

**NORTH CAROLINA
WAKE COUNTY**

REIMBURSABLE AGREEMENT

DATE: 01/05/18

**NORTH CAROLINA
DEPARTMENT OF
TRANSPORTATION**

AND

WBS Element: 37673.1.TA1

WAKE COUNTY

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as “NCDOT” and WAKE COUNTY, a body politic and corporate of the State of North Carolina, hereinafter referred to as “WAKE COUNTY,” referred to herein individually as “Party” and collectively as “the Parties.”

WITNESSETH

WHEREAS, the United States Fish and Wildlife Service (USFWS), NCDOT, North Carolina Wildlife Resources Commission (WRC) and North Carolina State University (NCSU) have recently agreed to establish the North Carolina Non-Game Aquatic Species Program (“Program”) as part of NCDOT’s possible mitigation requirements associated with the future 540 corridor to be constructed in Wake and Johnston Counties; and,

WHEREAS, USFWS, NCDOT, & NCSU have identified the Historic Yates Mill County Park (“Park”) as a suitable location for the Yates Mill Aquatic Conservation Center (YMACC); and,

WHEREAS, USFWS, NCDOT, & NCSU, have requested WAKE COUNTY to conduct renovations to the A. E. Finley Center and related improvements to the Park for the new YMACC to support the captive breeding of endangered aquatic species including, but not limited to, the Dwarf Wedgemussel; and,

WHEREAS, contingent upon NCSU committing to the maintenance and operation of the Program facility and the appropriation by NCDOT of all funds required for the renovations to the Program facility, WAKE COUNTY has agreed to the renovations to the Program facility to be located at the A.E. Finley Center; and,

WHEREAS, NCDOT has previously appropriated and by this AGREEMENT committed to fund the renovation and expansion of the A.E. Finley Center and surrounding Park grounds for the Program.

NOW THEREFORE, and in consideration of the promises and covenants contained in this AGREEMENT and the mutual benefits derived therefrom, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

(1) SCOPE OF SERVICES

a) WAKE COUNTY

- i) Subject to receipt of funding as included herein, design and construct an addition and renovation to the A.E. Finley Center and the Park grounds for the Program as summarized in APPENDIX A, entitled “Design Option 6” attached hereto and made a part of this AGREEMENT.
- ii) Serve as the Project Manager for all aspects of the renovation and construction of this Project including the design development, solicitation of bids and construction of the Project.
- iii) Execute an amended Ground Lease & Use Agreement and any other agreements, as deemed necessary, authorizing the use of the Park and the A.E. Finley Center for the Program.
- iv) Request reimbursement from the NCDOT as included herein.
- v) Provide the Certificate of Occupancy and the Certificate of Substantial Completion when the addition and renovation to the A.E. Finley Center and the Park grounds for the Program are complete as included in APPENDIX A.

b) NCDOT

- i) Provide funding for the design and construction of an addition and renovation to the A.E. Finley Center and the Park grounds for the Program as summarized in APPENDIX A, entitled “Design Option 6.”
- ii) Provide reimbursement of the costs for the addition and renovation costs to the A.E. Finley Center and the Park grounds for the Program to WAKE COUNTY as included herein.
- iii) Notify WAKE COUNTY of any delay or suspension of Project funding within three (3) business days of becoming aware of any delay or suspension.

(2) PROCEDURES

WAKE COUNTY will utilize their current processes, standards and requirements to design

and construct the addition and renovations to the A.E. Finley Center and the Park grounds for the Program. WAKE COUNTY will consult with and obtain concurrence from USFWS and NCSU throughout the process of design and construction in order to ensure the facility meets the requirements of the Program.

NCDOT will provide funding for the costs of the addition and renovations to the A.E. Finley Center and the Park grounds for the Program as included in Provision 3, "Payment By NCDOT."

The work included in this AGREEMENT for the addition and renovations to the A.E. Finley Center and the Park grounds for the Program are a part of a potential mitigation solution for a proposed NCDOT project. Proceeding with this work is contingent upon NCDOT receiving a Permit from the Army Corps of Engineers as follows:

- a) NCDOT has agreed to move forward with the design and preconstruction activities for the work included herein. If the Permit from the Army Corps of Engineers is not obtained, NCDOT will notify WAKE COUNTY in writing to stop the work immediately and reimburse any unexpended funds. NCDOT shall make payment to WAKE COUNTY for work completed. In the event that the permit from the Army Corps of Engineers is not obtained; NCDOT does not obtain a favorable Biological Opinion; the MOU between NCSU and WAKE COUNTY is terminated by NCSU; or, for any other reason beyond the control of WAKE COUNTY, the addition and renovations to the A.E. Finley Center and the Park grounds for the Program are suspended, or are not performed by WAKE COUNTY, then and in that event, WAKE COUNTY shall have no obligation to return funding that has already been paid or is owed by WAKE COUNTY for design and preconstruction work actually completed.
- b) The construction work included herein shall not begin and reimbursement shall not occur if the Permit from the Army Corps of Engineers is not obtained by NCDOT.

(3) PAYMENT BY NCDOT

NCDOT will reimburse the actual costs of the addition and renovations to the A.E. Finley Center and the Park grounds for the Program. The estimated costs are \$1,958,936. If, at any time, WAKE COUNTY expects the actual costs to exceed this amount by more than 10%, written notification to NCDOT is required prior to incurring the additional costs. There are no non-federal matching requirements or NCDOT charges associated with this PAYMENT that will or may become the responsibility of WAKE COUNTY.

BILLING PROCEDURE

WAKE COUNTY may bill NCDOT for eligible Project costs in accordance with NCDOT's guidelines and procedures and the following:

a) Preconstruction and Design Activities:

WAKE COUNTY may request payment for preconstruction and design and costs up to \$250,000 once they are ready to proceed with the addition and renovation design. WAKE COUNTY must include vendors and costs for each contract on their invoice in which payment is requested. Upon approval, NCDOT will provide payment for planned preconstruction activities directly to WAKE COUNTY.

Once the preconstruction work is complete, if the actual cost of the preconstruction work is more than WAKE COUNTY originally billed, then WAKE COUNTY may bill NCDOT for the additional amount. If the actual cost of the preconstruction work is less than the amount reimbursed by NCDOT, WAKE COUNTY shall reimburse NCDOT any overpayment within sixty (60) days.

The Parties will work together in good faith to minimize loss to either party by each informing the other of any circumstances which may affect the construction of the Project.

b) Construction Activities

WAKE COUNTY may request payment for construction costs up to the actual costs for the work as follows during construction utilizing the following procedure:

- i) WAKE COUNTY reviews and approves an invoice for payment.
- ii) WAKE COUNTY submits an approved invoice to NCDOT for review. The invoices shall reflect sales tax; however the request for reimbursement from NCDOT shall not include sales tax since this item is reimbursed to Wake County by the North Carolina Department of Revenue. NCDOT reviews, approves and makes payment for the invoice to WAKE COUNTY.
- iii) WAKE COUNTY initiates payment to the invoice vendor and provides documentation to NCDOT within three (3) business days once payment is received from NCDOT.
- iv) WAKE COUNTY provides NCDOT with proof of payment of the invoice to the Vendor within 30 days of receipt of the funds from NCDOT.

Proper supporting documentation shall accompany each invoice as may be required by NCDOT. By submittal of each invoice, WAKE COUNTY certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this AGREEMENT.

Along with each invoice, WAKE COUNTY is responsible for submitting the FFATA Subrecipient Information Form, which is available at:

<https://connect.ncdot.gov/municipalities/Funding/Pages/default.aspx>

Reimbursement to WAKE COUNTY shall be made upon approval of the invoice by the NCDOT's Financial Management Division.

WAKE COUNTY may invoice NCDOT monthly for work accomplished, but no less than once every six (6) months to keep the Project funds active and available. If WAKE COUNTY is unable to invoice NCDOT, then they must provide a written explanation. Failure to submit invoices or explanation less than once every six (6) months may result in de-obligation of funds. NCDOT will notify WAKE COUNTY thirty (30) days prior to any de-obligation of funds.

All invoices associated with the Project must be submitted within six (6) months of the completion of the addition and renovation work to be eligible for reimbursement by NCDOT. Any invoices submitted after this time will not be eligible for reimbursement.

If the actual cost of the work is less than the amount reimbursed by NCDOT, WAKE COUNTY shall reimburse NCDOT any overpayment within sixty (60) days.

(4) ADDITIONAL PROVISIONS

- a) Any modification to this AGREEMENT shall be agreed upon in writing by both Parties prior to being implemented.
- b) This AGREEMENT shall remain in effect for the time necessary to perform the required work unless either Party provides a thirty (30) day written notice to the executing Parties of the AGREEMENT requesting termination.
- c) To the extent permitted by law and consistent with the Wake County 2003 Resolution Regarding Limited Waiver of Sovereign Immunity, WAKE COUNTY shall be responsible for payment of any damages to third parties to the extent that the claim for damages arises out of the negligence of WAKE COUNTY, its agents, or employees; provided that Wake County does not waive any applicable defense, including governmental or sovereign immunity. NCDOT shall not be responsible for any damages or claims, which may be initiated by third parties.
- d) All terms and conditions of this AGREEMENT are dependent upon, and subject to, the allocation of funds for the purpose set forth in the AGREEMENT and the AGREEMENT shall automatically terminate if funds cease to be available without further obligation of WAKE COUNTY or NCDOT to each other or third parties.
- e) This AGREEMENT shall be interpreted under the laws of the State of North Carolina,

resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to the values and purposes sought to be set forth herein.

- f) By Executive Order 24, issued by Governor Purdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

IN WITNESS WHEREOF, this AGREEMENT has been executed, in duplicate, the day and year heretofore set out, on the part of NCDOT and WAKE COUNTY by authority duly given.

L.S. ATTEST

WAKE COUNTY

BY: Denise Hogan

BY: Mark Forstner

TITLE: Clerk to the Board

TITLE: Director
Wake County Facilities
Design & Construction

DATE: 1-16-18

DATE: 1-15-18

NCGS § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

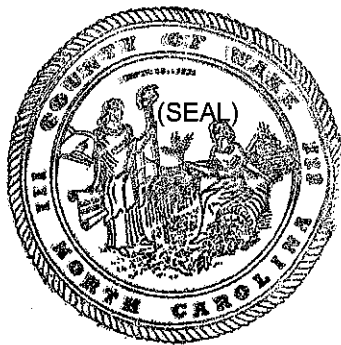
This Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

John P. Pagan 1/16/18
Wake County Manager Date
Or Designee

N/A
FINANCE OFFICER

Federal Tax Identification Number
56-6000347

Remittance Address:
Wake County
P.O. Box 550
Raleigh, NC 27602



DEPARTMENT OF TRANSPORTATION

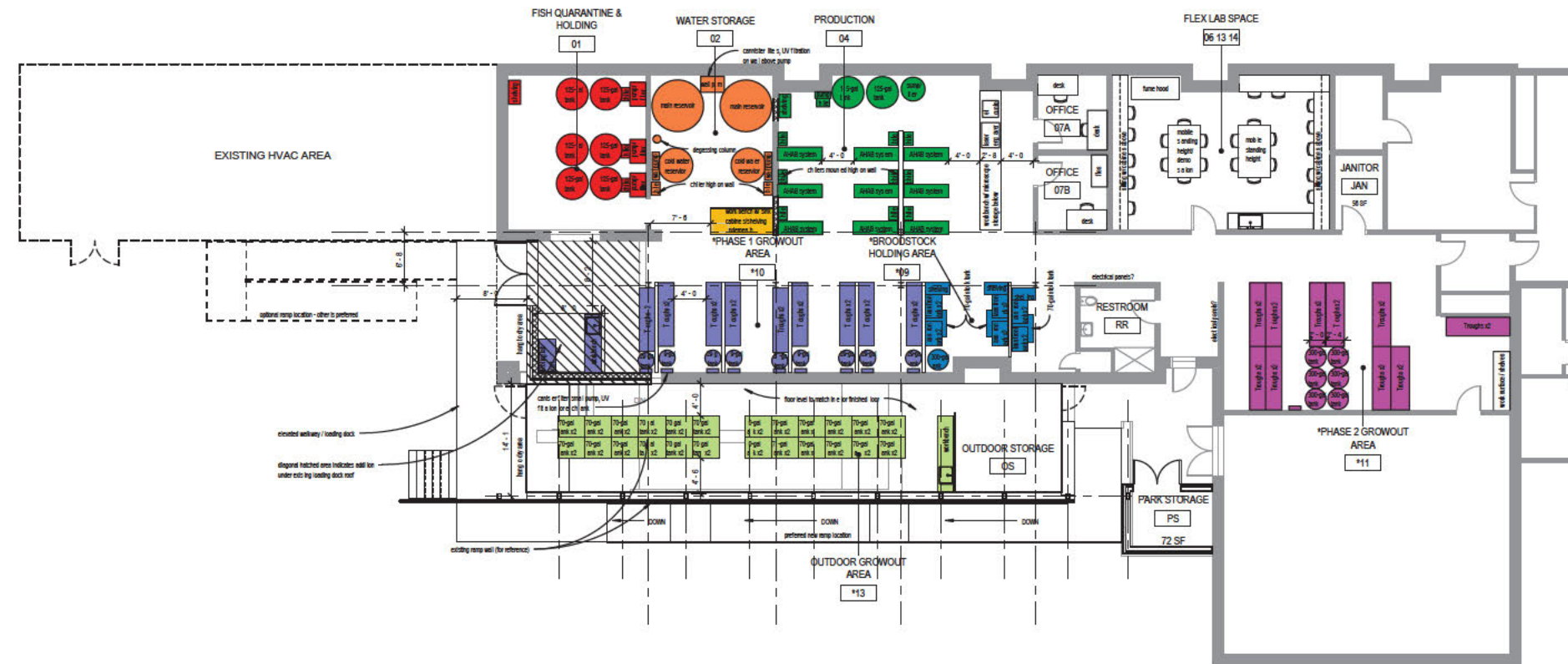
BY: [Signature]

TITLE: CHIEF ENGINEER

DATE: 1/24/18

APPROVED BY BOARD OF TRANSPORTATION ITEM O: 12-7-17
(Date)

APPENDIX A - Design Option 6



OPTION 6 PONDWATER POND SIDE MINIMIZE ADDITION
1/8" = 1'-0"

- ONLY ADDITION IS TO ENCLOSE PART OF THE LOADING DOCK AND SMALL EXTERIOR STORAGE ROOM.
- ELIMINATES FLEX SPACE IN THE PROPAGATION AREA AND MOVES OFFICES IN TO PART OF THE SECOND LAB QUAD, WITH A WORKBENCH FOR THE CELL COUNTER, LASER ENGRAVER AND MICROSCOPES.
- MORE OPENNESS FOR THE ADDITIONAL 3 AHAB UNITS IN PRODUCTION AREA.
- PARK STORAGE IS RELOCATED TO PROVIDE ROOM FOR PHASE 2 GROWOUT AREA. INTERIOR ACCESS TO MECHANICAL ROOM IS MAINTAINED.
- OUTDOOR GROWOUT AREA ON THE POND SIDE OF THE BUILDING AND RAISED TO THE BUILDING FLOOR LEVEL. THIS ALIGNS WITH THE EXISTING RAMP WALLS. NEW RAMP OVERHANGS EXISTING ACCESS DRIVE.
- MAINTAINS OPENNESS OF SERVICE AREA. LOADING DOCK IS INSET A LITTLE TO PROVIDE SOME COVER AND ROOM FOR A LARGE RESERVOIR TANK TO BE MOVED.

APPENDIX A

Site Design Option 6

KEYNOTE LEGEND	
KEY	DESCRIPTION
1	Floating dock with integrated hatchery baskets
2	Second floating dock, future phase
3	Pump inlet
4	Water intake pipe
5	Pump house with pump, control, filter, locate outside of buffer
6	Existing storage building to remain in park control
7	Existing shed, relocate park supplies to new shed, convert existing to serve mussel program
8	Existing canoe rack to remain, use for mussel program. New rack required for park at alternate launch location
10	Generator set on belly tank, located outside of current and future flood zone. Concrete pad with stone mulch in clearance zone.
11	Fence, match existing wood fence system, screen with climbing vines.
12	ADA Access Ramp/Service Access Ramp
13	Storage tank for well water, connect to prep tank using submerged pump. 6FT Diameter tank on legs, corrugated metal exterior, painted brown.
14	Approximate location of existing chilled water and gas lines. Will require final asbuilt location to be mapped through survey/subsurface utility exploration.
15	EXISTING COOLING TOWER, TYPIC
16	EXISTING SEPTIC TANK SYSTEM, TYP.
17	FUEL STORAGE, TYPICAL.

