MEMORANDUM OF AGREEMENT

BETWEEN

THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

AND

THE NORTH CAROLINA WILDLIFE RESOURCES COMMISSION

THIS AGREEMENT is made and entered into this the 30th day of October, 2009, between the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina, herein referred to as NCDOT, and the NORTH CAROLINA WILDLIFE RESOURCES COMMISSION of the North Carolina Department of Environment and Natural Resources, an agency of the State of North Carolina, herein referred to as WRC.

WITNESSETH:

WHEREAS, the NCDOT owns and maintains certain rights of way surrounding bridges in North Carolina (hereinafter, "the Property"), and,

WHEREAS, the WRC has been given the mission to fund, provide, and manage public recreational access; and,

WHEREAS, Session Law 2007-485 directs the WRC and NCDOT to work together to address public access to coastal waters along the roadways, bridges, and other transportation infrastructure owned or maintained by NCDOT, and,

WHEREAS, it is necessary for the NCDOT and the WRC to coordinate planning and development processes that coincide on the Property; and,

WHEREAS, the WRC and the NCDOT may enter into cooperative agreements with the approval of the North Carolina Department of Administration, pursuant to N.C.G.S. § 143B-24.

NOW, THEREFORE, the parties hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant and agree, each with the other, to formalize a framework for cooperation between the NCDOT and the WRC for the planning and development of public recreational access on or adjacent to Right of Way owned by the NCDOT.

1. The parties agree to cooperate in accordance with Attachments A and B which are incorporated as part of this agreement and to participate in joint planning and/or development of transportation projects and recreational access facilities as appropriate.

2. If, pursuant to Attachments A and B, the parties agree to pursue a recreational access facility, a project specific agreement will be signed by both parties.

3. Both parties agree that the property for the development of public recreational access on or adjacent to the Right of Way owned by the NCDOT, considered in its entirety, is not significant for consideration under Section 4(f) of the US Department of Transportation Act of 1966 and its implementing regulations (23 CFR Part 774) and further agree that it is not the intent of this agreement to interfere with future transportation improvements that may be needed at or near a bridge or stream crossing. Both parties also agree to insert this acknowledgment into each project specific agreement. To that end, recreational access facilities will be considered interim uses of NCDOT Property, encroachments onto NCDOT property, or interim uses of property adjacent to the Right of Way owned by the NCDOT, as further described in Attachment A.

4. Amendments to this Agreement may be made by mutual agreement and must be in writing and signed by both parties.

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

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION

By: _____ August 26, 2009
Gordon Myers, Executive Director — Date

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

By: _____ 9/3/09
Eugene A. Conti, Jr., Secretary — Date

By: _____ 9/6/09
J. Douglas Galyon, Chairman, NC Board of Transportation — Date

NORTH CAROLINA DEPARTMENT OF ADMINISTRATION

By: _____ 10.30.09
W. Britt Cobb, Jr, Secretary — Date

ATTACHMENT A

Attachment A serves as a framework for cooperation between the NCDOT and the WRC for planning and development of public recreational access on NCDOT's bridge replacement and new bridge construction projects.

Project Selection

The NCDOT and WRC will work cooperatively to identify feasible public recreational access on projects listed in the NCDOT's Transportation Improvement Program (TIP). Project selection will be determined by the following guidelines:

1. The NCDOT Project Development and Environmental Analysis Branch (PDEA) Bridge Unit agrees to furnish the NCDOT's TIP bridge project list in electronic format to the WRC Engineering Services, Design Services Section Chief. The NCDOT PDEA Bridge Unit will provide TIP updates following Board of Transportation approval of each new TIP.
2. The WRC, at no expense to NCDOT, shall perform site investigations, assess development feasibility, and prepare finding reports for each of the TIP projects. The WRC will provide the NCDOT a listing of projects recommended for development of public recreational access prior to NCDOT's project scoping meeting.
3. NCDOT's PDEA Bridge Unit will coordinate with the appropriate NCDOT Division Engineer for each recommended project to establish NCDOT's acceptance of each recommended project as appropriate for joint development.
4. The NCDOT PDEA Bridge Unit Project Planning Engineer shall contact the WRC Project Engineer upon planning and design commencement of the TIP project recommended for public recreational access to initiate the design

integration process, if the criteria contained in NCDOT's "Guidelines For Recreational Access At Creeks And Rivers," attached hereto as Attachment B, are met.

Planning and Design Integration

The NCDOT and the WRC will work cooperatively to accommodate the WRC's public recreational access needs within the NCDOT's TIP project planning and design process in accordance with the following guidelines:

1. The NCDOT PDEA Bridge Unit Project Planning Engineer will invite the WRC Project Engineer to the Field Scoping Meeting.
2. The NCDOT Roadway Design Project Engineer will provide the WRC Project Engineer with preliminary designs of alignment alternatives for the TIP bridge projects once designs are complete (approximately four (4) months after the Field Scoping Meeting).
3. The WRC will attend the Field Scoping Meeting and will provide the NCDOT with input regarding public recreational access development for the project site.
4. If feasible and practical, the NCDOT will accommodate the WRC's public recreational access needs within the TIP project design.
5. On TIP Projects with anticipated public recreational access accommodations, the WRC Project Engineer will be invited by the NCDOT Roadway Design Project Engineer to attend the Combined Field Inspection meeting.
6. For projects constructed entirely or in part by the NCDOT contractor, the NCDOT and WRC will coordinate payment and bid item details nine (9) months prior to TIP project letting. WRC will reimburse NCDOT for all expenses of project construction.

7. NCDOT must keep bridge replacement projects on schedule. If project issues or circumstances dictate, NCDOT reserves the right to proceed with the bridge replacement project and have WRC complete the access project at a later date.

Ancillary Property Acquisition

The integration of public recreational access with bridge replacement or construction of a new bridge may require the purchase of ancillary property in addition to the property required for the bridge project. Ancillary property required for the construction of public recreational access will be acquired according to the following guidelines:

1. The WRC will provide to the NCDOT ancillary property delineation to meet requirements of desired public recreational access.
2. NCDOT agrees to clearly identify and label on the TIP Project's Final Right of Way plans the ancillary property needed for the public recreational access. The property shall be labeled on the plans as "Public Recreational Property (By others)".
3. The NCDOT Right of Way Branch will perform appraisals for the ancillary property. The WRC will reimburse the NCDOT for the expense of the appraisal.
4. The NCDOT Right of Way Branch Agents will negotiate for the NCDOT project property required for the highway project. The Department of Administration, State Property Office, will negotiate for the WRC public recreational access property. The NCDOT Right of Way Agent and the State Property Office Agent will coordinate the initial negotiation meeting with the property owner.
5. Ownership transfer of the NCDOT right of way and the ancillary property will be completed separately through the acquisition processes established by each agency. At the completion of the acquisition process, NCDOT will own the right of way needed for the bridge project construction and the WRC will own the

additional property needed for the public recreational access. The WRC may also elect to donate the additional property needed for the public recreational access to the NCDOT. In this case, subject to the terms of a NCDOT encroachment agreement, the WRC will be allowed to encroach upon the additional property for the purposes of managing, maintaining, and operating the public recreational access. If there is a need for the NCDOT to demand abandonment of the encroachment, then NCDOT will provide written notification to WRC. In the case where NCDOT demands abandonment of the encroachment, NCDOT will perform the appraisal and will reimburse the WRC for the appraised value of the donated property.

NCDOT will certify that any property acquired by others and donated to NCDOT meets all applicable Federal and NCDOT acquisition requirements prior to being incorporated into any Federal-aid project.

6 Alternatively, the NCDOT Right of Way Branch may elect to perform appraisals and negotiate for both the NCDOT project property and the public recreational access property or a portion of the public access property. In this case, title to the public recreational access property will be held by the NCDOT and the property will be leased to the WRC on terms agreeable to both parties.

Environmental Documents and Permitting

Primary environmental regulatory agencies have provided the following guidance for permitting cooperative projects:

1 United States Army Corps of Engineers:

A. Public recreational access projects which will be constructed and completed by the WRC or its agents within one year of the completion of the NCDOT's bridge

project should be permitted as one project in combination with the NCDOT's project.

B. Public recreational access projects which will be constructed and completed by NCDOT or its agents within one year of the completion of the NCDOT's bridge project should be permitted as one project in combination with the NCDOT's project.

C. For public recreational access projects constructed and completed by the WRC or its agents one year or more after the completion of the NCDOT's bridge project, the regulatory agency requests notification of the pending project.

2. Division of Coastal Management

A. The Division of Coastal Management prefers application for regulatory approval of cooperative projects within the Division of Coastal Management's jurisdiction be submitted separately to maintain agency accountability.

B On a case by case basis, the Division of Coastal Management will consider permitting cooperative bridge replacement and public recreational access projects under a single application if it is deemed beneficial to the NCDOT and the WRC for an individual cooperative project.

General Permitting and Construction

1. The WRC, at no expense to the NCDOT, shall prepare, apply for and obtain the necessary environmental documents, mitigation and all permits needed to develop the public recreational access.

2 The WRC shall obtain an executed encroachment agreement from the NCDOT prior to the start of construction of the public recreational access.

3. The WRC shall be responsible for the development, design and construction of the public recreational access, including landscape plans, at no expense to the NCDOT.

4. The WRC, and/or its agent, shall construct, or cause to be constructed, at no cost to the NCDOT, the access roads, parking area, and any other structures for the public recreational access; any necessary site preparations or improvements including, but not limited to, landscaping, relocation of control access fencing, lighting, sidewalks, handicap accessibility structures; and any necessary roadway improvements including, but not limited to, turn lanes, signalization, pavement markings, or signs. All work shall be done in accordance with the approved project plans and in accordance with the NCDOT standards and specifications.
5. The WRC and/or its agent(s) agrees to comply with all federal, state and local laws and rules in the construction of the site and to prevent soil erosion; silting or pollution of rivers, streams, lakes, wetlands, reservoirs, other water impoundments, ground surfaces, or other property; or pollution of the air.
6. The WRC agrees to the following conditions during construction of the public recreational access:
    A. Letting of the contract for construction and purchase of materials, supplies, and equipment shall comply with North Carolina General Statute 143-129.
    B. The NCDOT reserves the right to inspect any portion of the work being performed by the WRC and/or its agent, to ensure compliance with the provisions of this Agreement.
    C. Any changes in the plans and site preparations shall be approved by the Division Engineer or his designated representative prior to the work being performed.
    D. All materials incorporated into the public recreational access and workmanship performed by the WRC and/or its agent, shall be in accordance with the standards and specifications used by the NCDOT.

E. The WRC, and/or its agent, shall be responsible for ensuring that the contractor complies with all of the terms of the approved plans and specifications.

F. During the construction of the public recreational access, the WRC, and/or its agent, shall provide and maintain adequate barricades, signs, and any other warning devices necessary for the protection and safety of its employees, agents and the traveling public in accordance with the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

G. The WRC, at no expense or liability to the NCDOT, shall adjust and/or relocate all utilities in conflict with the public recreational access.

Maintenance and Operations

1. The NCDOT reserves the right to inspect the public recreational access to ensure that the public recreational access is being maintained in a manner that is in conformity with its intended use.
2. The WRC, at no expense to the NCDOT, shall assume all management, security and liability responsibilities for the public recreational access in accordance with all applicable laws and regulations. The WRC shall perform routine safety and condition inspections of the public recreational access and maintain written documentation for said inspections
3. The WRC shall not install any underground tanks or associated underground piping for the storage of any product on the recreational access without the express written consent of the NCDOT.
4. The WRC shall not dispose of wastes of any kind, whether hazardous or not, on the public recreational access and shall not conduct any activity which may or does require a hazardous waste treatment, storage or disposal facility permit from

either the federal or state agencies. Septic systems installed to provide public restrooms are exempted from this condition provided express written consent is obtained from the Division Engineer or his designated representative.

5. The WRC agrees to exercise every reasonable precaution to maintain the public recreational access in a manner that prevents soil erosion; silting or pollution of rivers, streams, lakes, wetlands, reservoirs, other water impoundments, ground surfaces, or other property, or pollution of the air.

6. If hazardous or any other unauthorized material is discovered to have been illegally discarded since the acquisition of the property, the WRC shall be solely responsible and hold the NCDOT harmless for all costs associated with the removal of the material and any damages caused by the existence of said material.

7. If, in the future and upon completion of the public recreational access, the WRC desires to structurally alter the public recreational access or a portion thereof, notification must be submitted to the Division Engineer prior to any work being performed. If said alterations exceed the original boundaries of the public recreational access, or change the access for vehicles utilizing the public recreational access or have an adverse safety impact on highway traffic, the plan for the alterations shall be submitted to the Division Engineer for final approval and shall be approved by the Division Engineer or his designated representative prior to the start of any work.

8. Upon completion of the public recreational access by the WRC, the WRC shall have total jurisdiction and responsibility for the maintenance of the public recreational access including, but not limited to litter and garbage removal, parking and site maintenance, resurfacing, mowing, structural maintenance, painting, etc. Maintenance of the lighting shall include but not be limited to the

repair and replacement of foundations, poles and fixtures. The WRC shall also be responsible for providing electrical service and for all bills for the public recreational access, at no expense to the NCDOT. The WRC shall assume all liability and maintenance responsibility for these improvements.

General Conditions

1. WRC shall indemnify and hold harmless the NCDOT and its officers, agents, and employees from all suits, actions, or claims of any character brought for any injury or damages received or sustained by any person, persons, or property by reason of any act of the WRC, its contractors, agents or employees, in the design, construction, operation, or maintenance of the public recreational access The WRC shall be responsible for acquiring necessary insurance for the public recreational access in the event of vandalism and/or acts of nature that damage the public recreational access, at no expense to the NCDOT.
2. If it is necessary for the WRC to enter into agreements with third parties for the construction or maintenance of the public recreational access, the WRC shall enter into such agreements at its sole cost and expense. Such agreements shall not affect the terms or obligations of the parties to this Agreement.
3. The NCDOT and WRC reserve the right to terminate this Agreement at any time and for any reason. Each party shall give the other party thirty (30) days notice of termination.
4. At the NCDOT's discretion, the NCDOT may immediately control, limit or close said public recreational access from any public use in the event of an emergency, if the NCDOT deems the Property is otherwise unsafe or the Property presents a safety hazard to highway traffic.

5. Upon completion of the public recreational access, the WRC shall add the public recreational access to their inventory. Furthermore, the WRC shall be responsible for addressing all concerns and/or complaints from adjoining property owners that might arise due to the public recreational access. If said concerns are not addressed satisfactorily the NCDOT reserves the right to limit and/or close the public recreational access from all public use.

6. The NCDOT shall retain all rights of ownership of said Property for the purpose of bridge or highway maintenance, bridge replacement, and/or bridge expansion and/or roadway expansion. Both parties agree that the property for the development of public recreational access on or adjacent to the Right of Way owned by the NCDOT, considered in its entirety, is not significant for consideration under Section 4(f) of the US Department of Transportation Act of 1966 and its implementing regulations (23 CFR Part 774) and further agree that it is not the intent of this agreement to interfere with future transportation improvements that may be needed at or near a bridge or stream crossing. To that end, recreational access facilities will be considered interim uses of NCDOT property, encroachments onto NCDOT property, or interim uses of property adjacent to the Right of Way owned by the NCDOT The NCDOT may take any action it deems necessary, at any time, in order to maintain, repair, or improve its bridges or roadways regardless of the effect such action may have on the public recreational access. The NCDOT may require the public recreational access to alter its operations or to temporarily or permanently close to facilitate such maintenance, repair or improvement In the event of a permanent closure of a particular public recreation access site, the WRC shall, at its own expense and within 6 months, remove any improvements affixed to the Property which in the

opinion of the NCDOT can be removed without material injury to the Property, and restore the Property to the maximum extent practicable to a condition existing prior to the to the construction of the public recreational access. If WRC relocates or replaces the public recreational access, or if the NCDOT, for any reason, is required to relocate or replace the public recreational access, WRC will be solely responsible for finding a new site for the public recreational access and for all costs associated with said relocation or replacement.

7. To the extent allowed by Law, each party shall be responsible for its respective actions under the terms of this agreement and for any claims arising as a result of such actions under the terms of this Agreement.

ATTACHMENT B

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
GUIDELINES FOR RECREATIONAL ACCESS AT CREEKS AND RIVERS

Public interest in recreational access along various creeks and rivers in North Carolina has been increasing in recent years. The North Carolina Department of Transportation (NCDOT) fully acknowledges the value of recreational access but has not been given the mission to fund, provide, or manage such facilities. The Department will lend support (as legal, design, and funding constraints allow) by coordinating with other agencies that have been charged with such a mission.

In order to delineate more clearly how NCDOT will participate in providing recreational access, NCDOT has developed the guidelines to direct the decision making process. These guidelines should be used during the planning process The decision regarding whether an access will be provided should be made before the final planning document is completed so the access can be addressed within the document

If there is an existing publicly owned formal facility managed for recreational access (fishing, canoeing, or otherwise), the Department will replace the facility as part of the project construction. This is in accordance with the Federal Highway Administration's (FHWA) Section 4(f) procedures

If there is an existing privately owned formal facility managed for recreational access (fishing, canoeing, or otherwise) NCDOT will address any project impacts to the facility through the right of way acquisition process. NCDOT will not, however, replace impacted parts of the facility as part of the project construction

If formal access is desired where there is an informal recreational access (no formal facilities but site is used to access fishing, canoeing, and otherwise) or no existing access at all, NCDOT will include new access as part of the project construction under either of the following two conditions:

1) If, in the judgement of NCDOT, there is a strong transportation safety related need to include an access then NCDOT will improve the location as appropriate to resolve the safety concern. NCDOT will coordinate with local agencies on the long term management of the site. A separate government agency must agree to provide the long term maintenance and management of the site.

2) If all of the following five criteria is met, then NCDOT will as part of planning, design and construction, include a recreational access facility:

- If there is a separate funding source outside of the North Carolina Department of Transportation
- If there is a partnering government agency willing to maintain, fund, and manage the site
- If there is a willing seller or provider of land needed for the facility
- If there are not unacceptable impacts associated with developing the new recreational access facility (wetland impacts for example)
- If the adjacent property owners and the majority of the public comments favor the addition of the recreational access facility

Any project constructed by NCDOT will be consistent with the Americans with Disabilities Act (ADA). Any exceptions to the guidelines will require the approval of the NCDOT State Highway Administrator and the FHWA Division Administrator