

**NATIONAL FISH AND WILDLIFE FOUNDATION
PROJECT FUNDING AGREEMENT**

Project Title
NFWF Project ID #

This Project Funding Agreement (“Agreement”) is made between Organization (“Recipient”), with an address of Organization Address and the National Fish and Wildlife Foundation (“NFWF”), with an address of 1625 Eye Street NW, Suite 300, Washington, DC 20006. (Recipient and NFWF each, a “Party,” and together, the “Parties.”)

1. **Purpose.** This Agreement pertains to Recipient’s implementation of the project entitled “Project Title” (the “Project”). Under this Agreement, NFWF agrees to provide funds (“Funds”) to Recipient in accordance with the terms hereof to pay costs associated with Recipient’s implementation of the Project.

The Project was selected and approved for funding by the United States Army Corps of Engineers Nashville and Memphis Districts (together, the “USACE”) in consultation with the Interagency Review Team under the Tennessee Mitigation Program Transferred Funds Account Memorandum of Agreement executed by the USACE and NFWF as of September 12, 2024.

2. **Project to be Funded.** A detailed description of the Project, including but not limited to the Project purpose, schedule, Budget (as defined in Section 5 below), activities, outcomes, and deliverables (collectively, the “Project Description”), is included as Exhibit A hereto. Recipient hereby agrees to use the Funds it receives under this Agreement exclusively to pay the costs of the services, time, materials, equipment, and other items comprising the Project (collectively, the “Work”), all in accordance with the Project Description.

3. **Term.** The term (“Term”) of this Agreement shall run from [Project Start Date], through [90 Days After Project End Date], (the “Termination Date”), unless otherwise terminated or amended as provided in this Agreement.

4. **Maximum Amount of Funding.** Unless agreed otherwise in writing by NFWF (acting in its sole discretion), the amount of Funds to be made available by NFWF to Recipient under this Agreement for purposes of paying the costs of the Work shall not exceed a maximum of [] Dollars (\$XX.XX) (the “Maximum Amount”).

5. **Project Budget.** The budget for the Project from commencement through completion (the “Budget”) is described in the Project Description and attached hereto as Exhibit B. The Parties expect that Recipient will conduct all the Work and complete the Project within the Budget and, accordingly, for a total amount of Funds equal to or less than the Maximum Amount. If at any time during the term of this Agreement Recipient believes, based on the Work performed to date, that the aggregate costs to complete the Project are likely to exceed the Maximum Amount, Recipient shall so notify NFWF immediately in writing.

a. The Budget is comprised of milestones (each a “Project Milestone” and together “Project Milestones”) for credit releases (each a “Credit Release”) with associated dollar amounts to be paid upon completion of the applicable Project Milestone and approval by the

USACE of the corresponding Credit Release.

b. Recipient shall conduct all the Work in conformance with the narrative descriptions thereof set forth in the Project Description and Project Milestones.

c. The Recipient shall conduct all the Work substantially in conformance with the narrative descriptions thereof set forth in the Project Description and Project Milestones.

6. **Payment for Project Costs.** Recipient may request payment of Funds hereunder for Work costs in accordance with the applicable Project Milestone (all such requests, "Payment Requests"). NFWF will pay to Recipient the amount of Funds properly requested and substantiated in a Payment Request within thirty (30) business days of both NFWF's receipt of such Payment Request and NFWF's receipt of written approval of such Payment Request by the USACE. Recipient shall submit Payment Requests in accordance with the following procedures and subject to the following terms and conditions:

- a. **Frequency and Amount.** Recipient may submit a Payment Request after the applicable Project Milestone has been completed and approved by the USACE. To receive payment, Recipient must submit to NFWF a written request containing 1) the total dollar amount of Funds being requested; and 2) written documentation of the USACE's approval of the Credit Release corresponding to the Project Milestone. If requested by NFWF, Recipient shall provide such other supporting documentation as NFWF deems reasonably necessary to evaluate the request.
- b. **Method of Submission.** If specified by NFWF, Recipient shall submit Payment Requests through NFWF's electronic project management system; otherwise, Recipient may submit Payment Requests to NFWF via electronic mail, facsimile, or regular mail.
- c. **Duplicative Funding.** If at any time Recipient receives payment or reimbursement from any other source for the same exact Work costs for which NFWF has provided payment or reimbursement hereunder, the Recipient shall so notify NFWF immediately in writing and shall cooperate with NFWF in remedying the duplicative funding, which may include returning to NFWF the amount of Funds received by Recipient as a result of such duplicate payment or reimbursement.
- d. **Ongoing Compliance.** NFWF reserves the right to refuse to pay all or any part of the Funds requested in a Payment Request if at the time the request is submitted Recipient has failed to comply with any term or condition of this Agreement or has otherwise failed to perform the Work to date in accordance with the Project Description and Budget.
- e. **Final Payment after Completion of all Work.** The term "Final Amount" shall mean the amount of Funds requested in the final Payment Request submitted by Recipient. NFWF shall have no obligation to pay the Final Amount until such time as NFWF has (i) determined that Recipient has fully completed the Work; and (ii) received and approved all deliverables associated with the Work and this

Agreement. Within thirty (30) business days after NFWF's and the USACE's determination that the requirements of the immediately preceding items (i) and (ii) have been satisfied, NFWF shall disburse to Recipient the Final Amount.

7. **Contact Information.**

NFWF Primary:

National Fish and Wildlife Foundation
_____, Impact-Directed Environmental Accounts
(IDEA)
1625 Eye Street NW, Suite 300
Washington, DC 20006
Telephone: 202-857-0166
E-mail: _____

NFWF Alternate:

National Fish and Wildlife Foundation
_____, Impact-Directed Environmental Accounts
(IDEA)
1625 Eye Street NW, Suite 300
Washington, DC 20006
Telephone: 202-857-0166
E-mail: _____

Recipient:

Each Party agrees to notify the other Party promptly in writing of any change in named representative, address, telephone, or other contact information. The Parties agree and acknowledge that any change to their respective named representative as set forth above shall not constitute an amendment to this Agreement and may be effected through written notice to the other Party.

8. **Incorporation of Project Description and Budget.** The Project Description and Budget are hereby expressly incorporated into this Agreement by this reference.

9. **Assignment.** Recipient may not assign this Agreement, in whole or in part, to any other individual or other legal entity without the prior written consent of NFWF.

10. **No Agency Between NFWF and Recipient or Sub-recipients.** Neither Recipient nor any contractor, subcontractor, or other recipient of Funds from Recipient (each, a "Sub-recipient") shall be deemed to be an agent, representative, employee, or servant of NFWF in connection with this Agreement. NFWF shall neither have the right to control, nor have any actual, potential or other control over, the methods and means by which Recipient or any of its agents, representatives, employees, or Sub-recipients conducts its business operations. Recipient shall not, in the performance of the Work, perform any act or make any representation to any person to the effect that Recipient or any of its agents, representatives, employees, or Sub-

recipients is the agent, representative, employee, or servant of NFWF.

If Recipient makes or issues any award or subaward of Funds to any Sub-recipient for purposes of performing the Work, then Recipient will be deemed to have represented and warranted to NFWF at each such time, in connection with each such award or subaward, as follows:

- a. in making such award or subaward of Funds, Recipient has complied with all applicable laws, regulations, rules, orders, and other governmental mandates, including, without limitation, those pertaining to procurement, acquisition, and other contracting actions by Recipient;
- b. in making such award or subaward of Funds, Recipient has complied with its internal policies and procedures applicable to procurement, acquisition, or contracting actions;
- c. each Sub-recipient is qualified to perform the applicable Work and is authorized to do business in each jurisdiction in which such Work is to be performed;
- d. each Sub-recipient is required under its agreement with Recipient to perform the applicable Work within budgeted costs identified for such Work as provided in the Budget;
- e. each Sub-recipient has agreed to conduct its activities related to the Work in compliance with all applicable laws, regulations, rules, orders, and other governmental mandates;
- f. each Sub-recipient has agreed to obtain and maintain all appropriate insurance against liability for injury to persons or property from any and all activities undertaken by such Sub-recipient related to the Work; and
- g. no Sub-recipient has any conflict of interest with respect to NFWF, Recipient, or the Project.

Recipient shall be responsible for supervising and directing the Work performed by all Sub-recipients and shall be responsible for all Sub-recipient activities as well as for coordinating all Sub-recipients' Work. As between Recipient and NFWF, Recipient shall bear sole responsibility for any and all liability caused or incurred by any Sub-recipient in performing Work. NFWF shall not be deemed by virtue of this Agreement to have any contractual obligation to, or relationship with, any Sub-recipient, and the Parties agree and acknowledge that as between NFWF and Recipient, all Work shall be deemed to be the responsibility of, and shall be performed by, Recipient.

11. **Conflict of Interest.** During the term of this Agreement, Recipient will maintain in effect policies governing conflicts of interest and, with respect to its performance of the Work and Project, will adhere to such policies.

12. **Unexpended Funds.** Any Funds provided by NFWF and held by Recipient and not

expended or obligated for Work on or before the Agreement's termination date will be returned by Recipient to NFWF within thirty (30) days after such termination date.

13. **Amendments.** Any amendment to this Agreement must be in writing and must be consented to in writing by both Parties. If required by NFWF, Recipient will submit amendment requests through NFWF's electronic project management system.

14. **Default and Termination.** In entering this Agreement and agreeing to provide Funds to Recipient for purposes of the Project, NFWF is expressly relying on the accuracy, validity, and completeness of the information provided by Recipient to NFWF, including but not limited to that contained in any application or proposal for Funds, in the Project Description, and in this Agreement. Any material misrepresentation or omission of information (as determined by NFWF in its reasonable discretion) made by Recipient to NFWF in connection with this Agreement or the Project shall constitute grounds for NFWF, in its sole discretion, to terminate this Agreement, effective immediately, by written notice delivered to Recipient. Failure by Recipient to comply (as determined by NFWF in its reasonable discretion) with any material term of this Agreement, including but not limited to any failure by Recipient to perform the Work in accordance with the Budget and schedule set forth in the Project Description, shall be deemed to be a default of this Agreement and shall constitute cause for NFWF to issue a written "Notice of Default" to Recipient. Any such Notice of Default shall describe in reasonable detail the basis for NFWF's determination of default and shall provide Recipient with a period of no less than ninety (90) days in which to cure such default (or, if such default is incapable of being cured within ninety (90) days, to commence a cure of such default). If Recipient has not cured or, as the case may be, commenced a cure of, any default within ninety (90) days of its receipt of a Notice of Default, NFWF may thereafter terminate this Agreement by a further written notice delivered to Recipient.

Recipient may terminate this Agreement by providing no less than thirty (30) days' prior written notice to NFWF.

In the event of termination of this Agreement prior to Recipient's expenditure or obligation of any Funds available hereunder, Recipient shall immediately (unless otherwise directed by NFWF in its notice if NFWF initiated the termination) undertake all reasonable steps to terminate any further expenditure or obligation of Funds, including but not limited to the following:

- a. Stop work on any portion of the Work that is incomplete, and refrain from undertaking any further Work on the Project.
- b. Place no further orders or enter into any further contracts or subcontracts for materials, facilities, or other aspects of the Work.
- c. Terminate all pending orders, contracts, and subcontracts for Work that have not yet commenced.

- d. Promptly take all other reasonable and feasible steps to minimize and/or mitigate any damages that may be caused by the failure to complete the Work, including but not limited to reasonable settlements of any outstanding claims arising out of termination of orders, contracts, and subcontracts related to the Work.
 - e. Deliver or make available to NFWF all data, drawings, specifications, reports, estimates, summaries, deliverables, and such other information and material as may have been accumulated by Recipient with respect to the Work, whether completed or in progress.
 - f. Return to NFWF any unobligated or unspent portion of the Funds then held by Recipient.
15. **Additional Support.** By entering into this Agreement, NFWF assumes no obligation to provide further funding or financial support to Recipient beyond the terms stated in this Agreement.
16. **Choice of Law.** This Agreement shall be subject to and interpreted by the laws of the District of Columbia, without regard to choice of law principles. By entering into this Agreement, Recipient agrees to submit to the jurisdiction of the courts of the District of Columbia.
17. **Compliance with Laws; Insurance; Indemnification.**
- a. In conducting its activities relating to the Work and performing its obligations under this Agreement, Recipient agrees to conduct all such activities in compliance with all applicable Federal, State, and local laws, regulations, and ordinances; and to secure, and comply with, all appropriate and necessary public or private permits and consents.
 - b. Recipient agrees to obtain and maintain all appropriate insurance against liability for injury to persons or property from any and all activities undertaken by Recipient and associated with this Agreement in any way; will have NFWF named as an additional insured on all such policies; and will provide NFWF with appropriate Certificates of Insurance reflecting such additions within sixty (60) days after this Agreement is fully executed.
 - c. Recipient shall indemnify and hold harmless NFWF and its officers, directors, agents, representatives, and employees in respect of any and all claims, injuries, losses, diminution in value, damages, liabilities, whether or not currently due, and related expenses (including without limitation, settlement costs and any legal or other expenses for investigating or defending any actions or threatened actions) arising from or in connection with the Work or Recipient's performance under this Agreement, including but not limited to, environmental laws, regulations, orders and decrees of whatever character or nature and damage or injury to persons or property.

d. The terms of the Section will survive termination of this Agreement.

18. **Disclaimers.** Payments made to Recipient under this Agreement do not by direct reference or implication convey NFWF's endorsement of the Work or any deliverables provided pursuant to the Agreement. All information submitted by Recipient for formal publication under this Agreement shall carry the following disclaimer:

"The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions, views, or policies of the National Fish and Wildlife Foundation. Nothing contained herein constitutes an endorsement in any respect by the National Fish and Wildlife Foundation."

19. **Website Links.** Recipient agrees to permit NFWF to post a link on any or all of NFWF's websites to descriptions of the Work, the Project, or this Agreement.

20. **Access to Records.** NFWF and any of its duly authorized representatives shall have access to any books, documents, papers and records of Recipient that are directly pertinent to this Agreement for purposes of making audits, examinations, excerpts, or transcription during the term of this Agreement and for a period of five (5) years after the Termination date. By executing this Agreement and accepting Funds hereunder, Recipient agrees, without limiting any other obligation under this Agreement, to produce, maintain, and retain such invoices, purchase orders, bills, time records, evidence of payment, and other documents as are necessary to permit NFWF to verify the proper use and expenditure of the Funds received by Recipient hereunder. The terms of this Section will survive termination of this Agreement.

21. **Use of Information.** If Recipient provides NFWF with any information Recipient considers to be privileged, confidential, or otherwise protected from public disclosure, all such information must be clearly identified as such in writing by Recipient in order to be eligible for potential protection from public disclosure by NFWF. Recipient acknowledges and agrees that NFWF may, in NFWF's discretion, share with third parties and make public any and all information ("Information") provided by Recipient to NFWF in connection with the Project or pursuant to this Agreement, except such Information as (a) has been clearly identified by Recipient in writing as privileged, confidential, or otherwise protected from disclosure and (b) has been agreed by NFWF in writing to be entitled to protection from disclosure. Notwithstanding anything to the contrary set forth herein, all Information submitted to NFWF by Recipient is subject to potential disclosure to the United States federal government.

22. **Severability.** Each provision of this Agreement is distinct and severable from the others. If one or more provisions is or becomes invalid, unlawful, or unenforceable in whole or in part, the validity, lawfulness and enforceability of the remaining provisions (and of the same provision to the extent enforceable) will not be impaired, and the parties agree to substitute a provision as similar to the offending provision as possible without its being invalid, unlawful or unenforceable.

23. **Binding Obligation.** This Agreement has been duly executed by a representative of Recipient with full authority to execute this Agreement and bind Recipient to the terms hereof. After execution by the representative of Recipient named on the signature page hereto, this Agreement will represent the legal, valid, and binding obligation of Recipient, enforceable against Recipient in accordance with its terms.

DISCUSSION DRAFT

IN WITNESS WHEREOF, both parties have signed this Agreement, intending to be bound legally.

Organization Name

_____ Date: _____

Name: _____

Title: _____

National Fish and Wildlife Foundation

_____ Date: _____

Robert Polin
Vice President, Impact-Directed Environmental Accounts

Exhibit A
USACE-Approved Project Development Plan
[Page intentionally left blank. See next page.]

DISCUSSION DRAFT

Exhibit B
Project Budget

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DISCUSSION DRAFT

Project Budget

[If the Project is Restoration and/or Enhancement, the format will be as follows:]

Project Milestone	Credit Release	Payment
Final Instrument Approval, Execution of Site Protection and Financial Assurances	20%	\$ [20% of total budget amount]
Post Construction, As-Built Report Submittal, IRT Approval, and Adaptive Management & Monitoring Financial Assurance is fully funded	20%	\$ [20% of total budget amount]
Year 2 Monitoring: Project meets Ecological Performance Standards,	15%	\$ [15% of total budget amount]
Year 4 Monitoring	20%	\$ [20% of total budget amount]
Year 5 Monitoring <ul style="list-style-type: none"> Any required Adaptive Management is completed Final Performance Standards have been attained Long-Term Management Fund 100% Funded 	25%	\$ [25% of total budget amount]
TOTAL	100%	\$ [TOTAL BUDGET AMOUNT]

[If the Project is Preservation, the format will be as follows:]

Project Milestone	Credit Release	Payment
Final Instrument Approval, USACE Approval and Execution of Site Protection	100%	\$ [100% of total budget amount]
TOTAL	100%	\$ [TOTAL BUDGET AMOUNT]