

**NORTH CAROLINA  
WAKE COUNTY**

**INTERAGENCY AGREEMENT**

DATE: February 27, 2018

**NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION**

AND

WBS Element: 37673.1.TA1

**NORTH CAROLINA  
WILDLIFE RESOURCE COMMISSION**

**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 North Carolina Wildlife Resource Commission, an agency of the State of North Carolina, hereinafter referred to as "NCWRC," referred to herein individually as "Party" and collectively as "the Parties."

**WITNESSETH**

**WHEREAS**, the United States Fish and Wildlife Service (USFWS), NCDOT and North Carolina State University (NCSU) have recently agreed to establish the North Carolina Non-Game Aquatic Species Program ("Program") at the Historic Yates Mill County Park ("Park") in Raleigh, North Carolina to support the captive breeding of endangered aquatic species including, but not limited to, the Dwarf Wedgemussel; and,

**WHEREAS**, USFWS, NCDOT, & NCSU have identified the Park as a suitable location for the NCSU's Aquatic Species Propagation Program facility; and,

**WHEREAS**, USFWS, NCDOT, & NCSU, in collaboration with Wake County have requested renovations to the A. E. Finley Center and related improvements to Yates Millpond for the new research facility to be known as the Yates Mill Aquatic Conservation Center ("YMACC"); and,

**WHEREAS**, NCDOT has committed to fund the YMACC facility renovation by Wake County, which is addressed in a separate agreement; and,

**WHEREAS**, NCDOT has committed to fund the operations and maintenance of the Program for up to five (5) years with an established amount of funds; and,

**WHEREAS**, NCSU desires to receive funds provided by NCDOT for the Program to manage the maintenance and operations of the YMACC; and,

**WHEREAS**, NCWRC desires to work with NCSU on the YMACC operations and maintenance to partner on the successful breeding of endangered aquatic species; and,

**WHEREAS**, the NCWRC and NCSU agree to pursue an agreement for operation of the Program; and,

**WHEREAS**, the construction of the YMACC and the operations and maintenance of the Program is expected to be part of NCDOT's potential mitigation solution associated with the proposed future 540 corridor to be constructed in Wake and Johnston Counties.

**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) RESPONSIBILITIES OF EACH PARTY**

a) NCWRC

- i) Subject to receipt of funding from NCDOT as included herein, NCWRC shall provide funding for the operations and maintenance of the Program under a future agreement with NCSU.
- ii) Once NCWRC is notified by NCDOT that the project permits have been received, NCWRC will work to finalize an agreement with NCSU for the operations and maintenance of the YMACC.
- iii) NCWRC shall earmark the established funds provided by NCDOT for NCSU to provide for personnel, including a facility manager and an assistant at the YMACC to oversee the research, propagation and outreach of the Program; and other expenses needed to operate and maintain the YMACC for up to five (5) years, up to the maximum funds provided by NCDOT included in this **AGREEMENT**.
- iv) NCWRC is only responsible for managing the distribution of funds for the Program. NCWRC is not responsible for the construction of the YMACC facility, operations and maintenance of the Program or achieving the Program's propagation goals.
- v) NCWRC shall provide documentation to NCDOT at the end of the five (5) year period that funding for the Program has been reimbursed to NCSU for allowable Program expenses. Documentation includes a signed statement from the Finance



Officer for NCWRC attesting to the above with a general breakdown of costs including labor, facility, equipment, training, travel, etc.

b) NCDOT

- i) NCDOT will provide funding to NCWRC to support the Program managed by NCSU. The current anticipated funding amount is \$3,041,064. The Parties understand that the actual funding may be more or less than this amount depending upon the cost to renovate the YMACC facility. Both Parties also understand that these funds should only be provided to NCSU for the operations and maintenance of the YMACC unless NCSU cannot fulfill its obligation to operate the YMACC during the five (5) year period, in which case, NCWRC will follow Provision (4)d) of this Agreement.
- ii) NCDOT is only responsible for providing the funding for the Program. NCDOT is not responsible for the construction, management, operations or success of the Program, YMACC or its propagation goals.
- iii) NCDOT will enter into a funding agreement with the lessee of the YMACC facility (Wake County) for the renovation of the building. This funding agreement will be in place prior to receiving the permit from the Army Corps of Engineers to ensure construction may commence as quickly as possible after receipt of the permit from the Army Corps of Engineers.
- iv) NCDOT will notify NCWRC in writing of any delay of Program funding or if there will be no funding.

**(2) FUNDING**

The total maximum amount of funding available for the construction of the YMACC facility and the five (5) year operations and maintenance of the Program is \$5,000,000. The anticipated construction costs for the YMACC facility is \$1,958,936, which will be accomplished under a separate agreement with Wake County. The anticipated remaining amount after construction of the YMACC is \$3,041,064 and shall be available for the operations and maintenance of the Program for up to the five (5) year period. This established funding amount for the operations and maintenance of the Program shall be reimbursed to NCSU for up to a five (5) year period at the discretion of the NCWRC. The Parties understand that the actual funding available for the operations and maintenance of the Program may be more or less than this amount depending upon the cost to renovate the YMACC facility.

**(3) PROCEDURES**

The funding included in this AGREEMENT for the operations and maintenance of the Program is 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.

If the Permit from the Army Corps of Engineers is not obtained, NCDOT will notify NCWRC in writing of such and the funding included herein shall not be provided and reimbursement to NCSU shall not occur.

Upon receiving the Permit from the Army Corps of Engineers and the completion of the construction of the YMACC, NCDOT will notify the NCWRC of available established funding for the Program. After NCDOT notification, NCWRC will advise NCDOT regarding the transfer of funds to NCWRC for the established amount of funding available for operations and maintenance of the Program, currently anticipated in the amount of \$3,041,064. The Parties understand that the actual funding may be more or less than this amount depending upon the cost to renovate the YMACC facility.

NCWRC will utilize a future agreement with NCSU to reimburse NCSU the established funds for the operations and maintenance for the Program over the five (5) year period.

At the end of the five-year period, NCWRC shall provide documentation of the appropriate expenditure of NCDOT funding, under Provision (1) above.

#### **(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) In the event that either party terminates this AGREEMENT before funds have been transferred to NCWRC, no future payments are obligated to be made to NCSU.
- d) In the event that NCSU is unable to accept the entire amount of funds for the operation of the YMACC, the NCWRC and the USFWS shall determine the most appropriate use of the remaining funds not reimbursed to NCSU. Remaining funds shall not be returned to NCDOT. NCWRC will provide documentation of actual funds expended through this AGREEMENT.
- e) NCDOT and NCWRC are both agencies of the State of North Carolina and therefore have no known legal authority to give indemnities. As between said parties, NCWRC will be primarily liable to NCDOT for damages caused by NCWRC negligence or its officers, agents, or employees acting within the course and scope of their employment with respect to the subject matter of this AGREEMENT, except to the extent that any such loss is actually reimbursed by a contractor or insurer. With respect to the claims of

third parties, both NCDOT and NCWRC hereto enjoy the State's sovereign immunity except as expressly waived by the North Carolina Tort Claim Act, Article 31 of Chapter 143 of the General Statutes of North Carolina, and may be liable only as therein provided. Neither Party will take any action that could or might compromise the sovereign immunity of the other.

- f) 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.
- g) 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.
- h) 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 NCWRC by authority duly given.

L.S. ATTEST

NORTH CAROLINA  
WILDLIFE RESOURCES COMMISSION

BY: *Jenny Riddle*  
TITLE: OH&I Liaison

BY: *Carole W. Why*  
TITLE: Executive Director

DATE: 3-13-2018

*Melissa Blay*  
(FINANCE OFFICER)

Federal Tax Identification Number  
73-6502734

Remittance Address:  
North Carolina Wildlife Resources Commission  
1721 Mail Service Center  
Raleigh, NC 27699-1721

To the extent this agreement is a "Cooperative Agreement," as that term is defined by NCGS § 143B-24, and to the extent approval of the Department of Administration is required, based on the assurances from the parties to this Agreement, approval is hereby given as indicated by signature below.

DEPARTMENT OF ADMINISTRATION

DEPARTMENT OF TRANSPORTATION

BY: *Machelle Sanders*  
Secretary

BY: *[Signature]*  
Secretary

DATE: 3-12-18

DATE: 3/9/18

APPROVED BY THE BOARD OF TRANSPORTATION ITEM O: 12/7/17

RECEIVED  
Secretary's  
MAR 09 2018  
Office  
DOA