED:

The Board is requested to approve the attached scope of work and budget amendment. Staff also requests the Board authorize the attached state grant agreement and subrecipient agreement. The Board is also requested to provide authorization to the County Manager to execute the agreement on behalf of the County.

Suggested Motion:

I move the Board approve the attached scope of work, budget amendment, state grant agreement and subrecipient agreement. I move the Board provide authorization to the County Manager to execute the agreement on behalf of the County.

North Carolina Department of Public Safety Directed Grants Agreement

Agreement # HENDERSON COUNTY 2023-2024 FY 2023 DEPARTMENT OF PUBLIC SAFETY DISASTER RELIEF AND RECOVERY/MITIGATION/RESILIENCY DIRECTED GRANT, NC APPROPRIATIONS ACT OF 2023, HOUSE BILL 259, SECTION 5.3(a)-(c) & SECTION 5.6(a)-(l)

This Agreement is hereby entered into by and between the Department of Public Safety (the "AGENCY") and Henderson County (the "RECIPIENT") (referred to collectively as the "Parties"). The RECIPIENT's federal tax identification number is 56-6000307.

1. PURPOSE & AUTHORITY

The purpose of this Memorandum of Agreement (MOA) is to establish roles, responsibilities and procedures to implement the terms and conditions of the FY 2024 Department of Public Safety Disaster Relief and Recovery/Mitigation/Resiliency Directed Grant, NC Appropriations Act of 2023, [House Bill 259](#), Sections 5.3(a)-(c) and 5.6(a)-(l). The purpose of this grant is to provide directed grants to non-state entities established in accordance with appropriations contained in Session Law 2023-134 (HB 259) for disaster relief, recovery, mitigation, and resiliency.

This grant award and MOA are authorized under the provisions of: (1) NC Appropriations Act of 2023, House Bill 259 / SL 2023-134. The funds awarded under this grant must be used in compliance with all applicable federal, state, local and tribal laws, and regulations, including N.C.G.S. §§ 143C-6-21, 143C-6-22, 143C-6-23 and 09 NCAC 03M, and for governmental entities and public authorities subject to the Local Government Commission (LCG), N.C.G.S. Chapter 159 and 20 NCAC 03. By accepting this award, RECIPIENT agrees to use these funds in a manner consistent with all applicable laws and regulations.

2. EFFECTIVE TERM & PERIOD OF PERFORMANCE

This Agreement shall become effective upon signature by the Parties and this agreement shall terminate on June 30, 2028. Notwithstanding the effective date of this agreement, the period of performance (POP) for this directed grant is retroactive to July 1, 2023, the first day of state fiscal year 23-24, and the last day of the POP is June 30, 2028, the last day of state fiscal year 27-28 (Section 5.6(l)). Recipient must expend or encumber all directed grant funds within the POP. Expend or encumber are defined in [N.C. Gen. Stat. § 143C-1-1](#), which is incorporated here by reference. Unless otherwise expressly authorized by AGENCY, any directed grant funds not expended or encumbered within the POP must be returned by RECIPIENT to AGENCY within 30 days of the end of the POP.

3. DEFINITIONS

- Closeout: the final grant stage where, after completion of the scope of work, the RECIPIENT submits supporting documentation to AGENCY that funds have been expended consistent with their purpose in a fiscally responsible manner and the AGENCY administratively reviews the information and notifies RECIPIENT of administrative closing of the grant. See section 14 for closeout requirements.
- Directed Grant: legislatively directed grants to non-state entities. These grants provide a specific amount of state funds be directed to a named organization for a purpose described in the appropriations act in which the grant was included.
- Monitoring: The process of ensuring State funds are used responsibility and according to their purpose which involves a system of educating, reviewing, tracking, and reporting on the use of grant funds.

- Level I: A recipient or subrecipient that receives, holds, uses, or expends State financial assistance in an amount less than twenty-five thousand dollars (\$25,000) within its fiscal year.
- Level II: A recipient or subrecipient that receives, holds, uses, or expends State financial assistance in an amount of at least twenty-five thousand (\$25,000) or greater, but less than five hundred thousand dollars (\$500,000) within its fiscal year.
- Level III A recipient or subrecipient that receives, holds, uses, or expends State financial assistance in an amount equal to or greater than five hundred thousand dollars (\$500,000) within its fiscal year.
- Non-Compliance: failure by the grant awardee to follow the terms of this agreement, applicable federal or state law, and/or to use funds inconsistently with the purpose of the directed grant as defined by the General Assembly. See section 7 – Monitoring and Auditing.
- General Assembly: the bicameral legislature of the State of North Carolina, consisting of the State House of Representatives and State Senate.
- Encumbrance: As defined by the State Budget Act, [N.C. Gen. Stat. § 143C-1-1](#), A financial obligation created by a purchase order, contract, salary commitment, unearned or prepaid collections for services provided by the State, or other legally binding agreement.
- Budget: As defined by the State Budget Act, [N.C. Gen. Stat. § 143C-1-1](#), A plan to provide and spend money for specified programs, functions, activities, or objects during a fiscal year.

4. RECIPIENT'S RESPONSIBILITIES

The RECIPIENT is responsible for all the following:

Required Documents/Forms

RECIPIENT must submit the following documents to AGENCY upon execution of this MOA:

- i. W-9 (09 NCAC 03M .0202)
- ii. [Electronic Payment / Vendor Verification Form](#) (09 NCAC 03M .0202)
- iii. Conflict of Interest Policy (G.S. 143C-6-23. (b))
- iv. [Sworn \(Notarized\) No Overdue Tax Debt Certification](#) (G.S. 143C-6-23.(c))

Scope of Work and Budget (Attachment A)

RECIPIENT must provide a Scope of Work & Budget to AGENCY, and the Scope of Work & Budget must be approved by AGENCY before AGENCY can release any funds to RECIPIENT under this agreement.

The Scope of Work clearly and concisely defines the specific project(s) to be completed with the directed grant funds in this agreement, identifies the gaps and/or priorities addressed by the project(s), and provides the timeline and budget for the project(s). RECIPIENT is required to use the funds in the amounts as set forth in RECIPIENT's Budget. RECIPIENT must submit an amended budget to AGENCY if RECIPIENT wants to reallocate and/or redistribute the funds from a previously approved budget. See **Attachment A** for Scope of Work template including budget.

Quarterly Reports (Attachment B)

The RECIPIENT understands and acknowledges that total funding level available under this agreement will not exceed the amount allocated by the General Assembly **\$14,000,000.00**.

RECIPIENT must submit a **Quarterly Report** (90-day) to AGENCY for every quarter of the POP. Quarterly reports are due within 15 calendar days of the end of each quarter as follows:

- 1st July 01 – September 30 (Due October 15)
- 2nd October 01 to December 31 (Due January 15)
- 3rd January 01 to March 31 (Due April 15)
- 4th April 01 to June 30 (Due July 15)

Quarterly reports shall at a minimum include:

- i. Period stating beginning balance of the Project Fund.
- ii. 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).
- iii. Period ending balance of the RECIPIENT funding disbursed pursuant to this agreement.
- iv. A descriptive summary of how the funds were used including outcomes and specific deliverables or accomplishments to date.
- v. **Attachment B** is a copy of the quarterly report.
- vii. Quarterly reports shall be email: michael.grant@ncdps.gov

Request for Payment (Attachment B)

RECIPIENT must submit requests for payment of funds to AGENCY with all required documentation attached for **\$3,500,000.00** distributed quarterly, not to exceed a total of **\$14,000,000.00**. Once AGENCY is satisfied that RECIPIENT has provided all required documentation, the requested distributions can be processed for payment. The distributions of funds will be coded to cost center(s) **206631 56600044 1901176** in the North Carolina Financial System (NCFS)

RECIPIENT shall complete a “Request for Payment of Appropriation(s) from North Carolina General Fund” each quarter and submit to AGENCY, along with all required documentation. Funds will be paid quarterly after AGENCY receives all required documentation, including quarterly reports. See **Attachment B** for request for payment template.

Other Conditions

Pursuant to N.C.G.S 143C-1-1, 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.

RECIPIENT must complete any procurement(s) and expenditures no later than the end of the POP on June 30, 2028 (Section 5.6(l)). Funds allocated in this section that are not expended or encumbered by June 30, 2028, shall revert to the State Emergency Response and Disaster Relief Reserve.

No Match Requirement. RECIPIENT is not required to provide matching funds in cash or in-kind for this award.

Indirect Costs. No indirect costs will be charged to this award.

Municipalities, counties, and other entities subject to the Local Government Commission will follow the Local Government Finance Act, N.C.G.S. 159-34.

Directed grants to nonprofit organizations are for nonsectarian, nonreligious purposes only (S.L. 2022-74, Sec. 5.3(b)5).

Compliance

RECIPIENT understands and acknowledges required compliance with all applicable statutory provisions outlined in N.C.G.S. 143C-6-23 and 09 NCAC 03M .0205, Minimum Reporting Requirements for Recipients and Subrecipients.

RECIPIENT shall comply with applicable federal, state, local and/or tribal statutes, regulations, ordinances, licensing requirements, policies, guidelines, reporting requirements, certifications and other regulatory matters for the conduct of its business and purchase requirements performed under this MOA. RECIPIENT shall be wholly responsible for the purchases made under this MOA and for the supervision of its employees and assistants.

Failure to comply with the specified terms and conditions of this MOA may result in the return of funds and any other remedy for noncompliance specified in 2 CFR 200.339 (incorporated by reference in this MOA), and/or termination of the award per 09 NCAC 03M.0801 and 2 CFR 200.340 (incorporated by reference in this MOA). Additional conditions may also be placed on RECIPIENT for noncompliance with the specified terms and conditions of this MOA, including (but not limited to) additional monitoring and possible placement of RECIPIENT on the Suspension of Funding List (SOFL) maintained by the State Office of State Budget & Management (OSBM).

Conflict of Interest

Per N.C.G.S. § 143C-6-23(b), RECIPIENT is required to file with AGENCY a copy of RECIPIENT's policy addressing conflicts of interest that may arise involving the grantee's management employees and the members of its board of directors or other governing body. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the grantee's employees or members of its board or other governing body, from the grantee's disbursing of State funds, and shall include actions to be taken by the grantee or the individual, or both, to avoid conflicts of interest and the appearance of impropriety. **The policy shall be filed before AGENCY may disburse any grant funds.**

In conjunction with providing the conflict-of-interest policy to AGENCY, RECIPIENT must disclose in writing to AGENCY, and attempt to avoid, any real or potential conflict of interest that may arise during the administration of this grant award.

This includes RECIPIENT's responsibility to maintain written standards of conduct covering conflicts of interest and governing the actions of their employees engaged in the selection, award, and administration of contracts or subgrants. No employee, officer, or agent may participate in the selection, award, or administration of a contract or subgrant supported by this grant award if he or she has a real or apparent conflict of interest. Such conflicts of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract or subgrant. The officers, employees, and agents of the RECIPIENT may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts or subgrants.

RECIPIENT may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value.

The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the RECIPIENT. All RECIPIENTs must disclose in writing to RECIPIENT, and attempt to avoid, any real or potential conflicts of interest with respect to procurement, contracting, subcontracting and sub-granting with funds provided under this grant award. Upon request, RECIPIENT must also provide a copy of their standards of conduct policy covering conflicts of interest with respect to procurement, contracting and subcontracting with funds provided under this grant award.

State of North Carolina Reporting Requirements per NCGS 143C-6-23 and 09 NCAC 03M

North Carolina state law ([N.C.G.S. 143C-6-23](#) and [09 NCAC 03M](#)) requires every nongovernmental entity (including non-profit organizations) that receives state or federal pass-through grant funds from state agencies to file annual reports on how those grant funds were used no later than three months after the end of the non-state entity's fiscal year. **Government entities including counties and local governments are not required to file these reports.**

Audit Requirements

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.

If RECIPIENT is a unit of local government in North Carolina, RECIPIENT may be subject to the audit and reporting requirements 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 SUBRECIPIENT and are subject to change (see [Local Government Commission](#) for more information). See also [20 NCAC 03](#) (Local Government Commission).

AGENCY'S DUTIES & PAYMENT PROVISIONS

AGENCY shall ensure that funds allocated and disbursed comply with the intent and guidance from the Office of State Budget & Management and ensure compliance with related state statutes and financial management standards.

AGENCY will register all state assistance programs and awards with OSBM as required, and AGENCY will comply with the requirements of OSBM's [Grants Management System](#) as applicable.

The AGENCY shall pay the RECIPIENT on a quarterly basis with each payment being an equal amount of **\$3,500,000.00**, not to exceed total grant amount of **\$14,000,000.00**. Payment shall be made 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 **206631 56600044 1901176**.

AGENCY will submit grant monitoring plan(s) to OSBM as required.

AGENCY will provide education and technical assistance to directed grant recipients through one-on-one communication, live group events and/or web-based information to provide instruction on required documents and the process of receiving grant funds.

5. FUNDS MANAGEMENT

Accounting. 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. 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.

Travel. Expenditures for travel mileage, meals, lodging and other travel expenses incurred in the performance of this MOA shall be reasonable and supported by documentation. State rates should be used as guidelines and shall not be exceeded. International travel shall not be eligible under this MOA.

Taxes. No taxes will be charged to this award. If eligible, SUBRECIPIENT 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 grant, pursuant to [N.C.G.S. 105-164.14](#); and (b) exclude all refundable sales and use taxes from all reported expenditures.

6. 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
Allis Talley-Burton, Controller NC Department of Public Safety 2000 Yonkers Rd. Raleigh, NC27699-4220 Telephone: 919-866-3668 Fax: 984-920-8887 Email: allis.talley-burton@ncdps.gov	Allis Talley-Burton, Controller NC Department of Public Safety 2000 Yonkers Rd. Raleigh, NC27699-4220 Telephone: 919-866-3668 Fax: 984-920-8887 Email: allis.talley-burton@ncdps.gov

For the RECIPIENT	
IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Samantha Reynolds, Finance Director County of Henderson 113 N Main Street Hendersonville, NC 28792 Telephone: 828-697-4821 Fax: 828-697-4569 Email: sreynolds@hendersoncountync.gov	Samantha Reynolds, Finance Director County of Henderson 113 N Main Street Hendersonville, NC 28792 Telephone: 828-697-4821 Fax: 828-697-4569 Email: sreynolds@hendersoncountync.gov

7. MONITORING AND AUDITING

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.

AGENCY is required by law to monitor and oversee directed grant funds to ensure State financial assistance is spent consistent with the purposes for which it was awarded, [09 N.C.A.C. 03M.0401](#), and AGENCY will review the documentation provided by RECIPIENT to ensure adequate progress is being made toward achieving project goals and objectives.

AGENCY will assess RECIPIENT for risk using the factors adopted by Office of State Budget and Management:¹

Grant Amount

Low: Less than or equal to \$250,000

Moderate: Greater than \$250,000 or less than \$5,000,000

High: Greater than or equal to \$5,000,000

Number of Subrecipients

Low: 0 Moderate: Less than or equal to 5 High: Greater than 5

Entity Type

Low: County, School System Moderate: Municipality, Hospital High: Nonprofit – Construction, Nonprofit-Other, Other

Other factors

Other factors such as staff turnover, system changes, audit findings, monitoring issues and prior experience with grant recipient may also be considered when accessing the risks.

Based on the combination of those three indicators, grantee recipients will be identified with a risk assessment of Low, Moderate or High.

Levels of Monitoring Based on Risk

AGENCY will review financial and performance information for high-risk grantees to ensure each report is completed in accordance with the grant agreement and when expenditures are listed, review for allowability.

Based on time availability, AGENCY will select a sample of medium and low risk grant recipients for the same review as high-risk recipients.

Noncompliance with Agreement Terms

If RECIPIENT fails to comply with any term of this Agreement but the non-compliance is not the result of mismanagement or criminal misuse of funds, AGENCY shall address the non-compliance by

- (1) Communicating the requirements to RECIPIENT.
- (2) Requiring a response from RECIPIENT upon a determination of noncompliance.

¹ Office of State Budget and Management (OSBM) Recipient Monitoring Plan (May 2022)

(3) Suspending payments to the RECIPIENT until RECIPIENT complies.

If RECIPIENT fails to correct the non-compliance within 60 days, AGENCY may

- (1) Terminate this Agreement and seek return of unexpended funds or unauthorized expenditures. And
- (2) Offset future payments with any amounts improperly spent.

If RECIPIENT'S non-compliance includes management deficiencies or criminal activity leading to the misuse of funds, AGENCY shall notify the Office of State Budget and Management and:

- (1) Suspend payments until the matter has been fully investigated and corrective action has been taken.
- (2) Terminate the contract and take action to retrieve unexpended funds or unauthorized expenditures. And
- (3) Report possible violations of criminal statutes involving misuse of State property to the State Bureau of Investigation, in accordance with G.S. 143B-920.

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

RECIPIENT will not assign or subcontract without obtaining written approval. 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.

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 or unencumbered 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. CLOSEOUT REPORTING REQUIREMENTS

Following the principles of 2 CFR 200.344 (incorporated by reference in this MOA), RECIPIENT must submit to AGENCY, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the grant award, and this MOA.

This includes, at a minimum:

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, 2028:

- 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.

RECIPIENT agrees to submit to all required closeout documentation (final report) to AGENCY within ninety (90) days after expiration of this agreement on June 30, 2028, giving RECIPIENT until September 30, 2028, to submit final report.

AGENCY will not release the final fourth quarter payment to RECIPIENT unless/until RECIPIENT has submitted all required closeout documentation and AGENCY has approved that documentation.

Performance Reporting

The above noted closeout documentation shall include adequate information from RECIPIENT showing qualitative and quantitative results in accomplishing the approved Scope of Work in Attachment A. The purpose of this performance reporting is for RECIPIENT to demonstrate exactly how the grant funds were utilized to accomplish the approved scope of work, as well the impact of the completed work (to the extent known at the time of grant closeout).

Final Accounting & Supporting Documentation

The above noted closeout documentation must include sufficient documentation that approved expenditures have been properly invoiced and paid by RECIPIENT, and that the products and/or services have in fact been received by RECIPIENT. RECIPIENT must provide a final summary of all expenditures funded by this grant. Summary of expenditures should include at a minimum: vendor name, date of purchase, invoice number, total invoice amount, and amount paid for with grant funds.

RECIPIENT shall also include all legible and complete invoices and receipts detailing the expenses funded with this grant. The total amount of these invoices and receipts shall be equal to the full amount of the award.

If the total amount of these invoices and receipts exceeds the full amount of the award, RECIPIENT is required to clearly indicate the exact amount(s) paid with grant funds, equaling the full amount of the amount.

If the total amount of these invoices and receipts is less than the full amount of the award, AGENCY will reduce the final quarterly payment by the amount of the underrun. If the underrun exceeds the final quarterly payment, RECIPIENT will be required to reimburse AGENCY for the amount of the unrecovered underrun within 30 days of notification by AGENCY.

Invoices, receipts, and associated documentation must contain the following information:

- Name and address of the vendor or establishment providing the product or service.
- Vendor/Payee invoice number, account number, and any other unique meaningful identifying number.
- Date the product or service was provided.
- Itemized description of all products or services.
- Unit price of products or services (if applicable).
- Total amount charged.
- Proof of payment of expenses associated with the project.

15. ATTACHMENTS

All attachments to this Agreement are incorporated as if set out fully herein.

A. In the event of any inconsistency or conflict between the language of this MOA and the attachments hereto, the language of the MOA shall be controlling, but only to the extent of such conflict or inconsistency.

B. This MOA includes the following attachments or documents incorporated by reference as if fully set out herein:

- Attachment A - Scope of Work & Budget
- Attachment B - Quarterly Report & Accounting
- Attachment C – State Grant Tax Certification
- Conflict of Interest Policy

16. 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

Samantha Reynolds

Printed Name

Title

NC DEPARTMENT OF PUBLIC SAFETY

Signature

Date

Allis Talley-Burton

Controller

Printed Name

Title

Attachment A Scope of Work and Annual Budget

Before it will be possible to finalize this award and make any disbursement, you are required to provide to the Agency a description for how the organization will spend the amount of funding allocated for the specific purpose as stated in the grant contract. This will include a scope of work, information related to any potential subgrants and an annual budget for the grant funds. Please attach additional sheets as necessary.

1. Organization:	
Organization Name:	HENDERSON COUNTY
Tax Identification #:	56-6000307
Organization Fiscal Year End: (mmddyyyy)	06/30/2024

2. Scope of Work:
Recipient shall detail below how the organization will spend the amount of funding allocated for the specific purpose as stated in the grant contract. The description should include services to be provided, objectives to be achieved, and expected results. The description should also include anticipated timing of those services, objectives and expected results.
The scope of work includes rehabilitation of two high hazard and safety dams (Lake Hosea and Lake Tekoa) to mitigate downstream safety concerns and provide additional stormwater storage for downstream protection and resiliency. The scope of work also includes the stabilization of severely eroding and unstable streams in the French Broad River watershed damaged by recent and unnamed storm events.

3. Subgrants:				
a. Does the Recipient anticipate that it will subgrant or pass down any funds to another organization?	x	Yes		No
If yes, answer the following:				
b. Name of Subrecipient	c. Program Name		d. Amount to Subrecipient	
Resource Institute, Inc.			\$14,000,000	

Below are general expenditure descriptions that can serve as a **guide** for preparing the organization's annual budget related to the grant award. Please add or delete expenditure captions for clarity if needed. The annual budget must be signed by an authorizing official.

The following annual budget is for the time period beginning 4/1/2024 and ending 6/30/2028.

EXPENDITURE DESCRIPTION	AMOUNT
Employee Expenses (e.g. salaries, benefits, program related staffing).	\$
Services and Contract Expenses (e.g. utilities, telephone, data, lease related expenses)	\$14,000,000
Goods (e.g. supplies and equipment) Expenses	\$
Administration Expenses (e.g. overhead & project management)	\$
Other Expenses (e.g. related charges not assigned above with descriptions)	\$
Total Beginning Balance of the Project Fund	\$14,000,000

With regard to the information contained herein, I certify that the annual budget has been approved by the Recipient's Chief Fiscal Officer, CEO or Board Chair.

April 1, 2024

Signature

Date

Samantha Reynolds

Finance Director

Printed Name

Title

Subrecipient Agreement

between

County of Henderson, a body corporate and politic of the State of North Carolina (the *County*)

Resource Institute, Inc., a corporation existing under the laws of North Carolina (the *Sub-Recipient*)
TIN: **56-2251040** UEI: **MH335C186FFX7**

DISASTER RELIEF AND RECOVERY/MITIGATION/RESILIENCE DIRECTED GRANT

As directed by North Carolina Session Law 2023-134

This agreement is made between the County and the Recipient.

Recitals:

During the 2023 legislative session the North Carolina General Assembly passed House Bill 259, which became North Carolina Session Law 2023-134 (*SL 2023-134*).

A portion of SL 2023-134 appropriated the sum of \$14,000,000.00 to the County, on terms as provided in North Carolina Department of Public Safety Agreement #HENDERSONCO 2023-2024 (the *DPS Agreement*), for a Disaster Relief/Mitigation/Resilience Project (the *Project*).

The Sub-Recipient hereunder has proposed a flood resilience project meeting the guidance of the Project with the terms of the DPS Agreement.

The County and Sub-Recipient desire to enter into this Agreement.

Agreement:

Term:

This agreement shall be effective from the date hereof, and shall terminate June 30, 2028.

Sub-Recipient's Duties:

The Sub-Recipient shall provide the services as described in the DPS Agreement, which is attached hereto and incorporated herein by reference.

All funds provided to the Sub-Recipient under this Agreement shall be used to accomplish the Project.

The Sub-Recipient's scope of work (the *Scope of Work*) shall be attached hereto and incorporated herein by reference, as a complete and concise scope of goods or services supported by this agreement and consistent with language in Session Law 2023-134.

The Sub-Recipient agrees to use the funds in the amounts allocated for the budget cost items set forth in the Sub-Recipient's budget. The Sub-Recipient may not reallocate and/or redistribute funds among budgeted items without the express written permission of the County.

The Sub-Recipient understands and acknowledges that total funding level available under this agreement will not exceed \$14,000,000. The Scope of Work shows the payment amounts to be paid to Sub-Recipient for the various aspects of the Project. The Sub-Recipient agrees to complete all sections of the Quarterly or Periodic Status Report & Accounting following each quarter and provide all supporting documentation when the quarterly Accounting is submitted.

The Sub-Recipient will comply with all County requirements as if for Federally funded projects as stated in the attached addendum for projects with Federal funding (the *Federal Funding Addendum*).

The Sub-Recipient will provide to the County the following forms: W-9/Electronic Payment/Vendor Verification form (pursuant to 09NCAC 03M.002), Conflict of Interest Statement (pursuant to N.C. Gen. Stat. §143C-6-23(b)). and No Overdue Tax Debt Certification (pursuant to N.C. Gen. Stat. §143C-6-23(c)).

Pursuant to N.C. Gen. Stat. §143C-6-8, the Sub-Recipient understands and agrees that agreement funding shall be subject to the availability of appropriated funds received from the State of North Carolina.

Directed grants to nonprofit organizations are for nonsectarian, nonreligious purposes only. State funds for any one employee of a nonprofit are capped at \$120,000.00. Funds shall not revert until June 30, 2026 or later in accord with S.L. 2023-134.

The Sub-Recipient understands and acknowledges required compliance with all statutory provisions outlined in N.C. Gen. §143C-6-22 (use of State funds by non-State), and 09 NCAC 03M .0205 (minimum reporting requirement recipient and subrecipient).

County's Duties:

The County shall pay the Sub-Recipient a total not to exceed \$14,000,000. The appropriation shall be distributed as received from North Carolina General Fund. Once the County is satisfied that the Sub-Recipient has provided the County with all the required documentation as stated herein, the received distribution, less any fee for administration, shall be paid to the Sub-Recipient.

Quarterly Status Reporting:

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

- a. Period stating beginning balance of the Project Fund, and,
 - 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 Sub-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.
 - iv. Copies of all invoices paid for which reimbursement is sought.

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

- b. Quarterly project status reports shall be submitted by email to Samantha Reynolds, Finance Director of the County.

Funds Management:

The Sub-Recipient agrees that funds paid through this contract shall be accounted for in a separate fund and accounting structure within the Sub-Recipient's central accounting and grant management system. The Sub-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 the Quarterly Status Reporting, 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.

Monitoring and Auditing:

The Sub-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 Sub-Recipient are subject to being audited, inspected and monitored at any time by the AGENCY upon its request (whether in writing or otherwise). The Sub-Recipient further agrees to provide County and the State of North Carolina, and their respective staffs, with access to financial and accounting records to support internal audit, financial reporting and related requirements.

The Sub-Recipient 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, rules and regulations. Such audit and reporting requirements may vary depending upon the amount and source of grant funding received by the Sub-Recipient and are subject to change.

Taxes

The Sub-Recipient shall be considered to be an independent recipient and as such shall be responsible for all taxes. The Sub-Recipient agrees to provide the County with the Sub-Recipient's correct taxpayer identification number and Federal Unique Identification Number upon the execution of this Agreement. The Sub-Recipient agrees that failure to provide the County with a correct taxpayer identification number authorizes the County to withhold any amount due and payable under this Agreement.

Sub-Contracting and Assignment:

The Sub-Recipient agrees that by assigning or subcontracting any work related to the contract to a subcontractor is will insure that such entities shall comply with the following:

- (a) The Sub-Recipient is not relieved of any of the duties and responsibilities of the original contract; and
- (b) The Sub-Recipient and all subcontractors agree to abide by the standards contained in this contract and to shall provide all information to allow the County 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."

Compliance with Law:

The Sub-Recipient shall be wholly responsible for the scope of work to be performed under this Agreement and for the supervision of the Sub-Recipient's employees and assistants. The Sub-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, nor have any individual contractual relationship, with the County. The Sub-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 Sub-Recipient acknowledges and agrees that, in its conduct under this Agreement and in connection with any and all expenditures of funds hereunder, it shall comply with the cost principles enunciated in the Code of Federal Regulations, 2 CFR, Part 200 (the *Uniform Guidance*). The Sub-Recipient further acknowledges and agrees that, if it grants any of the grant funds awarded hereunder to one or more subcontractors or sub-sub-recipients, the Sub-Recipient shall, by contract, ensure that the Uniform Guidance is applicable to and binding upon any and all such subcontractors, sub-sub-recipients, and the like, in their handling, use and expenditure of the funds awarded to the Sub-Recipient hereunder.

Amendments

Amendments must be in writing, and must be executed by the Sub-Recipient, the County and an authorized representative of the State of North Carolina.

Close-Out Process

The Sub-Recipient shall submit to the County a complete performance and expenditure status report (final report) within ninety (90) days after expiration of this agreement June 30, 2028:

- 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 on a template supplied by the State of North Carolina for such purpose.

The above noted reports shall include Sub-Recipient and subcontractor and sub-sub-recipient reporting information related to the above noted quantitative results and accomplishments. The Sub-Recipient and any sub-sub-recipients shall state their agreement in such reports that all program activity results information reported shall be subject to review and authentication as described in this Agreement, and that Sub-Recipient will provide access to work papers, receipts, invoices and reporting records, if requested by the County or the State of North Carolina, as the County or the State of North Carolina execute any audit internal audit responsibilities.

The Sub-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 County, the Sub-Recipient will receive official notification of agreement close-out. The letter will inform the Sub-Recipient that the County and the State of North Carolina are 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.

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

Resource Institute, Inc.

By: _____

Name of signor: _____

Title: _____

Date: _____

County of Henderson

By: _____

Name of signor: _____

Title: _____

Date: _____

Certifications

By signing this Agreement, the authorized official of the Sub-Recipient certifies, to the best of his/her knowledge and belief, that:

Certification Regarding Lobbying:

1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or intending to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subcontractor shall complete and submit to the University the Standard Form-LLL, "Disclosure Form to Report Lobbying," available at <http://www.whitehouse.gov/omb/grants/sfillin.pdf>.

3) Sub-Recipient shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less that \$10,000 and not more that \$100,000 for each such failure.

Debarment, Suspension, and Other Responsibility Matters:

1) Acceptance of this Agreement constitutes certification by the Sub-Recipient that:

A) In accordance with OMB Guidelines, (34 CFR part 85), neither it nor its principals: (1) are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency, (2) have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (3) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in part (b) above; and (4) have not within three year period preceding this Agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.

B) Sub-Recipient it is not delinquent on any Federal debt in accordance with OMB Circular A-129.

C) The work will be performed in a drug-free workplace and that steps will be taken to provide a drug-free workplace in accordance with the policy expressed in the Federal Drug-Free Workplace Act of 1988 (Public Law 100-690), as amended.

D) Sub-Recipient is in compliance with the applicable provisions of the Anti-Kickback Act of 1986, 41 U.S.C. § 51 et seq., as set forth in FAR 3.502-2, FAR 3.502-3 and FAR 52.203-7 incorporated herein by reference and provisions of the Copeland Anti-Kickback Act, 18 U.S.C. § 874, as supplemented by Department of Labor Regulations, 29 CFR Part 3.

E) Sub-Recipient is in compliance with the applicable provisions of the Trafficking Victims Protection Act of 2000, 22 U.S.C §7101 et seq. as set forth in FAR 22.1700 and FAR 52.222-50 incorporated herein by reference.

F) Sub-Recipient will comply with the requirements of the OMB Circular A-21, A-102, A-110 or A-122 as applicable.

G) Sub-Recipient will comply, as applicable, with the requirements of the National Scenic Rivers Act of 1968, 16 U.S.C. § 1271 et seq., the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq., the Clean Air Act of 1970, 42

U.S.C. § 7401 et seq., the Clean Water Act of 1972, 33 U.S.C. § 1251 et seq., and the requirements of the Endangered Species Act of 1973, 16 U.S.C. § 1631 et seq.

H) Sub-Recipient will comply with the requirements of the False Claims Act, 31 U.S.C. §3729 et seq. and, if applicable, with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 1517, as amended, the Buy American Act, 41 U.S.C. 10a-10d, and with the Act of Export Administration Act of 1979, 50 U.S.C. § 2401 *et seq.*

I) Sub-Recipient will comply with the Davis-Bacon Act, 40 U.S.C. §276 as supplemented by Department of Labor regulations, 29 CFR Part 5, if applicable.

J) Sub-Recipient will comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 327, as supplemented by Department of Labor regulations, 29 CFR Part 5, if applicable.

K) Subcontractor (1) has an active and enforced Conflict of Interest Policy that is consistent with the provision of 42 CFR Part 50, Subpart F, "Responsibility of Applicants for Promoting Objectivity in Research," and that, to the best of Subcontractor's knowledge: (a) all financial disclosures have been made related to the activities that may be funded by this Agreement and required by Subcontractor's Conflict of Interest Policy, and (b) all identified conflicts of interest have or will have been satisfactorily managed, reduced, or eliminated in accordance with Subcontractor's Conflict of Interest Policy prior to the expenditure of funds; that (2) it does have an active Conflict of Interest, Financial Interest, and/or Conflicts of Commitment Policy in accordance with State and Federal Law requirements, or that (3) it does not have a conflict of interest policy but it will implement a policy that meets the requirements of 42 CFR Part 50, Subpart F, prior to commencement of work. Sub-Recipient will notify County upon full implementation of such policy.