

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FIFTH AMENDMENT TO MEMORANDUM OF UNDERSTANDING

This Fifth Amendment to Memorandum of Understanding (“Fifth Amendment”), made and entered into this _____ day of _____, 2025 by and between **WAKE COUNTY**, a public body politic and corporate of the State of North Carolina, hereinafter referred to as “**the County**” and the **TOWN OF MORRISVILLE**, a Municipality of the State of North Carolina, hereinafter referred to as “**the Town**,” the County and the Town being jointly referred to herein as “**the Parties**”.

RECITALS:

WHEREAS, the County and the Town entered into a MEMORANDUM OF UNDERSTANDING (“**the MOU**”) dated October 25, 2017, to set forth the understanding and mutual agreement of the Parties as it related to the conditions required to occur to proceed with a Joint Master Plan to investigate the feasibility of the County constructing a new Solid Waste Management Facility and the Town constructing a new Public Works Facility (“**Joint Master Plan**”) on a 13.71-acre property owned by the Town, located at 414 Aviation Parkway in Morrisville, North Carolina and identified with PIN 0755462762 (“**Morrisville Property**”); and

WHEREAS, the Parties executed a First Amendment to the MOU dated October 8, 2019 (“**First Amendment to MOU**”) for the purpose of extending the term of the MOU and increasing the scope of design development and funding to include an expanded schematic design for Convenience Center #3 including multi-material and hazardous household waste facilities, the Town of Morrisville Public Works site, and options for additional access to Cedar Fork District Park and appropriating additional funding; and

WHEREAS, the Parties executed a Second Amendment to the MOU dated April 28, 2021 (“**Second Amendment**”) for the purposes of extending the term of the MOU, increasing the scope of design and cost estimate based on the Concept Layout (“**Schematic Design Project Plus**”), and confirming the funding contributions required of each party; and

WHEREAS, the Parties executed a Third Amendment to the MOU dated February 9, 2024 (“**Third Amendment**”) for the purposes of extending the term of the MOU and increasing the scope of design and include Construction Manager at Risk Preconstruction Services based on the Schematic Design Plus; and

WHEREAS, the Parties executed a Fourth Amendment to the MOU dated November 20, 2024 (“**Fourth Amendment**”) for the purposes of increasing the scope of design to include Additional Design Services for the Road Improvements at Aviation Parkway, based on the recommendations established on the approved Traffic Impact Analysis; and

WHEREAS, the Parties now desire to amend and supplement the terms of the MOU by entering this Fifth Amendment to abandon the Joint Master Plan, while continuing to allow the County to proceed with its design and construction of a new Solid Waste Management facility to be located on a

portion of the Morrisville Property (hereafter referred to as “**West Wake Solid Waste Facility Project**” or “**Project**”); and

WHEREAS, additionally, the Parties wish to set forth their intentions in this Fifth Amendment to allow the Town to use approximately 6.93 acres of County-owned property located 266 and 262 Aviation Parkway with PINs 0755357836 and 0755358946 (“**Cedar Fork Property**”) in partial exchange for the Town leasing the portion of the Morrisville Property necessary for the Project; and

WHEREAS, the Memorandum of Understanding dated October 25, 2017, the First Amendment dated October 8, 2019, the Second Amendment dated April 28, 2021, the Third Amendment dated February 9, 2024, the Fourth Amendment dated November 20, 2024, and this Fifth Amendment are collectively referred to herein as “the MOU”.

NOW THEREFORE, in consideration of the promises and mutual understandings, the Parties hereby agree to the following terms and conditions:

1. PURPOSE AND SCOPE

The Town will exercise its right to terminate the Joint Master Plan. The Town has purchased a property located at 125 International Drive in Morrisville, NC, where the Town will relocate the Towns’s Public Works Facilities.

The purpose and scope of this Fifth Amendment is to set forth the understanding of the Parties as it relates to the conditions that must occur in order for the County to proceed on its own with a plan to design and construct a new West Wake Solid Waste Facility, to be located on a portion of the Morrisville Property and for the County and Town to amend the existing 2007 Interlocal Agreement for Cedar Fork District Park (“**ILA**”) to allow the Town’s use of the Cedar Fork Property.

2. GENERAL CONDITIONS

- A. The Parties’ obligations with respect to proceeding with the West Wake Solid Waste Facility Project are expressly conditioned upon and subject to the Parties receiving proper approval from their governing boards to enter into mutually acceptable written agreements as to all aspects of design, construction, development, and leasing of the Morrisville Property. Accordingly, except to the extent that specific responsibilities of the Parties are set forth herein, this MOU shall not impose obligations on either Party to proceed with the West Wake Solid Waste Facility Project, its associated components or otherwise enter into Agreements beyond the MOU.
- B. Unless and until superseded by written amendment or final agreements signed by all Parties, the MOU, contains the entire understanding of the Parties with respect to proceeding with the West Wake Solid Waste Facility Project.
- C. Except as provided in this Fifth Amendment, all of the terms, conditions, and agreements contained in the original MOU and First, Second, Third and Fourth Amendment to the MOU shall remain unchanged and in full force and effect, and the same hereby are

expressly ratified and confirmed by the County and the Town. In the event of a conflict between the terms and conditions of this Fifth Amendment and the original MOU or the First, Second or Third Amendments or Fourth Amendment, the terms of this Fifth Amendment shall control.

- D. The Town has purchased a property located at 125 International Drive, Morrisville, NC, where the Town plans to relocate the Town's Public Works Facility. Therefore, no new building structures will be built for the Town under this MOU.
- E. Wake County will proceed with the design and construction of the West Wake Solid Waste Facility and associated Road Work Improvements including providing driveway access for the Town's existing public works facility. Wake County will be responsible for all costs associated with the design and construction of such facility on a portion of the Morrisville Property.
- F. The Town offers to lease a mutually agreed portion of the Morrisville Property to the County for construction of the West Wake Solid Waste Facility. In furtherance of their mutual objectives, the Town and the County expect to execute a ground lease on the mutually agreed upon portion of the Morrisville Property that will envelop the West Wake Solid Waste Facility and required appurtenances for the development of the Project. A 40-year term is proposed for the ground lease. The County shall develop, plan, design, construct, own, operate and maintain the West Wake Solid Waste Facility. The ground lease shall be developed and mutually agreed upon, by and between the County and the Town for the external care and maintenance of the grounds surrounding the West Wake Solid Waste facility.
- G. As partial consideration of the ground lease referenced in Subparagraph F above, the County offers to add the Cedar Fork Property to the ILA by way of a mutually agreeable amendment thereto. The Town shall operate and maintain the Cedar Fork Property as outlined in the ILA and the contemplated amendment thereto.
- H. The Town acknowledges that the Cedar Fork Property is part of a County Flood Control Structure and subject to the County Crabtree Creek Watershed Policy. Accordingly, the Town will be required operate the Cedar Fork Property in such a way that will not disrupt or interfere with the County's use of it as a Flood Control Structure as required by USDA- NRCS. Any alteration to the Cedar Fork Property will require review and approval from Wake County and USDA- NRCS that said changes will be required to result in zero net fill to the County's Flood Control Structure. The Town further acknowledges that the County has the right to flood the Cedar Fork Property, to manipulate the level of the pool in any manner whatsoever and/or to make any other use of the Cedar Fork Property as may be necessary in connection with government purposes, and neither the Town nor its invitees shall have a claim for damages on account thereof against Wake County or any officer, agent, or employee thereof or for any damage to the Town's improvements placed on the Cedar Fork Property. The Town shall have sole

responsibility for closing public access and erecting barriers on the Cedar Fork Property during any flooding event until such time as the Town determines that use of the Cedar Fork Property by the public may safely be resumed.

3. TERM

The term of this Fifth Amendment shall be for a period of eighteen (18) months from the date of execution by the last party; or until such time as all documents contemplated in this Fifth Amendment shall be fully and finally executed, whichever is shorter. The Parties may extend this term by separate written agreement or addendum executed by both Parties.

4. OWNERSHIP OF DESIGN DOCUMENTS.

The County shall retain ownership or use of the work product for the Project, including drawings, renderings, estimates, etc.

5. RESPONSIBILITIES OF THE COUNTY

- A. The County shall engage a design consultant pre-qualified by Wake County Facilities Design & Construction to provide planning, design, preparation of construction documents, filing for permits, bidding assistance, construction administration and other related design services for the West Wake Solid Waste Facility, including an update to the current Traffic Impact Analysis and associated design and construction of Project related Road Improvements, as per the Wake County Professional Services Agreement, and associated amendments and attachments. The County will be solely responsible for the compensation of the design consultant for the Project scope of work.
- B. The County will also provide periodic updates on the design of the project to the Town and will design the Project to meet all requirements of the North Carolina State Building Code and the Town's Land Development Ordinance.
- C. The County shall assume responsibility for the bidding and construction of the Project.
- D. The County shall pay all costs for the design, construction, furnishings, operation and maintenance of the West Wake Solid Waste facility, as shall be further set forth in the ground lease agreement.

6. RESPONSIBILITIES OF THE TOWN

- A. Permits and Inspections. The Town shall enforce ordinances and regulations related to the Town zoning, stormwater, transportation, landscaping, buffers, utilities and other aspects of site development that are not governed by the North Carolina State building Code. The Town agrees to assist the County in obtaining all required Town site

approvals and permits in a timely manner, providing that the County's documents are submitted in compliance with Town requirements.

- B. The Town shall vacate and make available for demolition, any structures in the current Public Works Facility that will be in conflict with the proposed development. Such structures shall be made available to the County by the end of March 2027.

7. CONTEMPLATED SEQUENCE OF EVENTS

- A. Morrisville Town Council authorizes the Town Manager to enter into this Fifth Amendment.
- B. The Wake County Board of Commissioners authorizes the County Manager to enter into this Fifth Amendment.
- C. Following execution of the Fifth Amendment, the County shall engage the Designer to provide the design services and permitting for the project.
- D. Upon the design consultant delivering schematic designs, scope of design, and estimated cost of construction, the County shall determine if it is feasible to proceed with recommending the continuation of the design.
- E. The County shall submit the Project for approvals and permitting by governing agencies as required. Including applying for a new Special Use Permit with the Town.
- F. Following approvals and successful permitting, the County staff shall determine if it is feasible to proceed with recommending the award of the construction contract to the Board of Commissioners. If the County decides not to proceed, the events set forth in H and I inclusive shall not occur.
- G. Following approval and recommendation to award the construction contract for the West Wake Solid Waste Facility. The County will perform a Phase 1 ESA and Phase 2 limited sampling of the Existing Convenience Center #3 Site.
- H. Each respective board approves the ground lease for the West Wake Solid Waste Facility and the amendment of the ILA, which shall replace and supersede all previous documents, agreements and understandings with respect to the subject matter and may be amended to clarify or amend the terms and conditions herein.
- I. Upon approval from the respective elected boards, and upon execution of a ground lease, the County may begin construction; provided, in the interest of time and upon request by the County the Parties may enter into a mutually agreeable temporary right of entry to

begin site work on the Morrisville Property following board approval but prior to the execution of the ground lease.

8. ADDITIONAL AGREEMENTS WHICH MAY BE REQUIRED TO BE EXECUTED BY THE PARTIES TO EFFECTUATE PROJECT

- A. Any needed rights of entry, utilization and cross access agreements as determined to be necessary.
- B. Memoranda of any enumerated document requested by the other party for the purpose of recording in the Wake County Registry.

IN TESTIMONY WHEREOF, WAKE COUNTY AND THE TOWN OF MORRISVILLE through their authorized officers and by their own hands have hereunto set forth their hands and seals of the day and year first above written.

WAKE COUNTY

By: _____
Title: County Manager or designee

Date: _____

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

COUNTY FINANCE DIRECTOR

TOWN OF MORRISVILLE

By: _____
Title: Town Manager

Date: _____

Attest:

Town Clerk

This instrument has been pre-audited in the manner required by the Local Government Budget, Town Finance Director and Fiscal Control Act.

TOWN FINANCE DIRECTOR