



Fm-3-569

## GRANT AGREEMENT

BETWEEN

**SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND**

**LAKE CONESTEE DAM RESTORATION FUND, INC.**

This Agreement by and between the South Carolina Department of Health and Environmental Control (DHEC) and Lake Conestee Dam Restoration Fund, Inc. (Recipient), a limited liability company existing under the laws of South Carolina, is to provide for the distribution of funds **\$3,000,000.00** (nonrecurring funds) appropriated in 2022 Act 239, Part IB, Proviso 118.19 (83) J040 (z).

The parties agree as follows:

A. STATEMENT OF PURPOSE:

The purpose of the Agreement is to provide funding to Recipient in support of the **Conestee Dam Emergency Risk Mitigation Project**. This Agreement furthers DHEC's statutory mission as authorized in South Carolina Code **Section 48-39-10 to 48-39-360** and serves the public purpose of **environmental protections and conservation**.

B. SCOPE OF SERVICES:

The Recipient and its Manager (who shall serve in a fiduciary capacity) shall utilize the funds for the Conestee Dam Emergency Risk Mitigation Project (the "Project") as outlined in the attached earmarked appropriations Disbursement Request Form (Exhibit 1) as completed with supporting documents, which will be incorporated into this Agreement upon acceptance under Paragraph D. funds received shall be maintained in a separate, interest-bearing account. Cash received and interest earned shall be used solely for the purposes set forth herein, including management and administration expenses of the recipient as set forth in the grant budget.

C. TERM:

This Agreement shall be effective upon signature, calendar year 2022 and shall terminate on December 31, 2024, and may be extended thereafter. Either party may terminate this Agreement for its convenience and without cause upon the provision of at least thirty (30) days' prior written notice to the other party. Recipient's obligations under this Agreement shall survive termination.

D. PAYMENT:

1. Recipient shall request payment not to exceed **\$3,000,000.00** by submittal of the attached Disbursement Request Form (Exhibit 1) including the following as required by Proviso **117.21**: and DHEC. This funding may be requested in one or more disbursement requests.
  - a. An accounting of how the funds will be spent (*see Anticipated Budget, exhibit 2*),
  - b. Goals to be accomplished, and
  - c. Proposed measures to evaluate success in implementing and meeting the goals.  
*(Per Proviso 117.21 no funds shall be released until the required plan of how the state funds will be spent and how the expenditures will provide a public benefit are filed with the agency).*
2. Upon acceptance by DHEC, Exhibits 1 and 2 will be incorporated into and made a part of this Agreement. This includes organization certifications.
3. Recipient must register with SCEIS as a vendor and provide vendor information on the request for payment.
4. Payment is contingent on DHEC receipt of funds.
5. Upon Disbursement Request and Anticipated Budget review and approval, DHEC will transmit the funds to Recipient by check delivered to:

**Lake Conestee Dam Restoration Fund, Inc.**

Attn: Kelly D. H. Lowry  
753 E Main St., Suite 7  
Spartanburg SC 29302  
kelly@lowryandassociates.com  
864.921.8915

6. Source of Funds: State funds made available in the **FY2023** Appropriations Act Proviso 118.19 as a nonrecurring distribution per legislative direction, effective July 1, 2022. DHEC's Point of Contact for financial information regarding payments made under this Agreement:

Bruce C. Busbee, Director  
Budgets and Financial Planning  
SCDHEC  
2600 Bull Street  
Columbia, South Carolina, 29201

E. REPORTING REQUIREMENTS; AUDITS:

1. Recipient shall submit to DHEC quarterly expenditure reports containing a detailed accounting of its use of the funds, the services completed, and the outcome measures used to determine the success of the stated goals in sufficient detail for DHEC to determine Recipient's compliance with the Scope of Services set forth in Paragraph B above. This report should include an expected completion date by which it anticipates all funds will be spend. Recipient shall also submit a final report with this information within 90 days after project completion or exhaustion of funds.
2. Recipient will allow the State Auditor to audit or cause to be audited the funds.

F. PREVENTING AND REPORTING FRAUD, WASTE, AND ABUSE:

1. DHEC has procedures and policies concerning the prevention and reporting of fraud, waste, and abuse (FWA) in agency-funded programs, including but not limited to those funded by federal grants such as Medicaid. No agency employee, agent, or Recipient shall direct,

participate in, approve, or tolerate any violation of federal or State laws regarding FWA in government programs.

2. Federal law prohibits any person or company from knowingly submitting false or fraudulent claims or statements to a federally funded program, including false claims for payment or conspiracy to get such a claim approved or paid. The False Claims Act, 31 U.S.C. §3729-3733, and other "whistleblower" statutes include remedies for employees who are retaliated against in their employment for reporting violations of the Act or for reporting fraud, waste, abuse, or violations of law in connection with federal contracts or grants, or danger to public health or safety. Under State law, persons may be criminally prosecuted for false claims made for health care benefits, for Medicaid fraud, for insurance fraud, or for using a computer in a fraud scheme or to obtain money or services by false representations.
  3. If Recipient or Recipient's agents or employees have reason to suspect FWA in DHEC programs, this information should be reported in confidence to DHEC. A report may be made by writing to the Office of Internal Audits, DHEC, 2600 Bull Street, Columbia, SC 29201; or by calling the DHEC Fraud, Waste and Abuse Hotline at 803-896-0650 or toll-free at 1-866-206-5202. Recipient is required to inform Recipient's employees of the existence of DHEC's policy prohibiting FWA and the procedures for reporting FWA to the agency. Recipient must also inform recipient's employees, in writing, of their rights and remedies under 41 U.S.C. §4712 concerning reporting FWA or violations of law in connection with federal contracts or grants, or danger to public health or safety, in the predominant native language of the workforce.
- G. USE OF FUNDS: Recipient will not use, expend, or allow use or expenditure of the funds for any purpose not authorized in and consistent with this Agreement. Unexpended funds distributed pursuant to this Agreement may be carried forward to succeeding fiscal years and expended for the same purposes. Recipient shall continue the reporting and monitoring required under this Agreement until all funds are spent.
- H. RETURN OF FUNDS: The State of South Carolina reserves the right to all remedies available to it under law for the enforcement of this Agreement including but not limited to the right to demand repayment of any funds that

remain unused at completion of the project or that were used for purposes not authorized in this Agreement.

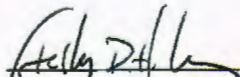
- I. **NON-DISCRIMINATION:** Recipient represents and agrees that it does not and will not practice discrimination, or use the funds for purposes which discriminate, against persons by virtue of race, religion, color, sex, age, national origin, disability, veteran status, pregnancy, gender identity, sexual orientation, or any other basis prohibited by law.
- J. **RECORDKEEPING:** Recipient shall create and maintain adequate records to document all matters covered by this Agreement. Recipient shall retain all such records for six (6) years or other longer period required by law after termination, cancellation, or expiration of the Agreement or after final expenditure of funds, whichever is later, and make records available for inspection, copying, and audit by DHEC or other authorized agent of the State. If any litigation, claim, or audit has begun but is not completed or if audit findings have not been resolved at the end of the retention period, the records shall be retained until all litigation, claims, or audit findings involving the funds have been resolved.
- K. **PUBLIC INFORMATION:** All information relating to distribution and use of the funds, including all reports and documentation submitted to DHEC under this Agreement, is subject to public disclosure under the South Carolina Freedom of Information Act and may be published on DHEC's internet web site.
- L. **ATTACHMENTS:** Attachments to this Agreement are incorporated into and made part of this Agreement.

**SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND**

**LAKE CONESTEE DAM RESTORATION FUND, INC.**



Bruce C. Busbee  
Director of Budgets and Financial Planning



Kelly D. H. Lowry  
President

12/9/2022

Date

December 7, 2022

Date

MAILING ADDRESS:

SC DHEC - Office of Budgets and Financial Planning

MAILING ADDRESS:

Lake Conestee Dam Restoration Fund, Inc.

2600 Bull Street  
Columbia, SC 29201  
Phone: 803-898-3388  
Fax: 803-253-7637

Attn: Kelly D. H. Lowry  
753 E Main St., Suite 7  
Spartanburg SC 29302  
kelly@lowryandassociates.com  
864.921.8915

TAX/EMPLOYER ID #92-1168431

TYPE OF ENTITY (check one):

- Corporation
- LLC
- Partnership
- Nonprofit organization
- Government agency or political subdivision – specify State if not SC:
- Other Governmental body (specify)
- Individual/sole proprietor
- Other (specify)

If a corporation or LLC:

State of incorporation/organization:

Delaware

Registered agent and address in South Carolina:

Kelly D. H. Lowry  
753 E Main St., Suite 7  
Spartanburg SC 29302  
kelly@lowryandassociates.com  
864.921.8915

THIS AGREEMENT IS NOT OFFICIAL AND BINDING UNTIL SIGNED BY THE DHEC CONTRACTS MANAGER.

  
\_\_\_\_\_  
Francine Miller  
DHEC Contracts Manager

DATE: 12-9-22

### Anticipated Budget for Lake Conestee Dam Restoration Fund, Inc.

Budget Categories	2022-2023	2024	Total Budgeted
Item 1: Kleinschmidt Engineering; current contract is \$50,000 through the end of 2022, detailed design, oversight, and testing costs of \$3,704,000 expected over three years, \$1,275,000 total through the end of 2023, and \$1,234,666 for 2024 and 2025.	\$1,275,000.00	\$1,233,000.00	\$2,508,000.00
Item 2: Caliber Engineering; evaluation and review of investigation report and proposed initial design; \$10,000 expected through end of 2022, and approximately \$5,000 per month through 2023.	\$50,000.00	\$10,000.00	\$60,000.00
Item 3: Fund administration - cost for administration of fund and substantive involvement of fund manager; this budget item includes compensation to manager at an hourly rate of \$250/hr., payment of taxes, engagement of professionals as necessary, and necessary expenditures such as travel.	\$56,000.00	\$46,000.00	\$102,000.00
Item 4: Engineering and professional services contingency - Accomodation of potential change orders, overages, and budgetary exceedences	\$180,000.00	\$150,000.00	\$330,000.00
<b>Totals</b>	<b>\$1,561,000.00</b>	<b>\$1,439,000.00</b>	<b>\$3,000,000.00</b>



### State of South Carolina Request for Contribution Distribution

This form is designed to collect the information required by South Carolina in accordance with Proviso 117.21 of the appropriations act of 2022 and Executive Order 2022-19. This form must be submitted to the state agency that is providing the contribution for the designated organization. The state agency providing the contribution should use this form to collect information from the designated organization. The information must be collected from the designated organization before the funds can be disbursed.

Amount	State Agency Providing the Contribution	Purpose
\$250,000.00	J040 - Department of Health and Environmental Control	Lake Conestee emergency dam mitigation

Entity Name	Lake Conestee Dam Restoration Fund, Inc.
Address	Attn: Kelly D. H. Lowry, 753 E Main St., Suite 7
City/State/Zip	Spartanburg SC 29302
Website	n/a
Tax ID#	92-1169431
Entity Type	Nonprofit Organization

Contact Name	Kelly D. H. Lowry
Position/Title	Manager
Telephone	864.921.8915
Email	kelly@lowryandassociates.com

Description	Budget	Explanation
Engineering investigation and initial design - Kleinachmidt Group	\$150,000.00	Investigation of Lake Conestee dam and initial design of proposed remedy
Independent engineer peer review - Caliber Engineering	\$25,000.00	Evaluation and review of investigation report and proposed initial design (QA/QC)
Fund administration	\$25,000.00	Provide for fund administration and participation of fund manager
Engineering, professional, legal services contingency	\$50,000.00	Accommodation of potential change orders, overruns, and budgetary exceedances
<b>Grand Total</b>	<b>\$250,000.00</b>	*This is the first of a series of disbursement requests; see attached three-year budget

Located approximately seven miles downstream from Greenville, South Carolina, Lake Conestee and the Lake Conestee Preserve provide unique and valuable ecological resources for the upstate of South Carolina through their riverine and lacustrine habitats and the associated upland resources. The lake was formed in 1892 by a dam across the Roedy River installed to provide hydroelectric power for Conestee Village and Conestee Mill. The dam has significant deficiencies that require immediate investigation and study to determine action needed to remedy the deficiencies. If the dam were to fail, there would be serious consequences downstream, including flooding, sediment deposition with possible hazardous substances, and a loss of stormwater attenuation, among other things. Dam failure would also result in a significant loss of riverine, lacustrine, and wetland resources in the reservoir and its upstream habitat, including a bird sanctuary providing a home to more than 225 species of birds. The LCRDF has worked and will continue to work closely with the Conestee Foundation and two prominent engineering firms to investigate the internal structure and stability of the dam, and to provide engineering solutions with the goal of remedying the deficiencies, with possible outcomes including repair or replacement of the existing dam. The primary stakeholders in the project include Conestee Foundation, RONA, Duke Energy, Greenville, Laurens, and Greenwood Counties, and the local legislative delegations, each of which has attended stakeholder meetings and plans to attend future meetings. This initial phase of the project will result in recommendations and measures to evaluate success to restore the dam's functionality and safety while preserving the natural resources in the impoundment and the Roedy River, all of which is an enormous public benefit to the citizens of South Carolina. These recommendations and measures to evaluate success will be provided to all of the stakeholders and to the South Carolina legislature.

- 1) Organization hereby gives assurance that no person shall, upon the grounds of race, creed, color, or national origin, be excluded from participation in, be denied the benefit of, or be otherwise subjected to discrimination under any program or activity for which this organization is responsible.
- 2) Organization certifies that it will provide quarterly spending reports to the Agency Providing Contribution listed above.
- 3) Organization certifies that it will provide an accounting at the end of the fiscal year to the Agency Providing Contribution listed above.
- 4) Organization certifies that it will allow the State Auditor to audit or cause to be audited the contributed funds.

Organization Signature  
 Kelly D. H. Lowry  
 Printed Name

President  
 Title  
 2022.12.15  
 Date

- 1) State Agency certifies that the planned expenditure aligns with the Agency's mission and/or the purpose specified in the appropriations act of 2022.
- 2) State Agency certifies that the Organization has set forth a public purpose to be served through receipt of the expenditure.
- 3) State Agency certifies that it will make disbursements directly to the organization.
- 4) State Agency certifies that it will provide the quarterly spending reports and accounting received from the organization to the Senate Finance Committee, House Ways and Means Committee, and the Executive Budget Office by June 30, 2023.
- 5) State Agency certifies that it will publish on their website any and all reports, accountings, forms, updates, communications, or other materials required by Proviso 117.21 of the appropriations act of 2022.
- 6) State Agency will certify to the Office of the Governor that it has complied with the requirements of Executive Order 2022-19 by June 30, 2023.

Agency Head Signature  
 Edward Simmer  
 Printed Name

12-15-2022  
 Date





State of South Carolina  
Office of the Secretary of State  
The Honorable Mark Hammond

Dec 15, 2022

Lake Conestee Dam Restoration Fund, Inc.  
Dr. Kelly D Lowry  
753 E MAIN ST STE 7  
SPARTANBURG, SC 29302-1284

RE: Registration Confirmation

Charity Public ID: P75369

Dear Dr. Kelly D Lowry :

This letter confirms that the Secretary of State's Office has received and accepted your Registration, therefore, your charitable organization is in compliance with the registration requirement of the "South Carolina Solicitation of Charitable Funds Act." The registration of your charitable organization will expire on May 15, 2023.

If any of the information on your Registration form changes throughout the course of the year, please contact our office to make updates. It is important that this information remain updated so that our office can keep you informed of any changes that may affect your charitable organization.

If you have not yet filed your annual financial report or an extension for the annual financial report, the annual financial report is still due 4 ½ months after the close of your fiscal year.

- Annual financial reports must either be submitted on the Internal Revenue Service Form 990 or 990-EZ or the Secretary of State's Annual Financial Report Form.
- If you wish to extend the filing of that form with us, please submit a written request by email or fax to our office using the contact information below. Failure to submit the annual financial report may result in an administrative fine of up to \$2,000.00.

If you have any questions or concerns, please visit our website at [www.sos.sc.gov](http://www.sos.sc.gov) or contact our office using the contact information below.

Sincerely,

Kimberly S. Wickersham  
Director, Division of Public Charities



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<b>Grand Total</b>	<b>\$250,000.00</b>	*This is the first of a series of disbursement requests per attached three-year budget

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- 2) Organization certifies that it will provide quarterly spending reports to the Agency Providing Contribution listed above.
- 3) Organization certifies that it will provide an accounting at the end of the fiscal year to the Agency Providing Contribution listed above.
- 4) Organization certifies that it will allow the State Auditor to audit or cause to be audited the contributed funds.

Organization Signature  
 Kelly D. H. Lowry  
 Printed Name

President  
 Title  
 2022.12.15  
 Date

- 1) State Agency certifies that the planned expenditure aligns with the Agency's mission and/or the purposes specified in the appropriations act of 2022.
- 2) State Agency certifies that the Organization has set forth a public purpose to be served through receipt of the expenditure.
- 3) State Agency certifies that it will make distributions directly to the organization.
- 4) State Agency certifies that it will provide the quarterly spending reports and accounting received from the organization to the Senate Finance Committee, House Ways and Means Committee, and the Executive Budget Office by June 30, 2023.
- 5) State Agency certifies that it will publish on their website any and all reports, accountings, forms, updates, communications, or other materials required by Proviso 117.21 of the appropriations act of 2022.
- 6) State Agency will certify to the Office of the Governor that it has complied with the requirements of Executive Order 2022-19 by June 30, 2023.

Agency Head Signature  
 Edward Simmer  
 Printed Name

12-15-2022  
 Date

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 10050023 not Relevant  
 5180750000 \$ 250,000.00 (B03) 12/19/2022