

**STATE OF NORTH CAROLINA  
COUNTY OF WAKE**

CT 10146

THIS MEMORANDUM OF UNDERSTANDING ("MOU"), made and entered into this 16 day of January, 2018 by and between **WAKE COUNTY**, a public body politic and corporate of the State of North Carolina ("Wake County"), and **NORTH CAROLINA STATE UNIVERSITY**, a constituent institution of the University of North Carolina ("NCSU"), collectively referred to herein as the "Parties."

**RECITALS**

WHEREAS, Wake County entered into a ground lease agreement with the State of North Carolina on April 2, 2001 (the "Lease") for a term of forty (40) years for the operation of the Historic Yates Mill County Park ("Park"); and

WHEREAS, in 2003, Wake County constructed a 16,000square foot building in the Park, the A.E. Finley Center for Education and Research ("A.E. Finley Center"), approximately 5,000 sq. feet of which is occupied by NCSU as a research center ("NCSU Research Center") pursuant to a use agreement entered into between NCSU and Wake County dated April 2, 2001 (the "Use Agreement"); and

WHEREAS, Wake County entered into a separate use agreement with Yates Mill Associates, Inc. ("YMA") on June 21, 2012 for a term of ten (10) years for the restoration, preservation and operation of the historic Yates Mill located on the Park premises; and

WHEREAS, the United States Fish and Wildlife Service ("USFWS"), the North Carolina Department of Transportation ("NCDOT"), NCSU and the North Carolina Wildlife Resource Commission ("NCWRC") have recently collaborated regarding the establishment of an aquatic species propagation and research program (the "Program") as part of NCDOT's mitigation requirements associated with the future U.S. I-540 corridor to be constructed in Wake County; and

WHEREAS, USFWS, NCDOT, and NCSU have identified the Park as a suitable location for the Program and in collaboration with Wake County desire to renovate the NCSU Research Center within the A.E. Finley Center and Yates Millpond to establish a new research facility (the "Facility") to support the captive breeding of endangered aquatic species such as the Dwarf Wedge mussel; and

WHEREAS, with funding received from USFWS, Wake County completed the Fresh-Water Mussel Propagation Feasibility Study ("Study") on July 20, 2016, which affirms that the Park is a suitable location for the proposed Program; and

WHEREAS, on or about April 20, 2017, Wake County, NCSU, USFWS, and YMA selected Design Option 6 as outlined in the Study as the best design for the proposed Facility; and

WHEREAS, prior to commencement of design and construction for the renovation and

expansion of the NCSU Research Center within the A.E. Finley Center and related improvements to Yates Millpond (the "Project"), the Parties desire to develop an understanding of their roles and duties in relation to the Project, Program and Facility; and

WHEREAS, NCDOT has appropriated funds for the Project and Program, the expenditure for which will be detailed in funding agreements between NCDOT and Wake County (the "County Funding Agreement") and NCDOT and NCWRC (the "NCWRC Funding Agreement"); and

WHEREAS, USFWS will continue to serve as a Project liaison and will jointly oversee all Program operations as related to NCDOT's mitigation requirements as detailed in a secondary agreement between USFWS and NCWRC; and

WHEREAS, on or about June 14, 2017, NCSU, the State of North Carolina, and Wake County entered into a Non-Binding Letter of Intent, signifying their commitment to the Project and Program, which contemplates this MOU would be developed to facilitate advancement of the Program; and

WHEREAS, as a condition to entering into this MOU and participating in the Project, NCSU acknowledges that no funding for the Project or Program will be provided by Wake County and that the Program will be administered independently of County Park operations.

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

## **ARTICLE I PURPOSE**

The purpose of this MOU is to set forth the understanding and mutual agreement of the Parties as it relates to the renovation and expansion of the NCSU Research Center within the A.E. Finley Center and related improvements to Yates Millpond on the site of the current Historic Yates Mill County Park located at 4620 Lake Wheeler Road, Raleigh, North Carolina to be utilized by NCSU as a new aquatic species propagation and research facility. The recitals set forth above are expressly incorporated herein.

## **ARTICLE II TERM & TERMINATION**

The term of this MOU shall be for three (3) years or until replaced by subsequent agreement. At the conclusion of the initial term, this MOU shall convert to a month to month term until such time as the Parties complete their obligations set forth herein or otherwise amend by separate written agreement or addendum.

Either Party may terminate this MOU any time prior to the execution and approval of the County Funding Agreement and NCWRC Funding Agreement. Notwithstanding the above, the Parties may terminate this MOU without penalty or recourse even after execution of the County Funding Agreement and NCWRC Funding Agreement if: 1) NCDOT fails to obtain or comply with the I-540 mitigation permit; 2) Project funding is not received or appropriated from NCDOT in a timely manner; 3) any Project Participant fails to fulfill its responsibilities as stated within this MOU; or 4) Project conditions are not met in accordance with Article V of this MOU.

### **ARTICLE III IDENTIFICATION OF PROJECT PARTICIPANTS**

A summary of the Project Participants and their contribution to the Project is detailed as set forth below.

**A. NCSU**

A summary of NCSU's Project responsibilities is set forth in Article IV below.

**B. WAKE COUNTY**

A summary of Wake County's Project responsibilities is set forth in Article IV below.

**C. NCDOT**

NCDOT is the primary funding partner for the Project and as such, pursuant to the County Funding Agreement, shall timely deliver funds to Wake County for all Project expenses, including but not limited to professional services (surveys, design, and emergency expenses required for Project completion), construction costs and escalations, fixtures and equipment that will be used in association with the Program in accordance with the Project payment schedule and in advance of each phase of construction. As a condition to the Parties' performance of the responsibilities set forth herein, and prior to the start of the bidding process for construction of the Project by Wake County, NCDOT shall 1) obtain a Biological Opinion in order to proceed with funding, 2) obtain the I-540 project permit; 3) enter into the County Funding Agreement with Wake County setting forth the payment terms and schedule to the satisfaction of Wake County; and 4) enter into the NCWRC Funding Agreement to provide \$2.93 million in funds to NCSU for administration of the Program and operation and maintenance of the Facility. The term of the Funding Agreement is anticipated to be 5 years, which term may be modified based upon NCDOT funding available for operation of the facility after construction/renovation.

**D. USFWS**

USFWS will serve as a Project liaison. In its regulatory role, USFWS will consult with NCDOT per the Endangered Species Act compliance requirements. USFWS may also provide input and recommendations for any Project design and construction elements that are essential to the Program.

**E. STATE OF NORTH CAROLINA**

The State of North Carolina will amend the Lease and any other agreements as may be deemed necessary authorizing the expanded use of the Park grounds to facilitate the Project.

**F. YMA**

As stewards of the historic Yates Mill, YMA will coordinate with the Parties during and after the construction and renovation of the A.E. Finley Center by allowing access to the Facility, millpond and grounds. It is also anticipated that YMA will execute and approve an addendum or amendment to its 2012 use agreement entered into with Wake County authorizing the Program and expanded use of the Park in support thereof.

**G. NCWRC**

NCWRC will enter the 5-year NCWRC Funding Agreement with NCDOT to provide \$2.93 million in funds to NCSU for administration of the Program and operation and maintenance of the Facility.

## **ARTICLE IV RESPONSIBILITIES OF THE PARTIES**

The Parties agree to carry out the following responsibilities and in doing so acknowledge that the list provided below is non-exhaustive. Additional responsibilities may be assigned or developed as the Project progresses.

**A. NCSU**

1. Coordinate with the State of North Carolina as necessary to amend the Lease to authorize the expanded use of the Park grounds to facilitate the Project.
2. Execute an amendment to the Use Agreement to authorize NCSU's expanded use of the Park for the Program.
3. Temporarily remove NCSU equipment, fixtures, or any other personal property from the A.E. Finley Center and Park grounds as instructed by Wake County prior to the requirement to commence construction or as required by Wake County at any time during construction as needed to avoid interference with construction of the Facility.
4. Temporarily relocate all University researchers, licensees, or agents and secure and restrict access to the A.E. Finley Center during construction as needed to avoid interference with construction of the Facility.
5. Execute funding agreements as may be required with NCWRC and other funding partners to administer the post-construction Program and operate the Facility without support or funding from Wake County.
6. Contingent upon receiving funds from NCWRC, purchase, acquire and install all equipment, and any other fixtures or improvements associated with the Project and Program that are not included in the construction budget to be managed by Wake County.

7. Appoint a single Project Manager who will serve to coordinate NCSU's installation of furniture, fixtures and equipment ("FFE") with Wake County's construction of the Project. This Project Manager may also represent the interest of USFWS.
8. Execute cost-sharing agreements with other operational partners for the Program, if applicable.
9. Using funding received from NCWRC and other funding partners, administer the Program and operate and maintain the Facility.
10. At all times, use the NCSU Research Center within the A.E. Finley Center in accordance with the Use Agreement, as amended.

## B. WAKE COUNTY

1. Execute the County Funding Agreement with NCDOT covering all Project expenses.
2. Accept and appropriate funding for Project design, permitting, construction and completion solely out of funding provided by NCDOT pursuant to the Funding Agreement.
3. Serve as Design and Construction Manager for the Project, to include design development and solicitation of bids including the purchase, acquisition and installation of equipment identified and included in the construction budget. The scope of the construction to be managed by Wake County includes:
  - a. pumps, filters, tanks, and pipework necessary to bring pond water into the building. There will be a main pipe routed to both the indoor and outdoor growout areas for NCSU connection and distribution. Design and installation of plumbing necessary for distribution of filtered pond water to Phase I and II areas as well as backwash of indoor filters to be installed.
  - b. blowers and pipework to bring air into building. There will be a main pipe routed into each area for NCSU connection and distribution.
  - c. collection and delivery of outgoing pond water back to the pond. This includes pumps, filters, tanks and pipework. There will be a main collection pipe routed from each area for NCSU connection.
  - d. bringing fresh well water to the building. This includes pumps, filters, tanks, and pipework. There will be a main pipe routed into each area for NCSU connection and distribution.
  - e. collection and delivery of used water in Phase I and II areas to be filtered and delivered back to the pond. There will be a main collection pipe routed from each area for NCSU connection.
  - f. alarm systems for the following: loss of air pressure in air line, flooding, failure of pump to indoor and outdoor systems, failure of pump to the pond and failure of building temperature control.



- g. fixtures and other building and site improvements as identified and included in the construction budget, to the exclusion of the improvements for which NCSU is responsible; and
- 4. Execute amendments to the Lease and Use Agreement and any other agreements, as deemed necessary, authorizing the use of the Park and the A.E. Finley Center for the Program.
- 5. Subject to receipt of funding, satisfaction of the project conditions listed in Article V of this MOU, and the responsibilities of the Parties and Project Participants as otherwise set forth herein, Wake County shall design and construct an addition and renovation to the A.E. Finley Center and the Park grounds as summarized in Design Option 6. The County shall serve as the Project Manager for all aspects of the renovation and build out of this Project, but shall not be a funding partner and shall not have any duty or obligation to expend or advance its own funding for any aspect of the Project. As such, Wake County revenue will not be expended in association with this Project and Wake County shall have no responsibility to carry out any duties as set forth herein unless and until it has received: 1) Executed funding agreement(s) governing the commitment and appropriation of all budgeted costs associated with the Project inclusive of all major equipment and fixture expenses, 2) Payment for construction costs in accordance with the funding schedule established by Wake County, 3) Approval of amendments to the Lease and Use Agreement authorizing the construction and expanded use of Park grounds and the A.E. Finley Center, 4) Proof that NCDOT has secured all I-540 permits in support of the Program, and 5) This fully executed MOU.
- 6. Subject to the terms and conditions as set forth in the Lease and Use Agreement, as amended, Wake County shall at all times retain ownership and control of the A.E. Finley Center.

## ARTICLE V PROJECT CONDITIONS

- 1. Any party or entity advancing funds and receiving funds in association with this Project shall enter into funding agreements which shall at a minimum set forth the funding schedule and condition for each phase of the Project.
- 2. Copies of all funding agreements associated with the Project shall be provided to Wake County.
- 3. Wake County shall serve as the Construction Project Manager and shall have complete discretion in contractor selection, subject to the conditions set forth in this MOU.
- 4. All construction and improvements shall be built or installed in accordance with Wake County standards.

5. A whole building generator shall be included in the final budget and installed at the A.E. Finley Center before commencement of construction.
6. Prior to construction, NCDOT shall secure all required permits, including the Biological Opinion associated with the Project and environmental permits required for the I-540 project.
7. State and local permits for the I-540 project shall be secured prior to commencement of construction and shall be made available to Wake County for inspection.
8. Wake County must receive confirmation of Project funding availability as a prerequisite of any duty on part of Wake County to commence design or construction work in association with the Project.
9. During the construction phase, Wake County shall submit monthly invoices to NCDOT for construction progress payments and NCDOT shall pay Wake County for the cost of each invoice within two (2) business days of receipt of such invoices.
10. NCSU shall not hold Wake County responsible for any design or construction activity contemplated herein, or any delays associated therewith, including permitting required for the Project.
11. NCSU shall not hold Wake County responsible if this MOU is terminated or construction is not completed based upon any reason for termination or non-completion outlined in this MOU.
12. Wake County shall not be obligated to purchase or carry any insurance coverage on any FFE or any other equipment, supplies or property of any Project Participant Party that is stored at the A.E. Finley Center and shall not be responsible for any losses incurred during or post-construction except where such losses result from the negligence or willful misconduct of Wake County.
13. NCSU, the State of North Carolina, and Wake County shall amend the Lease and Use Agreement permitting the proposed use and expansion of the A.E. Finley Center for the Program.
14. After completion of construction of the Project, Wake County shall have no responsibility for ongoing maintenance or repairs related to the Project except as specifically set forth in the Lease or Use Agreement or amendments thereto.
15. Wake County shall have no responsibility for operation of the Program and all expenses related to installation and operation of the Project except those specifically set forth in Wake County's Project Budget.
16. NCSU shall have full ownership of the furniture, fixtures, and equipment installed by NCSU as part of the Project. The amended Use Agreement shall specify that at the conclusion of the Use Agreement, NCSU shall be solely responsible for the removal of furniture, fixtures, and equipment, and the cost of restoring the Project site to its pre-installation status, reasonable wear and tear excepted.

**ARTICLE VI  
CONTEMPLATED SEQUENCE OF PRE-CONSTRUCTION EVENTS**

- A. The Parties will approve and execute this MOU.
- B. Wake County and NCDOT will approve and execute the County Funding Agreement setting forth NCDOT's full funding commitment to the Project.
- C. Wake County will develop a complete estimate of design and construction costs associated with Design Option 6 and prepare a total estimated Project Budget. The preliminary estimated Project Budget will be submitted to NCDOT and NCSU for review and approval along with proposed funding schedules.
- D. Wake County will offer the Project for formal bid.
- E. After receipt of formal bids, Wake County will develop a Final Project Budget and deliver to NCDOT and NCSU for consideration of approval. Within thirty (30) days of Final Project Budget approval and certification of funds from NCDOT, Wake County will award Project bids and enter into construction agreements with contractors and professionals.
- F. NCDOT and NCWRC will enter the NCWRC Funding Agreement to provide \$2.93 million in funds to NCSU for operation and maintenance of the Facility
- G. Wake County, NCSU, YMA and the State of North Carolina will execute amendments to the Lease and Use Agreement, as applicable, consistent with the terms of this MOU.
- H. Within ten (10) days of being requested to do so by Wake County, NCSU will execute a memorandum of any enumerated document for the purpose of recording in the Wake County Registry.

**IN TESTIMONY WHEREOF**, the Parties, through their authorized officers and by their own hands have hereunto set forth their hands and seals of the day and year written below.

WAKE COUNTY

By: 

Title: Manager

Date: 2-14-18



NORTH CAROLINA STATE UNIVERSITY

By: 

Name: Scott R. Douglass

Title: Vice Chancellor for Finance and Administration

Date: 1/16/18