

## Military Training Market-Based Conservation Eastern North Carolina Project

### Landowner Contract

Whereas, North Carolina Foundation for Soil and Water Conservation (NCFSWC) is a North Carolina non-profit corporation and a non-governmental organization, which has entered into an agreement with the Department of the Navy (“NAVY”) entitled Encroachment Protection Agreement by and between the United States of America, and North Carolina Foundation for Soil and Water Conservation Concerning the Market-Based Conservation Pilot Program dated \_\_\_\_\_ (hereinafter referred to as “Agreement”) to implement the Military Training Market-Based Conservation Pilot Program or “Pilot Program.”

Whereas, the Pilot Program’s purpose is to relieve or eliminate current and anticipated challenges that could restrict, impede, or otherwise interfere with current and anticipated military activities that involve Military Training Route (MTR) VR1046 and Special Use Airspace (SUA) 5306A in Eastern North Carolina and to maintain and improve natural resources on and in the farms, woodlands, forests, open spaces, and waters that lie off any Department of Defense installation but that lie beneath the MTR and SUA and that connect, buffer, and support the military bases and ranges that use the MTR and SUA. Attached hereto as Exhibit A and incorporated by reference herein is a map of MTR-VR1046 and SUA 5306A.

Whereas, fixed-term performance contracts, technical assistance for landowners, a market-based reverse auction system, and landowner Land Management Plans (agriculture conservation plans, forestry management plans and/or wildlife management plans) will be important parts of the Pilot Program.

Whereas, the Pilot Program simultaneously advances working lands, natural resource conservation, and national defense. The implementation of the Pilot Program will be led jointly by the Marine Corps Installations Command East (“MCIEAST”), NAVY and NCFSWC.

Whereas, the Agreement authorizes NCFSWC to enter into contracts with private landowners. Landowners will receive incentive payments to participate in the Pilot Program.

Whereas, \_\_\_\_\_, (“Landowner”) is such an owner, owning the land described on Exhibit B attached hereto and incorporated by reference herein (the “Property”), and desires to enter into such a contract, to receive such technical assistance, and as a condition for eligibility must commit to a new, or adopt an existing Land Management Plan;

Whereas, Landowner has requested NCFSWC, through the County Soil and Water Conservation District, to provide Landowner with technical guidance in connection with Landowner’s efforts on the Property to provide for the maintenance and improvement of natural resources managed under a current or new Land Management Plan. Attached hereto as Exhibit C and incorporated by reference herein is a form certifying that a management plan is in place.

The Landowner has submitted a bid to participate in the Pilot Program, and the bid has been approved by NCFSWC and MCIEAST. For good, valuable, and sufficient consideration received, Landowner and NCFSWC (the “Parties”) have agreed and hereby agree to the following:

1. The Contract Period. Unless sooner terminated as provided herein, this Contract shall be effective from the Effective Date (as hereinafter defined) until \_\_\_\_\_ (“Contract Period”).

2. Landowner's Obligations. During the Contract Period, Landowner shall:

(a) Remain enrolled in a Present-use Value or the Wildlife Conservation Program compliant with and approved pursuant to NC General Statute 105-277.2 through 105-277.7 if currently enrolled. If not, Landowner shall enroll in such program.

(b) Maintain the land in military mission compatible land uses so as to protect and sustain the MTR or SUA (e.g., working farms, ranches, forests, open space, etc). The criterion for compatible land use and new uses are:

i. No new construction of a structure greater than one hundred (100) feet above ground level.

ii. No exterior light emissions that would interfere with pilot vision. All lighting equipment, including but not limited to floodlights, searchlights and recreational lighting, and all protective lighting shall have positive optical control that shines downward so that no direct light is emitted above the horizontal plane. The PROPERTY shall not be used to generate visible emissions which violate the provisions of North Carolina Administrative Code (NCAC) 15 2D.0520, Control of Visible Emissions as these provisions exist on the date of the Declaration of Restriction.

iii. No construction of multi-residential or commercial facilities not directly associated with the agricultural operations of the Property.

iv. No construction of landfill operations on property requiring a permit or license by a state or local governmental entity.

(c) Permit on-site and off-site monitoring activities by NCFSWC and County Soil and Water Conservation District staff or designated representatives to ensure adherence to the provisions of the Contract.

(d) Permit access to comply with item (b) by NCFSWC and County Soil and Water Conservation District staff or designated representatives.

(e) Landowner shall keep current and actively comply with the Land Management Plan for the Property.

3. NCFSWC's Obligations. During the Contract Period, NCFSWC shall timely pay Landowner \_\_\_\_\_ annual payments of \$\_\_\_\_\_, with the first payment being made within one (1) year of the Effective Date of the Contract. Second and subsequent payments will be made within one (1) year of the last payment and after completion of the current year monitoring activities. NCFSWC shall comply with all of its obligations under the Agreement and this Landowner Contract.

4. Landowner Default. Landowner shall be in default (a) if Landowner fails to comply with any of Landowner's obligations under this Contract, (b) if proceedings are commenced by or against Landowner in any court under a bankruptcy act or for the appointment of a trustee or a receiver of any or all of Landowner's property, (c) if Landowner makes a general assignment of this contract for the benefit of creditors, (d) if Landowner's ownership of, and/or right to possess and use, any or all of the Property is acquired by any other person and/or entity (including government taking) without that other person and/or

entity becoming bound by this Contract, and/or (e) the property protected by the Pilot Program is negligently and/or intentionally damaged or destroyed by Landowner, and/or Landowner's employees, agents, representatives, and/or invitees.

5. NCFSWC Remedies. NCFSCW may terminate this Contract if Landowner is in default and cannot or does not cure that default within forty-five (45) days after NCFSWC sends Landowner notice of that default by certified mail, return receipt requested. A termination of the Contract would include, but not be limited to, termination of Landowner's right to future annual payments and/or termination of any future participation in the Pilot Program. In addition, upon the occurrence of Landowner's default, Landowner shall refund to NCFSWC all monies previously paid to Landowner since the inception of this Contract. Any and all amounts due to Landowner for future participation shall be retained by NCFSWC upon termination.

If Landowner breaches the Contract, NCFSWC shall be entitled, in addition to the above remedies and any other remedies available to it hereunder, to obtain from any court of competent jurisdiction an injunction prohibiting Landowner from further breaches of the Contract and/or to comply with the Contract, including requiring the restoration of the Property to its prior condition. NCFSWC shall be entitled, without the posting of any bond or security, to the entry of temporary and permanent injunctions and orders of specific performance enforcing the provisions of this Contract, including requiring the restoration of the Property to its prior condition. If NCFSWC secures any such injunction or order of specific performance, Landowner shall pay NCFSWC an amount equal to the aggregate of the cost of NCFSWC obtaining such relief, including, without limitation, reasonable attorneys' fees, costs, litigation expenses, and all other damages incurred by NCFSWC as a result of Landowner's breach of this Contract.

Any rights of NCFSWC to enforce Landowner's compliance with this Contract as set forth in this section may be exercised by NCFSWC or its agents, representatives, or designees, including, but not limited to, NAVY and/or the North Carolina Department of Agriculture. This shall include the right to take action to compel Landowner's compliance with the terms of this Contract. In addition, NAVY may, as an intended third party beneficiary, enforce the land use restrictions on the property contained in the Declaration of Restriction.

6. NCFSWC's Default. NCFSWC shall be in default (a) if NCFSWC fails to comply with any of NCFSWC's obligations under this Contract, (b) if proceedings are commenced by or against NCFSWC in any court under a bankruptcy act or for the appointment of a trustee or a receiver of any or all of NCFSWC's property, or (c) if NCFSWC makes a general assignment of this contract for the benefit of creditors.

7. Landowner's Remedies. If NCFSWC is in default and cannot or does not cure that default within forty-five (45) days after Landowner sends NCFSWC notice of that default by certified mail, return receipt requested, Landowner may, as Landowner's sole and exclusive right and remedy, terminate this Contract and demand and receive immediate payment of any current and past annual payments unpaid to Landowner under this Contract.

8. Termination by NCFSWC. NCFSWC may terminate this Contract at any time by giving Landowner forty-five (45) days notice of the termination. Notice is to be given by certified mail, return receipt requested.

9. Declaration of Restriction. This Contract shall be binding on any transferee or purchaser of the Property. Landowner shall execute a Declaration of Restriction in the form attached hereto as Exhibit D. Said Declaration of Restriction shall be recorded in the appropriate Register of Deeds' Office

by NCFSCW. Landowner understands that pursuant to the terms and conditions of the Agreement that NCFSCW may be required to assign the Declaration of Restriction to the NAVY and Landowner hereby consents to such assignment as a condition of this Contract. Should the Declaration of Restriction be assigned to the NAVY as a result of termination of this Contract by either party, NAVY has the unilateral right to continue annual payments to the Landowner, or at the sole discretion of the NAVY, make a lump sum payment to continue the enforceability of the Declaration of Restriction. The payment, whether lump sum or in annual installments shall not exceed the unpaid balance of the purchase price of the Declaration of Restriction due for the remaining term of the Contract and is subject to the availability of funds.

10. Notice. Notice shall be given to the parties at the addresses indicated below. Such notice shall be deemed received upon the earliest of actual delivery or seventy-two (72) hours after posting the same (postage, delivery, or transmission charges paid). The place of notice may change upon written notification of either party to the other, posted to the last known address.

To Landowner(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To NCFSCW: Michelle Lovejoy  
NC Foundation for Soil and Water Conservation  
5171 Glenwood Avenue, Suite 330  
Raleigh, North Carolina 27612

11. Assignment. This Contract may be assigned by NCFSCW with the express written consent of the NAVY. All covenants made under this Contract shall bind and inure to the benefit of any successors and assigns of NCFSCW whether or not expressly assumed or acknowledged by such successors or assigns.

12. Entire Agreement; Amendment. This Contract contains the entire agreement between the Parties. It supersedes any and all prior agreements, arrangements, or understandings between the Parties on all subjects in any way related to the transaction or occurrence described in this Contract. No oral understandings, statements, promises, or inducements exist contrary to, or inconsistent with, the terms of this Contract. This Contract is subject to modification, waiver, or addition only by means of a writing signed by the Parties.

13. Governing Law. This Contract shall be governed by and construed in accordance with applicable Federal and State law as it may affect the rights, remedies, and obligations of the United States.

14. Binding Effect. This Contract shall be binding on the parties hereto, their heirs, successors, assigns, purchasers, and transferees.

15. Attachments.  
Exhibit A: Map of MTR-VR1046 and SUA 5306A.  
Exhibit B: County Property/Tax Map of participating Landowner(s) or other description.  
Exhibit C: Land Management Plan Certification Form  
Exhibit D: Declaration of Restriction

16. Authorized Representative. The individuals signing below indicate that they are duly authorized to execute this Contract in the name, and on behalf, of the respective Parties for the purposes and consideration expressed in this Contract. Any and all owners of the property shall be required to sign

this Landowner Contract and the Declaration of Restriction unless the executing landowner provides a power of attorney acceptable to NCFSWC and NAVY.

“Effective Date:” \_\_\_\_\_

NC Foundation for Soil and Water Conservation, a North Carolina non-profit corporation

By: \_\_\_\_\_  
Authorized Agent

\_\_\_\_\_  
Landowner

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, a Notary Public of the County and State aforesaid, do hereby certify that the following person or persons personally appeared before me this day and acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: \_\_\_\_\_, Authorized Agent for NC Foundation for Soil and Water Conservation.

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

\_\_\_\_\_  
*Official Signature of Notary*

(Official Seal)

\_\_\_\_\_  
*Printed or typed name of Notary*

My Commission Expires: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, a Notary Public of the County and State aforesaid, do hereby certify that the following person or persons personally appeared before me this day and acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: \_\_\_\_\_, current property owner.

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

\_\_\_\_\_  
*Official Signature of Notary*

(Official Seal)

\_\_\_\_\_  
*Printed or typed name of Notary*

My Commission Expires: \_\_\_\_\_