

MEMORANDUM OF AGREEMENT BETWEEN THE  
NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY  
AND THE  
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

**1. Introduction and Purpose**

- 1.1. This Memorandum of Agreement (MOA) is made and entered into on the date herein below by and between the NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY (hereinafter "NCDEQ") and the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION (hereinafter "NCDOT"), collectively referred to hereinafter as the "Parties," to establish the procedures for the NCDEQ Division of Mitigation Services (hereinafter, "OMS") to provide compensatory mitigation to offset NCDOT impacts to waters and wetlands resulting from activities authorized by Sections 401 and 404 of the Clean Water Act, 33 USC §§1341, 1344, and under Section 10 of the Rivers and Harbors Act, 33 USC §403 (hereinafter "permits"), and by certain certifications, authorizations or permits issued under the North Carolina water quality statutes, the North Carolina Coastal Area Management Act and the North Carolina Dredge and Fill Law and associated rules. This Agreement supersedes the 2008 MOA and 2016 MOA between NCDEQ and NCDOT. Any other agreements between NCDOT and NCDEQ remain in effect. Upon mutual agreement by the Secretaries, this MOA may be expanded to include other natural resource and environmental impacts.

**2. Authority**

- 2.1. Authority of NCDOT. NCDOT is responsible for planning, design, right of way acquisition, construction, maintenance, and operation of an integrated statewide transportation system for the economic and safe transportation of people and goods. NCDOT's authority is derived primarily from NCGS, Chapter 136 (Roads and Highways), and Chapter 143B (State Departments, Institutions, and Commissions). NCDOT promulgates transportation related regulations in Title 19A of the North Carolina Administrative Code (NCAC). NCDOT is authorized under NCGS §136 to enter into contracts and agreements as necessary to construct, improve and maintain the state transportation system in conformance with present or future acts of Congress.
- 2.2. Authority of DMS. OMS is authorized to implement third-party in-lieu-fee (ILF) compensatory mitigation programs in the state of North Carolina for streams, wetlands, nutrients, and riparian buffers (NCGS 143-214 et seq). DMS' "NCDOT Stream and Wetland ILF Program" and the "Statewide Stream and Wetland ILF Program" are authorized by the US Army Corps of Engineers pursuant to the Federal Mitigation Rule (33 CFR Parts 325 and 332, and 40 CFR part 230) and the Compensatory Mitigation Instrument (hereinafter, "OMS ILF Instrument", which shall be construed so as to include any revisions or replacement instruments approved by the U.S. Army Corps of Engineers) between the U.S. Army Corps of Engineers and OMS (formerly named the Ecosystem Enhancement Program).

### 3. NCDOT Responsibilities

- 3.1. Permit Applications. NCDOT is solely responsible for all activities required to apply for and secure construction permits for transportation projects, including permits and regulatory certifications for impacts to jurisdictional natural resources from transportation projects.
- 3.2. DMS Compensatory Mitigation Reliance. NCDOT, pursuant to the terms of this MOA, agrees to use OMS to satisfy NCOOT's off-site compensatory mitigation needs as necessary to meet the requirements of federal and state permits.
- 3.3. Funding of OMS. NCDOT will provide the necessary funding to OMS to deliver the NCDOT Stream and Wetland ILF Program as described in the DMS ILF Instrument. NCDOT agrees to fund the program via a biennial budget and shall provide funds quarterly to OMS. NCDOT agrees to fund the full and actual costs of implementing the NCDOT Program, including the costs of credit delivery (property acquisition, design, construction, monitoring, long-term management, credit purchases, full-delivery projects, etc.), watershed planning and analysis, and administration.
- 3.4. Project Impacts/ Mitigation Order. NCDOT will order mitigation from DMS annually on March 1 by producing an NCOOT Mitigation Order. The Mitigation Order will itemize those projects and associated impacts for which NCDOT requests OMS to provide mitigation. All impacts to wetlands and streams will be estimated for NCDOT transportation projects that are prioritized for funding and expected to be let over the next five (5) years, including those impacts for which the NCDOT has identified other sources of mitigation. Impacts will be identified as cold, cool, and warm streams, riparian wetland, non-riparian wetland, and coastal marsh wetland. Other project information such as NCDOT project number, let date, permit request date, service area), and any other agreed upon criteria necessary for the successful OMS fulfillment of the NCDOT Mitigation Order will be provided. In combination with the mitigation order, NCOOT will submit a summary of unused available credits in NCOOT's mitigation inventory by service area and mitigation type to inform strategic planning by OMS' NCOOT Stream and Wetland ILF. When NCDOT utilizes in-house mitigation, NCOOT will provide information to OMS in the next annual Mitigation Order, including the mitigation project name, location and amount and type of credits NCOOT will develop. For Mitigation Order purposes, NCOOT requests that OMS secure sufficient credits to satisfy the Mitigation Order using a 2:1 mitigation credit ratio (two mitigation units for each unit of impact), unless otherwise agreed upon for specific transportation projects. NCDOT may order mitigation beyond the five (5) year required amount. NCOOT may provide modifications to the mitigation order throughout the fiscal year as updated information becomes available on transportation projects. OMS will seek to accommodate all such modification requests by adjusting procurement plans as practicable. Significant modifications in the Project Impacts/Mitigation Order timelines shall be agreed upon by both Parties to this MOA.

3.5. On-site and Off-site mitigation. On-site mitigation is defined as compensatory mitigation that is conducted on property parcels for which a claim (or partial claim) to such parcels is (1) deemed necessary to construct and maintain a transportation project or (2) determined to be acquired for rationale other than compensatory mitigation. NCDOT shall not acquire other real property interests solely for the purposes of developing compensatory mitigation without approval from **DMS**. On-site mitigation will be identified with associated impacts in the NCDOT Mitigation Order submitted to DMS. Off-site mitigation is defined as all compensatory mitigation conducted outside any parcels for which a claim (or partial claim) to such parcels is (1) deemed necessary to construct and maintain a transportation project or (2) determined to be acquired for rationale other than compensatory mitigation. NCDOT shall not perform off-site mitigation without prior consultation with and approval from DMS. NCDOT shall acquire any necessary off-site mitigation through DMS unless otherwise agreed to by DMS and NCDOT, including the purchase of any private mitigation bank credits.

#### **4. DMS Responsibilities**

4.1. NCDOT Compensatory Mitigation. DMS will manage and/or direct all NCDOT Stream and Wetland ILF compensatory mitigation procurement needed to satisfy each NCDOT Mitigation Order. DMS will deliver credits according to the terms, processes and conditions described in the DMS ILF Instrument, and all relevant statutes, rules, and regulatory guidelines.

4.2. Watershed Planning. DMS is required by Federal Rule to apply a watershed approach to all compensatory mitigation performed under the DMS ILF Instrument. Under this agreement, DMS will implement watershed planning consistent with the terms and conditions of the Compensation Planning Framework as defined in the DMS ILF Instrument

4.3. Mitigation Procurement. DMS shall oversee and direct the future acquisition of mitigation credits to the extent needed to satisfy any Mitigation Order. After the Mitigation Order is received, DMS will review the NCDOT Stream and Wetland ILF asset inventory to identify areas of credit surplus and credit needs. DMS will procure additional needed credits per the DMS ILF Instrument and applicable statutes. When NCDOT provides DMS with a mitigation order that includes mitigation needed beyond the minimum five (5) year requirements, and that is sufficient (in quantity, compliance timeline, and suitability for mitigation bank credits), DMS will initially attempt to fill suitable components of the order by issuing an RFP for unreleased mitigation bank credits.

4.4. Financial Accounting. DMS shall maintain all books, documents, papers, accounting records and such other evidence in accordance with state and federal accounting procedures and regulations. DMS shall make such materials available at its office at all reasonable times during the MOA period, and in accordance with state retention guidelines. To assist NCDOT with determining mitigation costs for individual projects, NCDMS shall provide NCDOT with the cost for each mitigation site along with the anticipated projects to be debited from those sites.

- 4.5. Biennial Budget. DMS shall provide NCDOT a biennial budget as described below, based upon the projected annual costs of active mitigation projects and administration for the next two state fiscal years and a gross estimate of the annual budgets for the first two years of fulfilling the Mitigation Order. The biennial budget will be supported with information on new mitigation needed for DMS to fulfill the NCDOT Mitigation Order, including the amounts of mitigation needed by credit type and cataloging unit.
- 4.6. Budget Development and Approval. DMS will produce a biennial budget and submit it to the NCDOT Environmental Analysis Unit (EAU) for review by April 15 of each fiscal year. The Biennial Budget will include line-item accounting of the administrative and mitigation delivery budget. The NCDOT EAU will submit questions and comments to DMS by April 30. DMS will respond to comments and/or adjust the draft budget by May 15. A copy of the finalized budget will be sent to the NCDOT Environmental Analysis Unit. The DMS Director and NCDOT Environmental Analysis Unit Head will send a copy of the final budget to the Contract Administrators of this MOA. Acceptance of the final biennial budget by the Environmental Analysis Unit shall constitute authorization and approval for DMS to procure all new mitigation credit needs necessary to fulfill the Mitigation Order as described in Section 3.4 (above). No significant modifications in the timelines, budgeted scope, or budget levels of the MOA shall occur until both Parties have mutually agreed upon the changes to this MOA.
- 4.7. Quarterly Invoicing. Invoice submittal and payment will occur quarterly. DMS will submit invoices to NCDOT within ten (10) business days of the BD-701 certifications by the NC Office of the State Controller each quarter. DMS's invoice will include the previous quarter's actual expenditures and the estimated expenditures for the next quarter. NCDOT will approve the invoice for payment after appropriate invoice documentation has been provided, any questions have been addressed in writing by both parties, and any necessary changes have been incorporated. NCDOT will identify and notify DMS of any issues that may delay payment within ten (10) business days. Payment to DMS shall occur within fifteen (15) business days from receipt of the invoice approval and such approval shall not be unreasonably withheld. The NCDOT invoice payments made to DMS shall be deposited in an interest-bearing fund that is housed in DEQ and specific to the NCDOT program. All interest earned in the program account must remain in that account for use by the NCDOT program in accordance with CFR 332.S(i). NCDOT and NCDMS agree that unique financial circumstances occur periodically which may require a different invoicing schedule. If a different invoicing schedule is needed temporarily, NCDOT and NCOMS shall consult and agree upon the schedule.
- 4.8. Program Decisions. The Contract Administrators for this MOA will meet as needed to discuss and make executive level decisions regarding programmatic changes associated with NCDOT funded program components.
- 4.9. Reporting. No later than September 30 of each year (contingent upon the BD-701 certifications being completed by the NC Office of the State Controller), OMS will provide the NCDOT with a final financial report of all mitigation costs and expenditures made during the prior state fiscal year. OMS will provide an Annual Report along with a regulatory addendum in accordance with the DMS ILF Instrument timelines and specifications.

## S. Amendment, Termination, and Dispute Resolution

- 5.1. Amendments. Amendments to this MOA may be made with mutual agreement in writing by the Contract Administrators.
- 5.2. Termination. This MOA may be terminated by a signatory party by giving a ninety (90) day written notice to the other party. Notwithstanding any termination of this MOA, OMS shall complete all restoration, creation, enhancement, or preservation activities necessary to satisfy the compensatory mitigation requirements of the state permits for which OMS is responsible. The completion of such compensatory mitigation shall be accomplished in accordance with the project implementation schedule included within the individual mitigation plans.
- 5.3. Termination Accounting. **Within** ninety (90) days of such written notice of termination by any party, OMS shall provide an accounting report showing total payments received from NCDOT in satisfaction of compensatory mitigation requirements and funds disbursed for implementation of compensatory mitigation requirements. The final report shall itemize the following accounting items for the NCDOT Stream and Wetland ILF:
  - 1) List of active and completed mitigation projects and their associated credits (released, unreleased and unrealized);
  - 2) the NCDOT Stream and Wetland ILF asset and requirement ledgers;
  - 3) list of completed projects with no anticipated future expenditures and available mitigation credits;
  - 4) list of all active contracts and projection of all future contracts and expenditures necessary to fulfill program requirements;
  - 5) total cash, encumbered cash, and unencumbered cash balances in account.
- 5.4. NCDOT Termination Payment and Closure. In the event of termination, no additional NCDOT compensatory mitigation obligations will be accepted by OMS that will require new credit procurement by OMS. OMS will submit a final invoice to NCDOT within ninety (90) days in the amount necessary to complete all obligations from previous Mitigation Orders. NCDOT shall complete payment in accordance with the project implementation schedule included within the individual mitigation plans or on an accelerated payment schedule mutually agreeable to both parties. OMS would continue to manage active mitigation projects until their full completion, final regulatory closeout, and successful transfer to long-term management. Upon successful transfer to long-term management and upon receipt of all payments for each completed project, OMS will provide a receipt to NCDOT stating that the compensatory mitigation credit requirements assigned to OMS and fulfilled by each such project, have been satisfied.
- 5.5. Termination Transfer of Assets. All NCDOT Stream and Wetland ILF credits shall be held by NCDEQ as necessary contingency in the event of unforeseen credits losses sustained during the project closure process after termination. After all mitigation projects have been fully completed and closed-out by the regulatory agencies, and after all permit obligations previously accepted by OMS have been fulfilled, any remaining mitigation credits will be transferred to NCDOT within ninety (90) days.
- 5.6. Conflicts and Disputes. All conflicts and disputes arising from the implementation of this MOA, including possible termination, shall be resolved by the NCDEQ and NCDOT Secretaries.
- 5.7. Contract Administrators. The Chief Deputy Secretary for NCDEQ and the Chief Operating Officer for NCDOT are designated as the Contract Administrators for their respective agencies and for matters that require escalation of disputes resulting from

consultation between NCOOT and OMS.

## **6. Effective Date**

- 6.1. Effective Date. The effective date of this Memorandum of Agreement is the date of the last signature below.

## **7. Duration**

- 7.1 Duration. This MOA will be evaluated by both parties every five (5) years after the effective date, unless otherwise terminated pursuant to Section 5.2. No later than ninety (90) days prior to the conclusion of the five (5) year period, NCOOT shall notify OMS in writing. If there are no objections from either party, the term of this MOA shall automatically be extended for an additional five (5) years. If either party objects to extending the MOA or proposes amendments, NCDOT and OMS shall utilize Section 5.6 to avoid termination.

North Carolina Department of Transportation

Signed by:  
*J. R. Hopkins*  
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J.R. Hopkins, PE  
Secretary

06/04/2025

Date

North Carolina Department of Environmental Quality

Signed by:  
*D. Reid Wilson*  
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D. Reid Wilson  
Secretary

06/05/2025

Date