

CONDITIONAL GRANT AGREEMENT

This Conditional Grant Agreement (the “**Agreement**”) is made effective as of April 1, 2023, between:

The Habitat Conservation Trust Foundation, As Trustee of the Habitat Conservation Trust (“HCTF”)

And:

The organization identified as the Recipient Organization in the Grant Approval Notification (“Recipient”)

BACKGROUND:

- A. The Recipient has submitted a Proposal seeking the Grant Amount identified in the Grant Approval Notification to assist with the Project.
- B. In furtherance of the foregoing, the HCTF wishes to assist the Recipient with the Project by providing a Conditional Grant based on the terms of this Agreement.

IN CONSIDERATION OF the Grant Amount identified in the Grant Approval Notification and other good and valuable consideration, the receipt and adequacy of which is acknowledged by the parties hereto, HCTF and the Recipient agree as follows:

1. DEFINED TERMS

1.1 In this Agreement the following words and phrases have the following meanings:

“**Accountable Advance**” means any portion of the Conditional Grant advanced to the Recipient to be applied against Eligible Costs only, and which may become repayable, as provided for in this Agreement;

“**Agreement**” means this Agreement, including all amendments to this Agreement;

“**Conditional Grant**” means the funding HCTF agrees to provide to the Recipient;

“**Eligible Costs**” means the costs and expenses that are set out in the Proposal as amended by the Funding Conditions, and which are in the reasonable opinion of the HCTF, necessarily and properly incurred by the Recipient in connection with the Project;

“**Funding Conditions**” means restrictions and other conditions imposed by HCTF on the Project as set out in the Grant Approval Notification and that must be addressed in writing by the Recipient and approved by HCTF prior to the Recipient receiving any part of the Conditional Grant;

“**Grant Amount**” means the total dollar value of funding to be provided by HCTF, as identified in the Grant Approval Notification;

“**Grant Approval Notification**” means the email sent to the Project Leader which includes information specific to the Project, such as the Grant Amount and Funding Conditions;

“Grant Report” means a report detailing project processes, outcomes, and financial expenditures completed within the Survey Apply platform in order to provide HCTF with reasonable assurance that the Recipient has used the Conditional Grant for its intended purpose;

“HCTF’s Website” means the website set up by HCTF and found at www.hctf.ca;

“Material” means accounting records, findings, data, specifications, drawings, reports, and documents created by the Recipient for this Project;

“Project” means the work or undertaking identified by the Recipient in its Proposal and for which HCTF has agreed to provide the Conditional Grant as set out in this Agreement;

“Project Leader” means the individual who was identified as the Project Leader in the Proposal. Project Leaders are responsible for all aspects of their Project, and meeting the deliverables identified in their Proposal. The Recipient is ultimately responsible for ensuring the Project Leaders fulfill all their assigned obligations as set out in this Agreement and otherwise;

“Proposal” means the proposal submitted by the Recipient to HCTF;

“Survey Apply” means the online platform through which Proposals, Grant Reports, and other documents are submitted.

2. CONDITIONAL GRANT

- 2.1 The Project will start April 1, 2023 and must be completed by March 31, 2024, unless an extension has been approved in advance by HCTF.
- 2.2 The Conditional Grant is for one (1) year only as set out in section 2.1. Any future funding for this Project beyond one year requires the submission and approval of a new proposal for each subsequent year. HCTF will not be liable to the Recipient in any way if funding is not provided beyond one year.
- 2.3 The Conditional Grant is to be spent on the Project, as specified in the Proposal including any modifications from the Funding Conditions. Prior written approval by HCTF is required for any changes to activities or budgets related to the Project beyond 20% of the budget.
- 2.4 The Grant Amount is conditional on compliance by the Recipient with the terms and conditions of this Agreement, including any terms and conditions which may reduce funding.
- 2.5 The HCTF will provide the Recipient with a Conditional Grant to a maximum of the Grant Amount, as follows:
 - (a) an Accountable Advance of 50%, following:
 - (i) the execution and delivery of this Agreement; and
 - (ii) satisfactory evidence Funding Conditions have been satisfied;
 - (b) an Accountable Advance of up to 30% upon receipt of an invoice confirming that the initial 50% Accountable Advance has been fully spent; and
 - (c) a final payment of up to 20% upon Project completion, submission of an HCTF approved Grant Report, and an invoice requesting final payment. The final 20% represents a holdback and is not an Accountable Advance. The Recipient must submit the Grant Report and final invoice by no later than April 15, 2024.

- 2.6 The Recipient must return to HCTF any portion of the Conditional Grant not spent by Recipient by within 60 days of Project completion.
- 2.7 HCTF may, at its sole discretion, refuse to make a payment if outstanding Grant Reports exist relating to any other contractual obligations the Recipient may have with HCTF.
- 2.8 Despite any other terms of this Agreement, HCTF may deduct from any payment:
 - (a) any costs claimed by the Recipient that HCTF, acting reasonably, deems not to be Eligible Costs;
 - (b) any adjustments HCTF is entitled to make under this Agreement; and
 - (c) any amounts the Recipient owes HCTF for any reason.

3. REPORTING

- 3.1 The Recipient must submit a Grant Report within Survey Apply prior to April 15th, 2024. A Grant Report consists of written commentary on the completed activities and outcomes of the Project and a listing that accounts for all expenditures paid on the Project.
- 3.2 Failure to submit a Grant Report by the deadline in Section 3.1 constitutes an event of default and may result in HCTF disallowing Eligible Costs, requiring the Recipient to repay all or a portion of the Conditional Grant, or any other action identified under Section 11.
- 3.3 When submitting a Grant Report, the Recipient must also submit a reasonable number of high-quality digital photos of any fieldwork components of the Project.
- 3.4 If the Grant Report (or other reporting deliverable such as the final invoice) is incomplete or otherwise not satisfactory to HCTF (acting reasonably), then, in addition to any other remedies set out in this Agreement, HCTF may require the Recipient to revise the Grant Report or other deliverable.
- 3.5 Any information, reports or documents submitted by the Recipient may be shared with the Provincial and/or Federal government and may be catalogued in a document management system that is accessible to the general public.

4. DUTIES OF THE RECIPIENT

- 4.1 The Recipient will:
 - (a) complete the Project on or before March 31st, 2024;
 - (b) submit the Grant Report on or before April 15th, 2024
 - (c) permit access by HCTF or its delegate at all reasonable times to the work sites or Project areas which are or have been the subject of this Agreement, including participating in an evaluation of the Project;
 - (d) not exceed the Eligible Costs as set out in the Proposal, including any modifications in the Funding Conditions;
 - (e) provide all equipment, materials, supplies, labour, supervision and accommodation necessary to perform the work necessary to complete the Project;
 - (f) exercise the standard of care, skill and diligence normally exercised and observed by competent persons engaged in the performance of activities similar to the Project;

- (g) ensure that all health and safety standards are met;
- (h) ensure that it and any employees, Subcontractors, volunteers or agents employed on the Project are competent, properly trained and instructed as required to undertake and successfully complete the Project;
- (i) provide an update on Project plans and activities, either in writing or verbally when requested to do so by HCTF, within two weeks of such a request;
- (j) provide for any on-going Project operations and maintenance activities and related costs for the reasonable life expectancy of any Project that involves infrastructure development or building or creating a structure, including but not limited to weirs, dams, lake aerators and resistivity counters. This includes any activities or costs that extend beyond completion of the Project;
- (k) provide, to the best of their ability, stewardship and financial support for any on-going operations and maintenance activities and related costs for the Project that may or may not be set out in the Proposal as amended by the Funding Conditions, including any activities or costs that extend beyond the completion of the Project;
- (l) collect and retain any project data that HCTF requires to be collected through the duration of the project. Data collection requirements include any data collection identified in the proposal, and any additional requirements that HCTF provides in writing. Data collected must be provided to HCTF within two weeks of HCTF submitting a request and must be submitted in the format directed by HCTF.

5. COMMUNICATIONS

5.1 The Recipient will recognize support from HCTF and its partners in all signage, publications, presentations, or other communications by the Recipient in respect of the Project in accordance with the communications guidelines posted on HCTF's Website.

- (a) The Recipient will cooperate with HCTF in any additional communications initiatives by HCTF in respect of the Project.
- (b) HCTF may share Recipient's contact information with interested members of the media or public for purposes of reviewing and discussing Project objectives and outcomes.

6. RECORDS AND AUDITS

6.1 The Recipient must:

- (a) keep books of account for a period of five (5) years after the completion of the Project or termination of this Agreement;
- (b) permit HCTF or its delegate to examine and copy and take away copies of any or all of the books of account that may be reasonably necessary or desirable in the evaluator's opinion to verify the Recipient's compliance with this Agreement;
- (c) within fifteen (15) days of receiving a request from HCTF, submit further documentation, verification or information to support the Eligible Costs claimed.

7. CONFIDENTIALITY

- 7.1 The Recipient agrees to keep confidential any information HCTF requests in writing to be kept confidential. Confidentiality requirements may be waived or amended by mutual agreement of the Parties.

8. SUBCONTRACTING

- 8.1 The Recipient may not assign or subcontract this Agreement in whole or in part without the prior written consent of HCTF. If a subcontractor is listed in the Proposal, this is considered sufficient written consent unless the Funding Conditions state otherwise.

9. INDEMNIFICATION AND INSURANCE

- 9.1 The Recipient will indemnify and hold harmless HCTF, its employees and agents (collectively referred to in this Paragraph as "HCTF") from and against any and all losses, claims, damages, actions, causes of action, costs and expenses of whatsoever kind or nature that HCTF may incur, suffer or be put to either before or after the expiration or termination of this Agreement, by reason of any wrongful act or omission of the Recipient, its employees, officers, directors, shareholders or agents, or any Subcontractors or supplier of materials or services or any of their employees, officers, directors, shareholders or agents, as a result of or in any way arising out of this Agreement, the actions of the Recipient, or the Project, except where, and to the extent that, the loss, claim, damage, action, cause of action, cost or expense arises from the negligence or willful default of HCTF. Such indemnification survives the termination or expiration of this Agreement and any sub-contract.
- 9.2 Without limiting its obligations or liabilities under this Agreement, and at its own expense, the Recipient must obtain and maintain insurance which it is required to have by law and insurance which a prudent businessperson conducting similar operations would obtain and maintain to cover the risks it has assumed or may encounter as a result of entering into this Agreement or completing the project.
- 9.3 All the foregoing insurance will be primary and not require the sharing of any loss by any insurer of HCTF.
- 9.4 The Recipient will obtain Comprehensive/Commercial General Liability in an amount not less than \$2,000,000.00 inclusive per occurrence against bodily injury and property damage, and will add HCTF as an additional insured under the policy.
- 9.5 The Recipient hereby waives all rights of recourse against HCTF with regard to damage to the Recipient's property.
- 9.6 HCTF assumes no liability for loss, injury, or damage suffered or caused as a result of this Project.

10. INTELLECTUAL PROPERTY

- 10.1 HCTF acknowledges and agrees that the Recipient owns all right, title and interest in the Material and intellectual property arising from the Project under this Agreement, subject to any Recipient creator owned intellectual property policies.
- 10.2 The Recipient grants HCTF a perpetual non-exclusive, irrevocable, world-wide, fully paid up and royalty-free license to use, make, copy, distribute, translate, reproduce, or to further develop or

update all such intellectual property or other property resulting from or generated by the Project for any purpose under section 122 (1) *BC Wildlife Act*, including a license to use all submitted photo images free of charge to HCTF for the non-exclusive use in promoting HCTF. If requested by the Recipient, and if a photo is used by HCTF, photo credit will be given to the photographer.

11. EVENTS OF DEFAULT

- 11.1 The Recipient is in default of this Agreement if the Recipient defaults in the performance or observance of any part of this Agreement.
- 11.2 If any event of default occurs, HCTF may give written notice thereof to the Recipient and provide the Recipient with 15 days to cure the default, following which HCTF may, at its sole discretion, do any or all of the following:
- (a) terminate this Agreement;
 - (b) withhold, or suspend payment of, all or a portion of the Conditional Grant;
 - (c) disallow the Eligible Costs associated with the Project;
 - (d) require the Recipient to repay HCTF all or a portion of the Conditional Grant;
 - (e) use the withheld or repaid portion of the Conditional Grant to remedy the Event of Default; or
 - (f) take any other reasonable action HCTF considers appropriate.

12. TERMINATION

- 12.1 This Agreement may be terminated by either party for any reason on thirty (30) days' written notice. The Recipient may claim all Eligible Costs incurred up to the date on which the written notice of termination is given but not thereafter.
- 12.2 If this Agreement is terminated, no claim will be made by the Recipient for damages or losses occasioned by that termination, and HCTF will be under no further obligation to the Recipient except for Eligible Costs properly incurred up to the date of termination.
- 12.3 If this Agreement ends for any reason and HCTF determines that the Recipient owes money to HCTF, the Recipient will promptly repay money owing to HCTF.

13. RELATIONSHIP

- 13.1 Nothing in this Agreement shall be construed to make the Recipient an employee, partner, or agent of HCTF for any purpose whatsoever or to establish a partnership or joint venture between the Recipient and HCTF. The Recipient understands that it is not entitled to receive any benefits from HCTF or participate in any employee benefit plan.
- 13.2 The Recipient has no authority to and will not commit HCTF to pay any third party.

14. LAWS OF BRITISH COLUMBIA

- 14.1 This Agreement is governed by and construed in accordance with the laws British Columbia. The Recipient will comply with all applicable laws relating to the Project and will obtain and comply with all permits or other governmental authorizations required to permit the Recipient to carry out the Project.

14.2 All Recipient Material, information and reports provided to HCTF may be subject to disclosure in accordance with the *Freedom of Information and Protection of Privacy Act* (British Columbia).

15. DISPUTE RESOLUTION

15.1 The Parties agree that any dispute which cannot be resolved by the parties using reasonable efforts will be resolved by arbitration by a single arbitrator under the *BC Arbitration Act*.

16. ENTIRE AGREEMENT

16.1 This Agreement is the entire agreement between the Parties regarding the Conditional Grant and no promises, representations, understandings, or contracts, whether oral or written, exist between the Parties with respect to the Conditional Grant, except as expressly set out in this Agreement.

16.2 This Agreement may only be amended by an amendment to this Agreement consented to in writing by the Parties.

16.3 The Parties consent to this Agreement being entered into via Survey Apply in electronic form. Each Party is responsible for downloading and retaining this Agreement from Survey Apply. This Agreement may become unavailable on Survey Apply after 90 days.

16.4 Delivery of an executed counterpart of a signature page to this Agreement by facsimile or email shall be as effective as delivery of a manually executed signature page.

17. WAIVER

17.1 No term or breach of this Agreement may be waived, except with the written consent of HCTF. Written waiver in one instance by HCTF of any particular term or breach by the Recipient of this Agreement will not be deemed to be waiver in any subsequent or other instance.

18. FORCE MAJEURE

18.1 If either Party is rendered wholly or partly unable to perform its obligations under this Agreement, other than an ability to make a payment, as a result of an act or event that is beyond the reasonable control or responsibility of that Party, the performance of that Party's obligations will be suspended to the extent so affected, provided that the suspension of performance is of no greater scope and of no longer duration than is reasonably necessary and the non-performing Party uses reasonable efforts to remedy its inability to perform.

19. NOTICES

19.1 All notices will be given in writing via email, as follows:

- (a) The Recipient must contact HCTF via the contact information on HCTF's website
- (b) HCTF must contact the Recipient via the contact information provided for the Project Leader provided in the Proposal.

19.2 Unless advised in writing, any financial payments and all legal and administrative documentation that is not delivered electronically will be delivered to the Recipient's address provided in the Proposal.

TO EVIDENCE THEIR AGREEMENT, the Parties have executed this Agreement on the date appearing below.

SIGNED AND DELIVERED on behalf of HCTF by:

_____ **Date:** _____

AND

SIGNED AND DELIVERED on behalf of the Recipient by:

_____ **Date:** _____

SAMPLE