

<b>STATE OF NORTH CAROLINA</b> <b>COUNTIES OF CHEROKEE, CLAY</b> <b>GRAHAM, JACKSON, MACON</b> <b>AND SWAIN</b>	) : ) ) )	<b>NANTHALA AREA PUBLIC ACCESS AREAS</b> <b>AGREEMENT</b>
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**NORTH CAROLINA WILDLIFE RESOURCES COMMISSION**  
**NANTAHALA AREA FERC HYDROELECTRIC PROJECTS**

**THIS PUBLIC ACCESS AREAS AGREEMENT** (this “Agreement”) is made this \_\_\_ day of \_\_\_\_\_ 2003, between **DUKE ENERGY CORPORATION**, a North Carolina corporation (hereinafter referred to as “Grantor”), and the **NORTH CAROLINA WILDLIFE RESOURCES COMMISSION** (NCWRC), an Agency of the State of North Carolina (hereinafter referred to as “Grantee”) and which may be referred to individually or collectively as “Party” or “Parties”;

**WITNESSETH:**

**WHEREAS**, “Duke Power, a division of Duke Energy Corporation, Nantahala Area” (“DPNA”), is the official title by which Grantor has been licensed by the Federal Energy Regulatory Commission (FERC) to operate the following North Carolina Hydroelectric Power Projects:

1. The Bryson Project (FERC Project No. 2601) in Swain County on the Oconaluftee River,
2. The Dillsboro Project (FERC Project No. 2602) in Jackson County on the Tuckasegee River,
3. The East Fork Project (FERC Project No. 2698) in Jackson County on the East Fork of the Tuckasegee River,
4. The Franklin Project (FERC Project No. 2603) in Macon County on the Little Tennessee River,
5. The Mission Project (FERC Project No. 2619) in Clay County on the Hiwassee River,
6. The Nantahala Project (FERC Project No. 2692) in Clay and Macon Counties on the Nantahala River, Dicks Creek, and WhiteOak Creek,
7. The Queens Creek Project (FERC Project No. 2694) in Macon County on the Nantahala River, and
8. The West Fork Project (FERC Project No. 2686) in Jackson County on the West Fork of the Tuckasegee River;

and which may be referred to individually or collectively as the “Project” or “Projects” and may also be referred to collectively as the DPNA Hydro Projects and;

**WHEREAS**, Grantor has entered into Settlement Agreements with the Tuckasegee Cooperative Stakeholder Team and with the Nantahala Cooperative Stakeholder Team which provide the terms, conditions, and limitations specific to resolution of all of the material matters at issue in the FERC relicensing of the Tuckasegee, East Fork, West Fork, Dillsboro and Nantahala Projects;

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**WHEREAS**, Grantor owns the tracts of land, referred to as “Public Reservoir Access Areas, Public Fishing Areas and Tuckasegee River Public Access Areas” (hereinafter “Public Access Areas”), more specifically describe on **Exhibit A** attached hereto, adjacent to the aforementioned Projects’ waters and rivers which provide access for public recreation purposes; and,

**WHEREAS**, Grantor desires to lease portions of the Public Access Areas shown in Exhibit A to state and local governmental agencies, commercial vendors or other interested parties, through its “Access Area Improvement Initiative”, which is designed to ensure the development and maintenance of a variety of high quality recreational opportunities for the general public; and,

**WHEREAS**, the Grantee agrees to: (1) enforce the laws of the State of North Carolina and its own regulations is on all parts of the Public Access Areas which are the subject of this Agreement; and (2) maintain the Public Access Areas, except for those portions of the Public Access Areas that have been or may be leased by Grantor to another entity; and,

**NOW, THEREFORE**, the Parties in consideration of the premises and the mutual covenants herein contained agree as follows:

1. **Term:** This Agreement shall become effective once signed by the Parties hereto and shall terminate on \_\_\_\_\_. This Agreement may be renewed if the Parties mutually agree, but Grantor shall not be obligated to renew. Grantor may terminate on this Agreement at any time if directed to do so by the FERC or its successor agency having jurisdiction over hydroelectric reservoirs which are subject to the Federal Power Act. Grantor may also terminate this Agreement pursuant to Paragraph 15 herein.

2. **Previous Agreements:** This Agreement replaces and supercedes any and all prior Agreements that may have been entered into between Grantor and Grantee for maintenance and enforcement activities on any of the Public Access Areas and such prior Agreement or Agreements shall be no further force or effect.

3. **Wildlife Protection Access:** Grantee, its agents and assigns, shall have the rights of ingress and egress upon all of the Public Access Areas at any and all times for the protection and propagation of wildlife.

4. **Law Enforcement:** Grantee has the responsibility under this Agreement to enforce the laws of the State of North Carolina and its own regulations for which it is responsible, on all portions of all Public Access Areas, except those portions of the Public Access Areas that have been leased to another party.

5. **Cost-Share:** Grantor agrees to pay Grantee a \$ \_\_\_\_\_ per year fee to maintain the Public Access Areas which are the subject of this Agreement. In return for this annual maintenance fee, Grantee has agreed to provide a minimum of \$ \_\_\_\_\_ per year toward capital improvements on the Public Access Areas, provided that matching funds are available to Grantee on a 50-50 match basis. Matching funds may come from numerous sources, including but not limited to (1) Grantor, (2) a state, local, or other non-federal governmental agency, (3) a third party lessee, or (4) donation from an individual or organization. That portion of the funding provided for capital improvements to match Grantee’s funds may only be utilized for improvements that directly benefit boating access users or public fishing area users. The annual cost-share amount can exceed \$ \_\_\_\_\_ if the Grantee has additional funds available for improvements to the Public Access Areas. Further, to insure Grantee retains the potential to utilize “U.S. Fish and Wildlife Sportfish Restoration Funds”, the source of matching funds shall not be a federal government source. All capital improvements constructed with these matching funds that are not located within the physical boundaries of the Grantee-managed portion of the Public Access Area, must remain accessible and free of charge to boating access facility users and public fishing area users for the duration of this Agreement. The Grantee’s contribution towards capital improvements, (which may include materials and/or labor in lieu of dollars), will be described in detail in an annual report which must be submitted to Grantor prior to the Annual Coordination Meeting (see Paragraph 13), for discussion. If Grantee’s contribution will be in materials and/or labor, such activities may not proceed until approved by Grantor.

6. **Compliance with Federal, State and Local Laws:** Grantee agrees that its use of the Public Access Areas as herein provided will be consistent with all FERC orders and regulations regarding recreation opportunities and development at FERC licensed hydro projects, and all other applicable state, federal and local laws as well as all ordinances, rules, regulations and sanctions of any regulatory body or governmental agency (state, federal or local) having jurisdiction in the subject premises, and Grantee's use of the aforesaid subject premises will comply with all applicable Duke Power Lake Management requirements and will not endanger health or safety, create a nuisance or otherwise be incompatible with the overall recreation use of the DPNA Hydro Projects.

7. **Boat Launching Facilities:** Grantor will provide public boat launching facilities where such facilities are indicated on Exhibit A, for the duration of this Agreement. Should relocation or replacement of public boat launching facilities be required for

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any of the Public Access Areas, the major repair cost measures defined in Paragraph 12 will be implemented to determine the funding for such relocation or replacement.

8. Signage: Grantor will provide to Grantee all information required for signage at the entrance for boat access ramp, or other required site, as set forth in the DPNA Hydro Projects licenses. Grantee will erect and maintain all said signs.

9. Maintenance: Grantee shall provide routine maintenance and repairs at all the Public Access Areas, including but not limited to those items specified in ‘a’ through ‘o’ below.

a. Entrance Road: Entrance roads are to be maintained in a safe, open, and clear condition and repaired on an as needed basis to ensure a good quality surface and drainage is maintained. Repairs may include, but are not limited to: repairing asphalt and maintaining gravel drives clear of ruts by grading and/or adding stone, keeping side ditches, water bars and culverts clear of water flow impediments, painting lines, and repairing guardrails.

b. Parking Lots and Turnarounds: Parking lots and turnarounds are to be maintained in a safe condition and repaired on an as needed basis to ensure good drainage. Repairs may include, but are not limited to: repairing asphalt, repainting faded lines and letters, painting new lines and letters, repairing curbing, applying asphalt sealer, maintaining gravel areas clear of ruts, ensuring proper drainage by grading and/or adding stone, and keeping all areas clear of debris, weeds, and grass.

c. Courtesy Docks and Fishing Piers: Courtesy docks and fishing piers are to be maintained in a safe condition and repaired as needed to ensure user safety. Repairs may include, but are not limited to: replacing broken or defective parts, replacing broken or loose pilings, replacing defective floats, insuring dock sections remain attached to each other, maintaining stone level around dock abutments and ramps, insuring nails and fastening devices are flush with dock surfaces, ensuring boat bumpers remain in sound condition, and maintaining handrails free of any rough or sharp areas.

d. Boat Launch Ramps: Boat Launch ramps are to be maintained in a safe condition and repaired as needed to ensure user safety. Repairs may include, but are not limited to: removal of debris and silt or any items that could hinder boat launching, maintaining stone at a sufficient level along edges and ends of ramps to ensure safety, and repairing any holes in ramps.

e. Drainage Control Devices: Drainage control devices provided to eliminate or minimize erosion problems are to be maintained in a safe condition and repaired as needed to ensure good drainage. Repairs may include, but are not limited to: correcting erosion problems and keeping drainage ditches and culverts clear of all debris, trees, and other drainage impediments.

f. Access Area Shoreline: The entire shoreline of all Public Access Areas is to be maintained in a safe condition and repaired as needed to ensure safety of recreation users and to maintain effective erosion control. Repairs may include, but are not limited to: maintaining or adding erosion control materials and removing brush or trees that threaten to displace erosion control materials or threaten the integrity of the bank.

g. Dead or Diseased Tree Removal: All dead or diseased trees or fallen tree and limbs that are or could impact the use or maintenance of the Public Access Area are to be removed in a timely manner.

h. Tree Maintenance: Ensure that all trees bordering parking areas, roads and/or walkways do not block driver vision; do not interfere with the movement of pedestrians, vehicles, and boats; and do not impede mowing and maintenance of the Public Access Area. Trees that may block vision or interfere with vehicle and boat movement or that have dead limbs that could injure recreation users if they fall will be promptly removed from the site.

i. Trash Removal: Trash receptacles placed in Public Access Areas will be maintained in a safe and sanitary condition and must be sized to adequately handle the volume of debris normally disposed of in the area. All trash receptacles should be emptied weekly or more often so that the accumulation of trash/refuse/junk does not present a safety or health hazard. Heavily used Public Access Areas may require more frequent trash removal and frequency of trash removal may need to be increased during peak recreation seasons and on weekends. All refuse and trash should be removed from the grounds before mowing, and if scattered around the Public Access Areas, removed on a weekly basis or as often as needed to ensure a safe and hazard free area.

j. Grass and Ground Cover: Ground cover, such as shrubs, grass, or mulch, will be provided as needed throughout the Public Access Areas and should be maintained in a safe, environmentally sound, and aesthetically pleasing condition. Mulch and/or grass areas should be maintained at a height of not less than three (3) inches and not more than eight (8) inches. Grass is to

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be mowed to the ditch or tree line along roadways, to the tree line around parking lots and to the tree line in open areas. Mowing an additional four (4) feet (or one mower width of at least three [3] feet) on the opposite side of the ditch line should be done in May, August and November or whenever appropriate to maintain sufficient water flow through the ditch and control woody vegetation.

k. Use of Herbicides: Environmentally acceptable herbicides approved by the Environmental Protection Agency and/or the North Carolina Department of Agriculture may be utilized in Public Access Areas as needed to control unwanted vegetation in driveways, parking lots, turnaround areas, designated foot paths, stabilized shoreline areas and on boat launch ramps. Herbicide may be applied to the first 6 (six) inches of grass around the edges of the parking lots, turnarounds and roads and around signposts, trash can pads, light poles and culverts and other structures to minimize the amount of trimming needed.

l. Use of Fertilizer: Use of fertilizer is permitted on a seasonal basis as needed. Grassed portions of Public Access Areas should be fertilized twice per year or at the times recommended and with the type of fertilizer recommended by the manufacturer for the type of material being treated.

m. Use of Grass Seed: The timing of, preparation for, and application of grass seed will be dependent on the manufacturer's recommendations for the type of seed being applied.

n. Signage: All signage provided by the Grantee must be maintained in safe and readable form.

o. Lighting and Utility Lines: All lighting must be installed in conformance with current building and electrical code requirements and maintained in a safe manner. The Grantee will assume all costs associated with any lighting and its maintenance, including but not limited to, payment of power bills. To the maximum extent practicable, new or modified utility lines and/or boating facilities should be designed so that overhead utility lines do not cross boat access roads, parking lots, turnaround areas, or boat launch ramps. Any overhead utility lines that have no other practical alternative to being located within the areas defined above, must be designed with the height clearances required by the then current National Electric Safety Code or any other applicable electrical safety codes, whichever is the most restrictive and provides for the greatest height.

10. User Fees: User fees on any portion(s) of the Public Access Areas subject to this Agreement and under control of Grantee, may only be charged under the following conditions:

a. Review Process: At least sixty (60) days prior to implementation of user fees, all parties will be provided with a copy of the proposed fee schedule and a written proposal describing how the fees will be collected and how the proceeds will be distributed and utilized. (Note: As a general rule, proceeds from user fees should be equitably shared among the parties considering the site uses to which the fees apply and the relative proportion of each party's operating and maintenance expenses for those applicable site uses.)

b. Prior Written Approval Required: User fees may not be implemented until all involved parties have agreed and written approval has been received from Grantor.

c. Review of User Fees: User fees established for the Public Access Areas must be a reasonable and customary amount and are subject to review and approval by the FERC to ensure Project license compliance.

d. Exemptions from User Fees: Grantor's employees, Grantee's employees, third party lessee's employees, local law enforcement officials, local environment and public health officials, and local emergency response crews, or any other official representing the Grantor, Grantee or a governmental entity that require access to the facilities while operating in his/her official capacity will be exempt from user fees.

11. Improvements: Grantee shall have the right, at its own expense, to make additions or modifications to facilities at the Public Access Areas, to change operating hours of such facilities, and to implement or modify user fees consistent with the purpose of the Public Access Areas. However, Grantee shall submit such requests in writing to Grantor and shall receive written approval from Grantor prior to initiating any work or instituting changes to the hours or user fees at the Public Access Areas. Additions to or modifications of any facilities will require the submittal of detailed plans, including but not limited to construction plans and elevation drawings. Major additions or modifications may require the approval of applicable local, state, and federal agencies prior to submittal of the request to Grantor and in certain situations, the Grantor will need to submit Grantee's written request to the FERC for approval, prior to issuance of approval by Grantor.

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12. Major Repair Costs: When major “non-routine” repairs or replacement of any facilities becomes necessary, Grantor and Grantee will consult to identify the resources necessary to make such repairs, and then determine the availability of the necessary resources and/or funding including the cost-share funding as defined in Paragraph 5. Approval by both Parties will be required prior to work being initiated. Major repairs may include, but are not limited to repair or replacement of docks, piers, boat launch ramps, access roads, or parking lots.

13. Annual Coordination Meeting: At least once each year, Grantor and Grantee will meet, during the period of January to March, to discuss and coordinate future development plans for improvements to the Public Access Areas. Potential projects for joint funding in any given year will normally be presented and discussed during the previous year’s Coordination Meeting, with a final decision made not later than June of the year before construction is to be initiated. Additional topics for the Coordination Meeting may include any proposed changes in operating hours or the implementation or modification of any user fees. Decisions on projects, operating hours and user fees must be acceptable to both Grantor and Grantee in order to be implemented.

14. Joint Inspection: Grantor and Grantee will perform an annual joint physical inspection of each of the Public Access Areas included in this Agreement, to insure the Public Access Areas are being maintained in a safe manner and to the levels mutually acceptable to Grantor and Grantee.

15. Termination: This Agreement or any part thereof may be terminated by either Party upon ninety (90) days written notice to the other. Upon termination or expiration of this Agreement, Grantee shall have the right to remove its personal property and any and all buildings, apparatus and materials supplied by it for the purpose of this Agreement for a period of ninety (90) days. If Grantee does not remove such items, such items shall become the property of the Grantor.

16. Amendments: Amendments to this Agreement may be proposed by either Party upon thirty (30) days written notice to the other. Such amendments, when agreed to by both Parties, shall become effective on the date such Amendment is signed by the Parties hereto.

17. Transfer or Assignment: Grantee may not transfer or assign this Agreement to any other party or entity.

18. Changes to Public Access Areas: Grantor reserves the right to move, alter or change the location, boundaries or layout of any Public Access Area or private road access to any Public Access Area, wherever and whenever it shall become necessary in order to insure full public utilization of the area or to prevent any noxious or offensive use of any area, or whenever the land then occupied by such Public Access Area or road is necessary to the operations of Grantor. In the event the relocation of any Public Access Area becomes necessary, Grantor will notify the Grantee and will attempt to relocate the affected Public Access Area on land owned by Grantor and at a location satisfactory to the Grantee. Grantor may add, remove or close all or any portion of any Public Access Area, at any time, after notifying the Grantee of the proposed action.

18a. Temporary Closures: In the event it becomes necessary to temporarily close any access (e.g. if a lake level is too low to safely use the access are, if a boat ramp has failed, or for any other reason), Grantor will notify Grantee of such condition and the Parties will jointly determine the appropriate course of action, including methods for closure, and public notification.

19. Notice of Changes to Design or Operation: Grantor will notify Grantee in writing of all new orders issued by the FERC that may impact the existing or future design and/or use of the Public Access Areas which are the subject of this Agreement.

20. Response to Increase in Recreation Use: Grantor will in good faith endeavor to accommodate future increases in public recreation demand on any or all of the DPNA Hydro Projects by either arranging for the expansion of the Public Access Areas which are the subject of this Agreement or by arranging for new and/or replacement public recreation facilities on lands that are or may become available for such purposes and are consistent with the operation of Grantor’s business.

21. FERC License Conflicts: This Agreement is subject to the terms and conditions of the licenses issued by the FERC for the Queens Creek, Bryson, Dillsboro, East Fork, Franklin, Mission, Nantahala, and West Fork Projects. In the event of any conflict between the terms and conditions of this Agreement and the terms of any of the individual Project licenses, it is agreed that the terms of the applicable Project(s) license shall prevail. The Settlement Agreements entered into with Tuckasegee Cooperative Stakeholder Team and with Nantahala Cooperative Stakeholder Team supersede conflicts of this Agreement.

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22. Reservation of Use: Grantor reserves for itself, subsequent FERC project licensee, and its successors and assigns, the right to use the Public Access Areas for Project purposes and for any other purpose consistent with Grantor’s business operations.

23. Reservation of Authority: No terms or conditions herein contained shall be construed as limiting or affecting in any way the authority of Grantor in connection with its exercise of proper protection and administration of the Public Access Areas or its DPNA Hydro Projects.

24. Fire Protection: In the event of a fire within or threatening to the lands or facilities of any of the Public Access Areas, Grantee agrees to assist Grantor with fire protection.

25. Leases of Portions of the Public Access Areas: Grantor has the right to lease portions of the Public Access Areas to state or local agencies, third parties, or individuals for the provision of additional public recreation facilities and the terms of this Agreement will become a part of the lease on said portions of the Public Access Area, subject to the approval of all parties.

26. Public Use of Facilities: Grantee will allow any recreation as user of any leased portion of the Public Access Areas to cross and use the portion of the Public Access Area under control of Grantee, for the purpose of viewing the lake or any other lawful recreation activity.

27. Entry by Additional Lessees: Additional Lessees, their agents and representatives, who lease a portion of the Public Access Areas as provided in Paragraph 25 above, may at all reasonable times enter, cross and use the portion of the Public Access Areas maintained by the Grantee, for the purpose of installing and maintaining utility lines, roads and trails according to the previously approved facilities improvement plan for the Public Access Areas.

28. Utility Easement: Grantor reserves an easement to build, construct, maintain and operate electric distribution/transmission lines on, over, along and above the Public Access Areas. Grantor also reserves the right, privilege and easement to erect, construct, reconstruct, replace, maintain and use towers, poles, wires, crossarms and other appliances and fixtures for the purpose of transmitting or distributing electric power, for said Grantor's communication purposes, and for any other purpose that is, in Grantor’s sole discretion, consistent with Grantor’s business operations, together with the right to keep said lines, appliances, and fixtures free of structures, trees and other objects that may endanger or interfere with same.

29. Flooding: Grantor reserves the unlimited right to back or flood the waters or tributaries of the DPNA Hydro Projects, from time to time and at any and all times, over and upon the Public Access Areas or any portion of the same, to such extent the flooding may be necessary or convenient in connection with the practical operation of its hydroelectric power plants located or to be located in the future in the Nantahala Area. Grantee agrees that any damage it may suffer as a result of such flooding shall not be claimed or charged against Grantor. Grantee hereby waives all claims against Grantor for damages resulting from floods that may occur on the rivers or any tributary associated with the DPNA Hydro Projects.

30. FERC Project Restoration: Grantor shall be under no obligation to Grantee to maintain or continue to operate the DPNA Hydro Projects and should said Project(s) be damaged, destroyed or removed, the Grantor shall be under no obligation to restore or rebuild same, and Grantee hereby waives all claims against Grantor for damages to or destruction or removal of said Project(s).

31. Indemnity: Grantee, to the extent allowed by applicable North Carolina law, specifically as may be authorized by the General Statutes of North Carolina, Article 31, Chapter 143-291, entitled “Tort Claims Against State Departments and Agencies”, covenants to indemnify and save harmless Grantor from and against any and all claims, liability, loss or damage, arising from any conduct, work or thing done under the terms of this Agreement, to include injury or damage to any person or persons, including Grantor, or to the property of any person, or persons or corporations occurring on or within the Public Access Areas which are the subject of this Agreement, as the result of any activity of Grantee, its agents, employees, or any other person or entity under the direction of the Grantee, and for any protection, mitigation and enhancement measures or activities required by FERC or its successor agency in connection with the activities conducted by Grantee hereunder. Upon the State of North Carolina (State) contracting with an entity for the purpose of constructing any facilities on the Public Access Areas that are the subject of this Agreement, Duke Energy Corporation shall be named as an insured or an additional insured on a policy of insurance covering the scope of such activity prior to the commencement of any activity by the State, its agents or contractors. Any contractor or subcontractor performing work on property that is the subject of this easement shall have in place prior to commencement of any activity and during the performance of any activity, the following types of insurance and coverage limits:

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- General Liability Coverage – Two million dollars per occurrence.
- Auto Liability – one million dollars per occurrence.
- Workers Compensation within statutory limits.
- Employer's Liability – five hundred thousand dollars each accident.
- Contractor's Pollution Liability Coverage – one million dollars per occurrence.

32. Limitation of Liability: Grantor and Grantee agree and warrant that any and all work performed within the Public Access Areas will be performed with professional thoroughness and using acceptable standard business practices. Grantor's total cumulative liability to Grantee for claims of any kind whether based on contract, tort (including negligence and strict liability and excluding willful misconduct), under any warranty or otherwise, for any loss or damage relating to this Agreement, shall in no case exceed the cost of completing the work in accordance with acceptable business practice, and Grantee releases Grantor from all further liability in excess of this amount for any work performed under this Agreement. Grantee further releases Grantor from any and all liability resulting from any injury of any employee of Grantee or anyone performing any service at the direction of Grantee on the Public Access Areas, excluding any acts of willful misconduct by the Grantor.

Neither Party shall be liable, whether based on contract, tort (including negligence and strict liability), under any services or work performed relating to this Agreement, for any consequential, indirect, special, or incidental loss or damage, any damage (except to the extent damage resulted from willful misconduct) to or loss of any property or equipment.

This limitation of, or protection against liability shall also protect directors, officers, employees, agents, consultants, suppliers, subcontractors, and affiliated entities and their directors, officers, employees, agents, consultants, suppliers, subcontractors, parents, subsidiaries and affiliates of the Grantor and shall apply regardless of the fault (excluding willful misconduct), negligence or strict liability of the respective party.

Grantee waives and will require its insurers to waive all rights to recovery and claims of any kind, including rights and claims to which its insurers or another may be subrogated, against Grantor arising out of damage to, or loss of use of any of Grantee's property, located on the Public Access Areas, whether based on contract, tort (including negligence and strict liability), under any warranty or otherwise. These waivers are effective as to all damages to, or losses of use of property arising out of or relating to this Agreement or deficiencies in the services provided hereunder and Grantee hereby covenants that no such action or claim shall be brought by or through Grantee on any theory whatsoever. In the event Grantee or its insurers recover damages from a third party for losses or damages to which the foregoing waivers apply, Grantee shall indemnify and hold Grantor harmless against any liability for any such losses or damages which said third party recovers from Grantor and any expenses (including attorney fees and other cost of investigation and defense) related hereto.

The limitation of liability in this provision shall apply notwithstanding any other provision of this Agreement.

33. Non-warranty, As-Is: Grantor makes no representation or warranty, express or implied, and will bear no responsibility, as to the existing or future water quality or quantity in the lakes and rivers associated with the DPNA Hydro Projects or the sufficiency or suitability of the Public Access Areas for use as a public park and/or public recreation site. Grantee accepts the Public Access Areas in "AS IS" condition.

34. Survival: Provisions of this Agreement for Termination Paragraph 15, Limitations of Liability Paragraph 32, Survival Paragraph 34 and the indemnification provision Paragraph 31 of this Agreement shall survive the termination or cancellation of this Agreement and shall remain in effect.

35. Recovery of Fees and Costs: If any action is taken by Grantor to enforce any provision, covenant or agreement contained in this Agreement or if Grantor is required to retain an attorney to enforce any provision, covenant or agreement contained in this Agreement (including, without limitation, the removal of an encroachment constructed by Grantee on any Public Access Area in violation of this Agreement), then Grantor shall be entitled to recover from Grantee all Grantor's reasonable attorneys' fees and court costs incurred in such action and/or enforcement.

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36. Notices: Wherever in this Agreement it shall be required or permitted that notice be given by either Party to this Agreement to the other, such notices must be in writing and must be given personally or forwarded by certified mail addressed as follows:

To Grantor: Duke Energy Corporation  
Attn: Lake Management EC12Q  
P.O. Box 1006  
Charlotte, NC 28201-1006

To Grantee: North Carolina Wildlife Resources Commission  
Division of Engineering Services  
Attn: Division Chief  
1720 Mail Service Center  
Raleigh, NC 27699-1720

**[Signature Pages Follow]**

**IN WITNESS WHEREOF**, the Parties hereto have caused this instrument to be executed this the day and year first above written.

**GRANTOR**  
DUKE ENERGY CORPORATION

By: \_\_\_\_\_  
Name: William F. Hall, III  
Title: Executive Vice President, Fossil/Hydro Generation Department

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public for said County and State, certify that William F. Hall, III personally came before me this day and acknowledged that he is Executive Vice President, Fossil/Hydro Generation Department of Duke Energy Corporation, a North Carolina corporation, and that he, as Executive Vice President, Fossil/Hydro Generation Department, being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2003.  
[SEAL]

My Commission Expires: \_\_\_\_\_ Notary Public \_\_\_\_\_

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**GRANTEE**  
STATE OF NORTH CAROLINA

Attested By:

\_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public for the above State and County, hereby certify that \_\_\_\_\_ personally came before me this day and acknowledged that s/he is \_\_\_\_\_ of THE STATE OF NORTH CAROLINA and that by authority duly given and as the act of said corporation, the foregoing and annexed instrument was signed in its name by \_\_\_\_\_, its \_\_\_\_\_, sealed with its corporate seal and attested by \_\_\_\_\_ as its \_\_\_\_\_.

WITNESS my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Notary Public

My Commission Expires:

## **EXHIBIT A**

### **DUKE POWER NANTAHALA AREA**

#### **PUBLIC RESERVOIR ACCESS AREAS, TUCKASEGEE RIVER ACCESS AREAS AND PUBLIC FISHING AREAS (PFA)**

#### **NCWRC MAINTENANCE AND ENFORCEMENT AGREEMENT**

##### Queens Creek Lake

- ❖ Fishing pier for persons with disabilities;
- ❖ Two picnic tables with a large animal proof trash container; and
- ❖ “tote and float” launch area with parking

The present agreement between NCWRC and Duke Power provides that NCWRC periodically empty the trash receptacle.

##### Nantahala Lake

- Big Choga Access Area with the following enhancements:
  - ❖ One pump-and-haul toilet;
  - ❖ Lighting designed to minimize effects on fish and wildlife;
  - ❖ Trash collection; and
  - ❖ A bank fishing area
- Rocky Branch Access Area with the following enhancements:
  - ❖ One pump-and-haul toilet;
  - ❖ Lighting designed to minimize effects on fish and wildlife;
  - ❖ Trash collection; and
  - ❖ A bank fishing area

##### Wolf Lake

- Wolf Lake Access Area with the following enhancements:
  - ❖ One pump-and-haul toilet;
  - ❖ Lighting designed to minimize effects on fish and wildlife; and
  - ❖ Trash collection;

##### Tanassee Lake

- Tanassee Lake “tote and float” boating access area

##### Bear Lake

- Bear Lake Access Area with the following enhancements:
  - ❖ Improved / paved access road and parking lot;
  - ❖ One pump-and-haul toilet;
  - ❖ Lighting designed to minimize effects on fish and wildlife;
  - ❖ Trash collection; and
  - ❖ A bank fishing area

##### Cedar Cliff Lake

- Cedar Cliff Access Area with the following enhancement:
  - ❖ Lighting designed to minimize effects on fish and wildlife

##### Lake Glenville

- Powerhouse Access Area with the following enhancements:
  - ❖ One pump-and-haul toilet;
  - ❖ Lighting designed to minimize effects on fish and wildlife;
  - ❖ Trash collection;
  - ❖ Public land-based fishing area with an access trail; and
  - ❖ Barrier free dock

## Attachment E – Draft Access Area Maintenance Agreement between DPNA and the NCWRC

- Public Swimming Area and a public land-based fishing area with an access trail
- Pine Creek Access Area and PFA with the following enhancements:
  - ❖ One pump-and-haul toilet;
  - ❖ Lighting designed to minimize effects on fish and wildlife;
  - ❖ Trash collection; and
  - ❖ Barrier free dock
- Access to the Glenville Bypassed Reach, including parking and a trail from the dam to below High Falls located on the West Fork of the Tuckasegee River near River Mile 9.8.

### Tuckasegee Lake

- Bank fishing trail from boating take-out located on the West Fork of the Tuckasegee River near River Mile 1.9 upstream on the Licensee's property along the Glenville Bypassed Reach; and a
- boating take-out area and parking area

### Mission Lake

- Canoe take-out upstream of Mission Dam with a portage trail to a parking area and boating launch site located below the powerhouse. Boating launch site will accommodate fishing drift boats and whitewater boats.

### Franklin Lake

- Canoe portage around Franklin Dam with parking area;
- Access ramp with small parking area located approximately .8 mile above Franklin Dam.

Note: Any of these reservoir areas may also include Wildlife Viewing Platforms

### Tuckasegee River

- A public boat launch and gravel parking lot on DPNA property below the Cedar Cliff Powerhouse located on the East Fork of the Tuckasegee River near River Mile 51.9 off the Shooks Cove Road, with improved Take-Out 0.5 miles downstream of the boat launch.
- A public boat launch and gravel parking area at the Tuckasegee Powerhouse located on the West Fork of the Tuckasegee River near River Mile 1.7 off NC Highway 107..
- A public boat launch and gravel parking area at the Jackson County East LaPorte Park located on the Tuckasegee River near River Mile 46.0
- An upstream Take-Out and downstream Put-In at Cullowhee Dam located on the Tuckasegee River near River Mile 41.2.
- A public boat launch and gravel parking area off Old Highway 107 located on the Tuckasegee River near River Mile 37.5 and about 0.5 miles upstream of the delayed harvest section.
- A public boat launch and gravel parking area in the Barkers Creek area off Highway 74 located on the Tuckasegee River between Mile 24.7 and River Mile 27.3.
- A public boat launch and gravel parking area in the Whittier area located on the Tuckasegee River between River Mile 20,2 (off Old Highway 19) and River Mile 22.2 (off Highway 74).