

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** January 3, 2005

**SUBJECT:** Emergency Watershed Protection Program Project Agreement

**ATTACHMENTS:** Project Agreement (Including Attachments)

### **SUMMARY OF REQUEST:**

Attached is a proposed project agreement for the Emergency Watershed Protection Program. The agreement is between the County and the Natural Resources Conservation Service, a USDA agency. As has been indicated on previous occasions, North Carolina has been allocated approximately \$65 million in federal funds for the USDA's Emergency Watershed Protection Program. The Emergency Watershed Protection Program provides funding for locally-sponsored watershed protection projects that repair damage resulting from hurricanes, tornadoes, fires, drought, and floods. Through the program, the Natural Resources Conservation Service provides technical and financial assistance to protect life and property threatened by excessive erosion and flooding caused by the sudden impairment of a watershed. The Natural Resources Conservation Service works in partnership with local, state, and federal agencies to ensure public safety and to undertake restoration efforts on private land. Rehabilitation projects should provide sound erosion control solutions that are economically and environmentally defensible. Specifically, funds should be used to remove debris from waterways, restore eroded streambanks, and take other steps to mitigate threats to humans and property.

Henderson County is eligible to participate in this program. The program, like most other federal disaster relief programs, requires a 25% match by the sponsoring agency. The state has a history of providing the required 25% match for these federal programs. County staff has been assured by officials with the North Carolina Division of Emergency Management that the state will provide the required matching funds for this program. Per the attached agreement, Henderson County's projects total \$1,856,880. Of this total, the state will be providing \$464,220 in matching funds. If approved, County staff along with staff from the local Soil and Water Conservation District is prepared to begin implementation of this program.

### **COUNTY MANAGER'S RECOMMENDATION/ACTION REQUIRED:**

Staff recommends the Board approve the attached project agreement including enclosed attachments with the understanding that the State of North Carolina will provide the required local matching funds.

STATE North Carolina  
PROJECT Emergency Watershed  
Protection  
Henderson  
AGREEMENT NO. 69-4532-5-

UNITED STATES DEPARTMENT OF AGRICULTURE  
NATURAL RESOURCES CONSERVATION SERVICE

**PROJECT AGREEMENT**

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between the *Henderson County Board of Commissioners*, hereinafter referred to as the **Sponsors**; and the *Natural Resources Conservation Service*, United States Department of Agriculture, hereinafter referred to as **NRCS**.

WITNESSETH THAT:

WHEREAS, under the provisions of the Emergency Watershed Protection Program (EWP), 33 U.S.C. 2203, as amended, 7 CFR Part 624; Section 216 of Public Law 81-516; and Title IV of the Agricultural Credit Act of 1978, Public Law 95-334, NRCS is authorized to assist the Sponsors in relieving hazards created by natural disasters that cause a sudden impairment of a watershed, and

WHEREAS, NRCS and the Sponsors agree to install emergency watershed protection measures to relieve hazards and damages created by Hurricane Ivan on September 16-17, 2004.

NOW THEREFORE, in consideration of the premises and of the several promises to be faithfully performed by the parties hereto as set forth, the Sponsors and NRCS do hereby agree as follows:

- A. It is agreed that the work described in Attachment D is to be constructed at an estimated cost of **\$1,856,880.00**.
- B. The **Sponsors** will:
  - 1. Provide **25 percent** of the cost of constructing the emergency watershed protection measures described in Section A. This cost to the Sponsors is estimated to be **\$ 464,220.00**.

The Sponsors 25 percent may consist of cash, in-kind contributions, or a combination of both. In-kind contributions may include the following services: Assist with completion of Damage Survey Reports (DSR), Prepare the designs, specifications, and drawings, Perform contracting activities, and Perform quality assurance (inspections). The Sponsors will retain records to support costs incurred by the Sponsors equal to the amount of the in-kind contribution.

2. Provide certification that real property rights have been obtained for installation of emergency watershed protection measures. Certification will be provided on Form SCS-ADS-78, Assurances Relating to Real Property Acquisition, as amended (no attorney's opinion is required).
3. Accept all financial and other responsibility for excess costs resulting from their failure to obtain, or their delay in obtaining, adequate land and water rights, permits, and licenses needed for the emergency watershed protection measures described in Section A.
4. Provide appropriate State and Federal regulatory agencies the opportunity to provide comment or information regarding permit requirements using the NRCS EWP Site Environmental Review Checklist, Attachment C to this agreement. The site location should be indicated on a copy of the USGS 7.5 minute quadrangle map.
5. Ensure that requirements for compliance with environmental and/or cultural resource laws are incorporated into the project.
6. Prepare a conceptual Plan for Construction for review and approval by NRCS. Upon receipt of NRCS Plan approval, prepare a design, construction specifications, and drawings. Construction plans for structural emergency watershed protection measures will be reviewed and approved by a Professional Engineer registered in the State of North Carolina. Prior to FINAL development, the Sponsors will submit the construction plans (structural and non-structural) to NRCS for review to determine compliance with standard engineering principles and programmatic requirements.

7. Contract for construction of the emergency watershed protection measures described in Section A in accordance with applicable procedures and requirements prescribed in the General Statutes of North Carolina. The Sponsors will notify NRCS of the value of each contract award and any revisions thereto.
8. Take reasonable and necessary actions to dispose of all contractual and administrative issues arising out of the contract(s) awarded under this agreement. This includes, but is not limited to, disputes, claims, protests of award, source evaluation, and litigation that may result from the project. Such actions will be at the expense of the Sponsor, including legal expenses.
9. Arrange for and conduct final inspection of completed emergency watershed protection measures, and certify to NRCS that the project was installed in accordance with contractual requirements. The Sponsors will notify NRCS of the planned final inspection date when the inspection is scheduled.
10. Pay the contractor(s) as provided in the contract(s). Submit billings for reimbursement to NRCS on Form SF-270, Request for Advance or Reimbursement. The Sponsors will include a statement synopsisizing the status of the contract(s) for which the billing covers. Billings for reimbursement of final payment for a completed contract(s) must include an NRCS certification that the emergency watershed protection measures installed comply with programmatic requirements.
11. Upon acceptance of the work from the contractor(s), assume responsibility for operation and maintenance for the emergency watershed protection measures installed. Operation and maintenance is required for structural measures. The Sponsors will provide a written Operation & Maintenance Agreement and Plan *prior to award* of the contract(s) for construction of the emergency watershed protection measures.
12. Comply with the requirements of the Special Provisions which are included in Attachment A to this agreement. If applicable, complete the "Clean Air and Water Certification," included in Attachment A.
13. Ensure that all contracts for construction of emergency watershed protection measures include the provisions contained in Attachment B to this agreement.

14. Be legally responsible for the services provided under this Agreement. Indemnify and hold NRCS harmless from any costs, damages, claims, liabilities, and judgments arising from past, present, and future negligent or wrongful acts or omissions in connection with the services provided for in this agreement.
15. Retain all records dealing with the award and administration of contract(s) for 3 years from the date of the Sponsor's submission of the FINAL Request for Reimbursement or until final audit findings have been resolved, whichever is longer. If any litigation is started before the expiration of the 3-year period, the records are to be retained until the litigation is resolved or the end of the 3-year period, whichever is longer. Make such records available to the Comptroller General of the United States or his or her duly authorized representative and accredited representatives of the U.S. Department of Agriculture or cognizant audit agency for the purpose of making audit, examination, excerpts, and transcripts.
16. Provide the following as liaison:

Name:	Justin Hembree
Title:	Asst. County Manager
Address:	100 North King Street Hendersonville, NC 28792
Telephone:	828-694-7974
Facsimile:	828-692-9855
Email:	

C. **NRCS** will:

1. Provide **75 percent** of the cost of construction the emergency watershed protection measures described in Section A. This cost to NRCS is estimated to be **\$1,392,660.00**.
2. Not be substantially involved with the technical or contractual administration of this agreement. However, NRCS will provide advice and counsel as needed.

3. Review and approve the conceptual Plan for Construction for each project to be installed.
4. Review construction plans for each project to be installed to determine compliance with standard engineering principles and programmatic requirements.
5. Conduct periodic progress checks and participate in final inspections. NRCS will certify contract completion as described in Section B.10.
6. Make payment to the Sponsors covering NRCS's share of the cost, including the Sponsors in-kind contributions, if any, upon receipt and approval of Form SF-270, Request for Advance or Reimbursement, and supporting documentation as described in Section B.10.
7. Provide the following as liaison:

Name:	Robert V. Carter, Jr.
Title:	District Conservationist
Address:	USDA-NRCS 999 High Country Lane Hendersonville, NC 28792
Telephone:	828-697-4949, Ext. 3 828-693-1406, Ext. 3
Facsimile:	828-693-5832
Email:	<a href="mailto:robert.carter@nc.usda.gov">robert.carter@nc.usda.gov</a>

D. It is **mutually agreed** that:

1. This agreement is effective the date it is fully executed by all parties to this agreement. It shall become null and void 90 calendar days after the date NRCS has executed this agreement if a contract has not been awarded. It is noted that all work should be completed within 30 calendar days after obligation of funds for "exigency" situations, and all work should be completed within 220 calendar days after receipt of funds in nonexigency situations.
2. This agreement may be renegotiated, amended, extended, or modified by written amendment as agreed to by the parties hereto. Amendments become a part of the agreement when signed by the Sponsors and NRCS.

3. The furnishing of financial and other assistance by NRCS is contingent upon the continuing availability of appropriations by Congress from which payment may be made and shall not obligate NRCS if the Congress fails to so appropriate.
4. This agreement may be temporarily suspended by NRCS if NRCS determines that corrective action by the Sponsor is needed to meet the provisions of this agreement. Further, NRCS may suspend this agreement when it is evident that a termination is pending.
5. NRCS may terminate this agreement in whole or in part if it is determined by NRCS that the Sponsor has failed to comply with any of the conditions of this agreement. NRCS shall promptly notify the Sponsor in writing of the determination and reasons for the termination, together with the effective date. Payments made by or recoveries made by NRCS under this termination shall be in accord with the legal rights and liabilities of NRCS and the Sponsor.
6. NRCS may make adjustments in the estimated cost to NRCS set forth in Section C.1. for constructing the emergency watershed protection measures. Such adjustments may increase or decrease the amount of estimated funds that are related to differences between such estimated cost and the amount of the awarded contract or to changes, differing site conditions, quantity variations, or other actions taken under the provisions of the contract. No adjustment is to change the cost sharing assistance to be provided by NRCS as set forth in Section C.1. nor reduce funds below the amount required to carry out NRCS's share of the contract. NRCS will not be obligated to contribute funds greater than \$1,000 under any agreement or commitment made by the Sponsors without prior concurrence of NRCS.
7. The contract for constructing the work described in Section A. will not be awarded to the Sponsors or to any firm in which any Sponsor official or any member of such official's immediate family has direct or indirect interest in the pecuniary profits or contracts of such firms.
8. No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise there from; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

9. By signing this agreement, the Sponsors assure the Department of Agriculture that the program or activities provided for under this agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.

In WITNESS WHEREOF, the following authorized representatives of the Sponsors and NRCS have executed this Agreement:

**HENDERSON COUNTY BOARD OF COMMISSIONERS**

Signed: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

U. S. DEPARTMENT OF AGRICULTURE

**NATURAL RESOURCES CONSERVATION SERVICE**

Signed: \_\_\_\_\_

By: Jane D. LaBounty

Title: State Administrative Officer

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

Attachment A - Special Provisions

Attachment B - Contractual Documents

Attachment C - Site Environmental Review Checklist



## **ATTACHMENT A - SPECIAL PROVISIONS**

- I. DRUG-FREE WORKPLACE CERTIFICATION
- II. CERTIFICATION REGARDING LOBBYING
- III. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS
- IV. CLEAN AIR AND WATER CERTIFICATION
- V. ASSURANCES AND COMPLIANCE
- VI. EXAMINATION OF RECORDS

## ATTACHMENT A - SPECIAL PROVISIONS

The signatories agree to comply with the following special provisions which are hereby attached to this agreement.

### I. **Drug-Free Workplace**

By signing this agreement, the sponsors are providing the certification set out below. If it is later determined that the sponsors knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the Service, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulations (21 CFR 1308.11 through 1308.15);

Conviction means a finding of (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacturing, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (I) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirements; consultants or independent contractors not on the grantees' payroll; or employees of subrecipients or subcontracts in covered workplaces).

#### CERTIFICATION:

A. The sponsors certify that it will or will continue to provide a drug-free workplace by:

(A) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(B) Establishing an ongoing drug-free awareness program to inform employees about--

(1) The danger of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(C) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(D) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --

(1) Abide by the terms of the statement; and

(2) Notifying the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such a conviction;

(E) Notifying the Service in writing, within ten calendar days after receiving notice under paragraph (d) (2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number (s) of each affected grant;

(F) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d) (2), with respect to any employee who is so convicted --

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

(G) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(H) Agencies shall keep the original of all disclosure reports in the official files of the agency.

**B.** The sponsors may provide a list of the site(s) for the performance of work done in connection with a specific project or other agreement.

**II. Certification Regarding Lobbying (7 CFR 3018)** (Applicable if this agreement exceeds \$100,000) - The sponsors certify to the best of their knowledge and belief, that :

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the sponsors, to any person for influencing or attempting to influence an officer or employer of Congress, or 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 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL., "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The sponsors shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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 than \$10,000 and not more than \$100,000 for each such failure.

**III. Certification Regarding DEBARMENT, Suspension, and Other Responsibility Matters - Primary covered Transactions, (7 CFR 3017)**

(1) The sponsors certify to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) 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 public transaction; violation of Federal or State antitrust statutes or commission embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) 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 paragraph (1) (b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal has one or more public transactions (Federal, State or local) terminated for cause of default.

(2) Where the primary sponsor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this agreement.

**IV. Clean Air and Water Certification**

(Applicable if this agreement exceed \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8 (c) (1) or the Federal Water Pollution Control Act (33 U.S.C. 1319 (c)) and is listed by EPA, or is not otherwise exempt.)

The project sponsoring organization(s) signatory to this agreement certifies as follows:

(a) Any facility to be utilized in the performance of this proposed agreement is \_\_\_\_\_, is not \_\_\_\_\_ Listed on the Environmental Protection Agency List of Violating Facilities.

- (b) To promptly notify the State Administrative Officer prior to the signing of this agreement by NRCS, of the receipt of any communication from the Director, Office of Federal Activities, U. S. Environmental Protection Agency, indicating that any facility which he proposes to use for the performance of the agreement is under consideration to be listed on the Environmental Protection Agency List of Violating Facilities.
- (c) To include substantially this certification, including this subparagraph (c), in every nonexempt subagreement.

#### CLEAN AIR AND WATER CLAUSE

(Applicable only if the agreement exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857-8(c) (1) or the Federal Water Pollution Control Act (33 U.S.C. (1319(c)) and is listed by EPA or the agreement is not otherwise exempt.)

A. The project sponsoring organization(s) signatory to this agreement agrees as follows:

- (1) To comply with all the requirements of section 114 of the Clean Air Act as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the signing of this agreement by NRCS.
- (2) That no portion of the work required by this agreement will be performed in a facility listed on the Environmental Protection Agency List of Violating facilities on the date when this agreement was signed by NRCS unless and until the EPA eliminates the name of such facility or facilities from such listing.
- (3) To use their best efforts to comply with clean air standards and clean water standards at the facilities in which the agreement is being performed.

- (4) To insert the substance of the provisions of this clause in any nonexempt subagreement, including this subparagraph A. (4).

B. The terms used in this clause have the following meanings:

- (1) The term “Air Act” means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604).
- (2) The term “Water Act” means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).
- (3) The term “clean air standards” means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110 (d) of the Clean Air Act (42 U.S.C. 1857c-5(d)), and approved implementation procedure or plan under section 111 (c) or section 111 (d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or an approved implementation procedure or plan under section 112 (d) or the Air Act (42 U.S.C. 1857c-7(d)).
- (4) The term “Clean water standards” means any enforceable limitation, control, condition, prohibition, standards, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharge by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by a local government regulations as required by section 307 of the Water Act (3 U.S.C. 1317).
- (5) The term “compliance” means compliance with clean air or water standards. compliance with clean air or water standards. Compliance shall also mean compliance with the scheduled or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or any air or water pollution control issued pursuant thereto.

- (6) The term “facility” means any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operations, owned leased, or supervised by a sponsor, to be utilized in the performance of an agreement or subagreement. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental facilities are collocated in one geographical area.

## **V. Assurance and Compliance**

As a condition of the grant or cooperative agreement, the recipient assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those set out in 7 CFR 3015, 3016, 3017 and 3018 which hereby are incorporated in this agreement by reference, and such other statutory provisions as are specifically set forth herein.

## **VI. Examination of Records**

Give the Service or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this agreement. Retain all records related to this agreement for a period of three years after completion of the terms of this agreement in accordance with the applicable OMB Circular.



## **ATTACHMENT B**

- I. EQUAL OPPORTUNITY (SCS-AS-83)
- II. EQUAL OPPORTUNITY (FEDERAL ASSISTED CONSTRUCTION) (SCS-AS-83)
- III. NOTICE TO CONTRACTING LOCAL ORGANIZATION OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES
- IV. NOTICE TO PROSPECTIVE FEDERALLY ASSISTED CONSTRUCTION CONTRACTORS
- V. NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES
- VI. CERTIFICATION OF NONSEGREGATED FACILITIES (SCS-AS-818)
- VII. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

## CONSTRUCTION

### **I. EQUAL OPPORTUNITY**

The Contracting Local Organization agrees to incorporate, or cause to be incorporated, into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is paid for, in whole or in part, with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following Equal Opportunity (Federally Assisted Construction) clause:

### **II. EQUAL OPPORTUNITY (FEDERALLY ASSISTED CONSTRUCTION)**

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicant for employment, notices to be provided setting forth the provisions of this Equal Opportunity (Federally Assisted Construction) clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Contractor will send to each labor union or representative of workers, with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicant for employment.
4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the Contractor's noncompliance with the Equal Opportunity (Federally Assisted Construction) clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

7. The Contractor shall include this Equal Opportunity (Federally Assisted Construction) clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Contracting Local Organization further agrees that it will be bound by the above Equal Opportunity (Federally Assisted Construction) clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, however, That if the Contracting Local Organization so participating is a State or local government, the above Equal Opportunity (Federally Assisted Construction) clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The Contracting Local Organization agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with the Equal Opportunity (Federally Assisted Construction) clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Contracting Local Organization further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the Equal Opportunity (Federally Assisted Construction) clause as may be imposed upon Contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D, of the Executive order. In addition, the Contracting Local Organization agrees that if it fails or refuses to comply with these undertakings the administering agency may take any or all of the following actions: Cancel, terminate, or suspend, in whole or in part, this grant; refrain from extending any further assistance to the Contracting Local Organization under the program with respect to which its failure or refusal occurred until satisfactory assurance of future compliance has been received from such Contracting Local Organization; and refer the case to the Department of Justice for appropriate legal proceedings.

### **III. NOTICE TO CONTRACTING LOCAL ORGANIZATION OR REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES**

(a) A Certification of Nonsegregated Facilities must be submitted by the Contracting Local Organization prior to any agreement for Federal financial assistance where the Contracting Local Organization will itself perform a federally assisted construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause.

(b) The Contracting Local Organization shall notify prospective federally assisted construction contractors of the Certification of Nonsegregated Facilities required, as follows:

### **IV. NOTICE TO PROSPECTIVE FEDERALLY ASSISTED CONSTRUCTION CONTRACTORS**

(a) A Certification of Nonsegregated Facilities must be submitted prior to the award of a federally assisted construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause.

(b) Contractors receiving federally assisted construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of the following notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

### **V. NOTICE TO PROSPECTIVE SUBCONTRACTORS OR REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES**

(a) A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause.

(b) Contractors receiving subcontract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

## VI. CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to federally assisted construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity Clause.)

The federally assisted construction contractor certifies that he/she does not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she does not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that he/she will not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she will not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The federally assisted construction contractor agrees that (except where he/she has obtained identical certifications from proposed subcontractors for specific time periods) he/she will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that he/she will retain such certifications in his/her files.

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

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Contractor

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Signature

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Title

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Date

## VII. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

### (EXECUTIVE ORDER 11246)

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Program, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. "Minority" includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all groups having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000, the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which the contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO Clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in

an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in Paragraphs 7.a. through 7.p. of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or Federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the *Federal Register* in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs or from Federal procurement Contracting Officers. The Contractor is expected to make substantially uniform progress toward meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligations to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
  - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority and female referral from a union, a recruitment source or community organization and of what action was

taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process had impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under Paragraph 7.b. above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper; annual report, etc.; specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or their employment decisions, including specific review of these items with on-site supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipate doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of the applications for apprenticeship or other training by any recruitment sources, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.



- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
  - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m. Ensure that seniority practices, job classification, work assignments, and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of the affirmative action obligations (Paragraphs 7.a. through 7.p.). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Paragraphs 7.a. through 7.p. of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables of affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
14. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in Paragraph 7. of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**EWP SITE  
ENVIRONMENTAL REVIEW CHECKLIST**

Please complete the appropriate sections of this form and return it, along with a copy of the Quad map indicating the specific area of concern, to:

Sponsor's liaison and address \_\_\_\_\_

**Section 1 to be completed by Sponsor prior to review of cooperating agencies. Sponsor provides 8.5" x 11" copy(ies) of USGS 7.5 minute Quad Map. All markings should be made using black ink. Be sure to indicate name of the Quad Map.**

**SECTION 1**

County \_\_\_\_\_

Site number(s) \_\_\_\_\_

Stream or River name(s) \_\_\_\_\_

River basin name \_\_\_\_\_

USGS 7.5 minute Quad name(s) \_\_\_\_\_

Describe proposed measures:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION 2**

Is site located in:

Section 10 Waters? (USACOE)..... Yes \_\_\_ No \_\_\_

Outstanding Resource Waters? (NCDWQ)..... Yes \_\_\_ No \_\_\_

High Quality Waters? (NCDWQ).....  Yes  No

Trout Waters? (NCDWQ, NCWRC).....  Yes  No

Is site and proposed work subject to buffer rules? (NCDWQ).....  Yes  No

Is site located in waters supporting  
anadromous fish spawning? (NCWRC, NMFS).....  Yes  No

Commercial shell-fishing waters (SA)?.....  Yes  No

Is site located in area providing important or unique habitat?.....  Yes  No

Is site located in waters or adjacent  
areas that contain or provides habitat  
for state or federal threatened or endangered  
species? (NCWRC, USFWS).....  Yes  No

Is site located in an area providing important or unique  
environmental values? (NC Natural Heritage).....  Yes  No

Are there records of archaeological or historic resources in or  
adjacent to the site? (NCDCCR).....  Yes  No

Is site in or adjacent to Wild or  
Scenic River? (NRCS/NC Parks and Rec).....  Yes  No

Comments / additional information:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of reviewing official

\_\_\_\_\_  
Date

**ATTACHMENT D**

**EMERGENCY WATERSHED PROTECTION MEASURES  
DESCRIPTION OF WORK TO BE CONSTRUCTED - HENDERSON COUNTY**

<b>DSR NO.</b>	<b>DESCRIPTION OF WORK</b>	<b>ESTIMATED COST</b>
Henderson-01	Stream Bank Stabilization Upper Broad River Upper Broad River Watershed	\$ 122,550.00
Henderson-02	Stream Bank Stabilization Clear Creek Clear Creek Watershed	\$ 221,775.00
Henderson-03	Stream Debris Removal and Disposal; Vegetation Clear Creek Clear Creek Watershed	\$ 122,000.00
Henderson-04	Stream Debris Removal and Disposal; Vegetation Green River; Hungry River Green River and Hungry River Watersheds	\$ 37,400.00
Henderson-05	Stream Bank Stabilization Green River; Hungry River Green River and Hungry River Watersheds	\$ 25,500.00
Henderson-06	Stream Bank Stabilization Vegetation Mills River Mills River Watershed	\$ 227,405.00
Henderson-07	Stream Debris Removal and Disposal; Vegetation Mills River Mills River Watershed	\$ 80,000.00
Henderson-08	Stream Debris Removal and Disposal; Vegetation Broad River Broad River Watershed	\$ 16,000.00

**ATTACHMENT D**

**EMERGENCY WATERSHED PROTECTION MEASURES  
DESCRIPTION OF WORK TO BE CONSTRUCTED - HENDERSON COUNTY**

<b>DSR NO.</b>	<b>DESCRIPTION OF WORK</b>	<b>ESTIMATED COST</b>
Henderson-09	Stream Bank Stabilization French Broad River Including Mill Pond, Boylston, Cane Creek Hooper's Creek, and McDowell Creek French Broad River Watershed	\$ 85,125.00
Henderson-10	Stream Debris Removal and Disposal; Vegetation French Broad River Including Mill Pond, Boylston, Cane Creek Hooper's Creek, and McDowell Creek French Broad River Watershed	\$ 80,000.00
Henderson-11	Stream Bank Stabilization Mud Creek and Tributaries Includes Crab Creek, Bat Fork, Devils Fork, and Tributaries Mud Creek Watershed	\$ 283,125.00
Henderson-12	Stream Debris Removal and Disposal; Vegetation Mud Creek and Tributaries Includes Crab Creek, Bat Fork, Devils Fork, and Tributaries Mud Creek Watershed	\$ 156,000.00
Henderson-13	Stream Bank Stabilization Land Slides; Bear Rock And Vitti Mud Creek and Broad River Watersheds	\$ 400,000.00