

**STATE OF NORTH CAROLINA  
COUNTY OF WAKE**

**SECOND AMENDMENT TO MEMORANDUM OF UNDERSTANDING**

This Second Amendment to Memorandum of Understanding (this “Second Amendment”) effective as of the \_\_\_\_ day of February 2018, is by and between **WAKE COUNTY, NORTH CAROLINA**, a body politic and corporate (“Wake County” or the “County”) and **TOWN OF CARY**, a municipality of the State of North Carolina (the “Town”). Wake County and the Town are also sometimes referred to herein as a “Party” or “the Parties”.

**RECITALS:**

**WHEREAS**, the County and the Town entered into a MEMORANDUM OF UNDERSTANDING dated April 28, 2016, and amended by FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING dated February 3, 2017. The Memorandum of Understanding and the First Amendment are jointly referred to as “MOU;” and

**WHEREAS**, the purpose of MOU was to provide the design funding of, and conditions that must occur for the Parties to proceed with, the design and construction of the Cary Regional Library Project; and

**WHEREAS**, to support the Downtown Cary Master Plan goals the Town desires modifications to the description of and scope of work for the Parking Deck and the elimination of the integrated public art wall originally planned for the north façade of the Parking Deck; and

**WHEREAS**, the Parties desire to ratify and extend the term of MOU; and

**WHEREAS**, capitalized terms used in this Second Amendment that are defined in the MOU have the definitions set forth in the MOU, as modified by this Second Amendment.

**NOW THEREFORE**, in consideration of the promises and mutual understandings, the Parties hereby agree to amend the MOU in accordance with the following terms and conditions:

**1. Purpose**

The purpose of this Second Amendment is:

- a. To amend the description of, and scope of work for Parking Deck element of the Cary Regional Library Project to provide for a naturally ventilated parking deck with 600 parking spaces, being six (6) to seven (7) levels, and without decorative sheathing on the north, east or south facades and without integrated art on the north façade (the “Deck Modification and Expansion”); and
- b. To amend, as necessary, the description of and scope of work for services, means of ingress and egress and infrastructure necessitated by the Deck Modification and Expansion; and
- c. To extend the term of MOU;
- d. To ratify the design and engineering work that was undertaken to increase the height of the Parking Deck by two levels, increase the height of the elevator, add a second elevator, delete the art wall, and modify the north, south and east facades;

- e. To commit to negotiating and executing an Interlocal Agreement (“ILA”) as contemplated by MOU for approval by the Parties’ respective boards in March 2018 prior to the commencement of construction;
- f. To indicate acceptance of construction bid prices for the Parking Deck by the Town Council with the understanding that the Parties will promptly negotiate, approve and execute the Interlocal Agreement and Ground Lease described in MOU; and
- g. To establish a payment schedule for amounts owed by Town to County.

## **2. Preliminary Recap of Status of Project Budget**

- a. MOU established total Town budget responsibility for the Project at \$8,380,000 for construction of a 340-space Parking Deck, integrated art, monumental stair and sidewalk connectivity related to Parking Deck, the construction of restrooms and unfinished future space for the Town in the Ground Floor of the Library, and contingency, escalation and associated professional services fees. The Town has paid the County a total of \$843,736 as required by the MOU. Therefore, the Town has met all prior funding obligations for this Project established in MOU.
- b. Pursuant to the MOU, the County has committed a total of \$1,000,000 to the design and construction of the Parking Deck in consideration of the allocation of 120 parking spaces for the use of the County for its library patrons and staff. To date, the County has paid \$66,264 toward its \$1,000,000 commitment for design of the Parking Deck, leaving a balance of \$933,736 to be paid by County and applied to construction of the Parking Deck.

## **3. Ratification of Modifications Requested to Parking Deck Scope**

Because the Downtown Cary Master Plan contemplates private development along Walnut Street and Walker Street, the Town desires to provide the opportunity for a significant mixed-use development adjacent to the Project. To support this opportunity, the Town has requested an expansion of the Parking Deck to six (6) to seven (7) levels with a total of 600-spaces. While the original bid documents were prepared with enough specificity and certainty to obtain unit prices to expand the deck from its original scope of 340 spaces to the Town’s request to expand to 500-spaces, actual design and engineering drawings will have to be revised for pricing confirmation and construction. As a result of the new scope, the design team will be required to prepare construction documents to extend the parking deck capacity to six (6) to seven (7) levels and 600-spaces. The project costs established herein are therefore increased over the original budget to reflect the change attributable to the added scope.

The revised scope of work includes increasing the height of the Parking Deck as previously referenced, increasing the height of the elevator, adding a second elevator, deleting the art wall, and modifying the north, south and east facades. The parties agree that the County is not responsible for the added cost related to the Town’s requested expansion.

## **4. Approval of Award of Construction Contract**

The County received construction bids in November 2017. Due to high bid pricing, an extensive post bid evaluation and value engineering analysis was undertaken, mainly for the Library element of Project, but also for the Parking Deck. County intends to authorize the award of a Guaranteed Maximum Price (“GMP”) contract to the Construction Manager at Risk (“CM”) for the Project on February 19, 2018 at the Board of Commissioners meeting. Such authorization of award shall be contingent on approval of the Town’s portion of Second Amendment to Memorandum of Understanding for Cary Regional Library & Parking Deck  
Wake County and Town of Cary

the Project and appropriation of Town’s required funding by Town Council on February 22, 2018. The GMP contract award amount will be **\$23,730,816**, which is the combined cost of the Parking Deck and Library:

Library Structure and Associated Sitework	\$ 10,716,671
<u>Parking Deck Structure and Associated Sitework</u>	<u>\$ 13,014,145</u>
Total GMP	\$ 23,730,816

Because each Party has some interest in each structure, actual responsibility for construction costs will be apportioned to each Party as follows:

Wake County - \$11,125,407

– Cost of Library minus Town’s contribution for 2,200 SF of unfinished basement level space + Balance of County’s Contribution toward Parking Deck construction.

Town of Cary - \$ 12,605,409\*

– includes \$12,080,409 for net Parking Deck cost + \$525,000 toward Town’s contribution for designated portion of Library

\* this amount is subject to subsequent adjustment by change order depending upon final Town approved cost for Deck Modification and Expansion

## 5. Parking Deck Modification and Expansion

The cost to complete design and engineering construction documents to extend capacity to 600 spaces is \$555,000, supported by a fee proposal from the design team and an amendment to the design contract, which will be furnished to the Town upon request. By approving this Second Amendment, the Town approves the scope and cost of the design contract amendment. Town of Cary staff and County staff and the project team shall meet as necessary so the Town can provide prompt review and approval of specific changes to the layout, appearance and features of the expanded Parking Deck so that the design can be completed as soon as possible. Town staff shall also coordinate with the County on all design and construction activities related to the adjacent future private development, as it impacts the Cary Regional Library Project.

## 6. Development Plan Review and Parking Deck Building Permit

Development Plan Review approval for the Project was received by the Town of Cary on November 6, 2017. Due to the Town’s Parking Deck Modification and Expansion set forth in Paragraph 5, the Town shall assist the County in obtaining any required amendment to the Development Plan Review approval, including assisting in clarifying review comments and limiting the plan review to one review cycle, so that Parking Deck construction can be started and completed without impacting the schedule for the Library according to the latest project schedule, attached as **Exhibit A**. Likewise, for the Parking Deck building permits, Town staff will need to work closely with County staff and the project team to help clarify any review concerns by Town permit review staff, and avoid any unnecessary delays to the review process.

## 7. Adjustment to Total Project Costs

- A. A final adjusted cost for the Deck Modification and Expansion as defined in Paragraph 5, will be determined based on the revised design and engineering construction documents.
- B. The revised “Total Project Cost” attributable to the Town of Cary, including additional design and engineering fees for the parking deck, construction cost for the Town’s portion of the Library ground floor area (public restrooms and future program space), construction of the modified and expanded scope for the parking deck, less the County’s original contribution of \$1,000,000, now totals \$13,945,409 (“Revised Total Project Cost”). Revised Total Project Cost includes anticipated reimbursable expenses, less the County’s contribution to fees and reimbursables directly attributable to the cost of the Parking Deck.

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8. **Payment.** The Revised Total Project Cost for Town, from this point forward is as follows:

Deck Modification Expansion Design/Engineering	\$ 555,000
Additional Soft Cost Allowance (QC Testing, etc.)	\$ 185,000
Construction of Town space within Library	\$ 525,000
Construction 500-Space Parking Deck + Library Space	\$ 12,080,409
<u>Revised Construction Contingency</u>	<u>\$ 600,000</u>
<b>Total Payment</b>	<b>\$ 13,945,409</b>

Upon execution of this MOU amendment, the Town shall pay to the County the sum of **\$750,000**. The remaining balance of \$13,195,409 from the Town's appropriation to the County as shown in the Revised Total Project Cost herein shall be paid upon execution of the Interlocal Agreement, to follow this Amendment.

Given the Deck Modification and Expansion it is possible that the final cost of the Parking Deck will increase beyond the Revised Total Project Cost shown herein. Any increases in the cost of the Parking Deck shall be reconciled through additional payments by the Town and whereas any decreases in the cost shall be reconciled through reductions to the Town's final cost.

9. **Term.** The MOU Term is extended through and including the date of execution of the ILA contemplated by the MOU; or no more than 30 days from the execution of this Second Amendment. The Parties shall promptly negotiate, approve and execute an ILA with ground lease, and no construction shall commence until such ILA has been executed.
10. **Private Developer Costs.** If and at such time that the Town enters into an agreement for private development of the Town owned property immediately adjacent to the Parking Deck, such agreement shall be between the Town and Developer and the County shall not be a party to such agreement. Town shall be responsible for all communications related to its agreement for private development and with private developer.
11. **Iran Divestment and Divestment from Companies Boycotting Israel.** The Parties agree that each shall obtain required certifications from all contractors performing work arising out of this MOU that they are not listed on the Final Divestment List created by the NC Office of State Treasurer pursuant to *NCGS 147 Article 6E, Iran Divestment Act*, Iran Divestment Act Certification. Vendors and contractors shall not utilize any subcontractor that is identified on the Final Divestment List.
- Any organization defined under NCGS 147-86.80(2), Divestment from Companies Boycotting Israel, shall not engage in business totaling more than \$1,000 with any company/business, etc. that boycotts Israel. A list of companies that boycott Israel is maintained by the NC Office of State Treasurer, pursuant to NCGS 147-86.81(a)(1). Any company listed as boycotting Israel is not eligible to do business with any State agency or political subdivision of the State.
12. **Continuing MOU.** Except as provided in this Second Amendment, all the terms, conditions, and agreements contained in 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 purpose, terms and conditions of this Second Amendment and the MOU, the purpose, terms and conditions of this Second Amendment shall control.
12. **Modification.** Any agreement hereinafter made shall be ineffective to change, modify or waive this Second Amendment or the MOU in whole or in part, unless such agreement is in writing and is signed by the Party against whom enforcement of the change, modification or waiver is sought.

**13. Exhibits.** The following exhibits are attached hereto and incorporated herein by reference:

Exhibit A – Revised Project Schedule Dated 2/15/18

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

**WAKE COUNTY**

By: \_\_\_\_\_

Title: County Manager

Date: \_\_\_\_\_

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

\_\_\_\_\_  
Wake County Finance Director, or designee

**TOWN OF CARY**

By: \_\_\_\_\_

Title: Town Manager

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Secretary [SEAL]

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

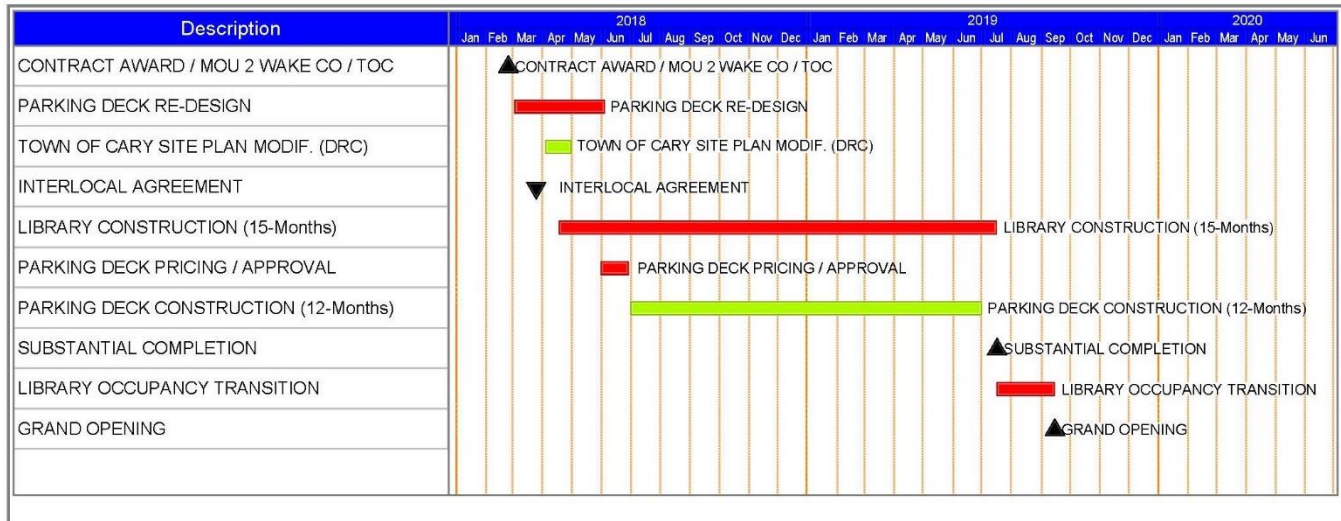
\_\_\_\_\_  
Town of Cary Finance Director, or designee

**EXHIBIT A**

**TO SECOND AMENDMENT TO MEMORANDUM OF UNDERSTANDING**

**PROJECT SCHEDULE**

**2/15/18**



**MILESTONE DATES INDICATED IN CHART ABOVE**

<b>Construction Contract Approval</b>	<b>- Feb 19, 2018</b>
<b>MOU Amendment Approval</b>	<b>- Feb 19, 2018</b>
<b>Interlocal Agreement Approval</b>	<b>- Mar 19, 2018</b>
<b>Library Construction Begins</b>	<b>- April 2018</b>
<b>Parking Deck Redesign Complete/ Final Cost Approved by Town of Cary</b>	<b>- June 2018</b>
<b>Parking Deck Construction Begins</b>	<b>- July 2018</b>
<b>Construction Substantial Completion</b>	<b>- July 2019</b>
<b>Grand Opening</b>	<b>- Sept 2019</b>