

STATE OF NORTH CAROLINA

COUNTY OF WAKE

**INTERLOCAL AGREEMENT for
FUNDING AND CONSTRUCTION
of the
CARY REGIONAL LIBRARY PROJECT ***

This Interlocal Agreement for Funding and Construction of the Cary Regional Library Project (the "Agreement") is entered into this the 6TH day of June 2018, 2018, by and between **WAKE COUNTY, NORTH CAROLINA**, a public body politic and corporate of the State of North Carolina (hereinafter "Wake County" or "County") and the **TOWN OF CARY**, a municipal government under North Carolina law ("Cary" or "Town"). Wake County and Cary are individually referred to as "Party" and collectively referred to herein as "the Parties".

WITNESSETH:

WHEREAS, on June 4, 2007, the Wake County Board of Commissioners endorsed an updated Master Plan for Wake County Libraries which includes a recommendation for the replacement of the community branch library that has operated in downtown Cary since 1987 ("Community Branch Library"); and

WHEREAS, on November 6, 2007, Wake County voters approved a \$45 million bond referendum which will partially fund implementation of a multi-year capital improvement program which includes replacement of the Cary Community Library located at 310 S. Academy Street with a larger regional branch library; and

WHEREAS, Cary has a vision for redevelopment of the Cary downtown area set forth in the Imagine Cary Community Plan ("CCP"), and owns property in downtown

Cary which will accommodate a large regional branch library and a Cary parking deck which will provide public parking for, among other things, the library, the Cary Arts Center, other venues and for desired adjacent mixed-use development; and

WHEREAS, Wake County and Cary staff have been working on a unified approach to the development of the Wake County regional branch library and the Cary parking deck in what has been known as the Cary Regional Library Project ("Project"); and

WHEREAS, on April 28, 2016, Wake County and Cary entered into a Memorandum of Understanding ("MOU") setting forth the understanding of the Parties as it related to the conditions that must occur in order to proceed with the plan for Cary Regional Library Project; and

WHEREAS, on September 8, 2016, the Cary Town Council approved schematic design plans for the Cary Regional Library Project and approved the construction of space in the lower level of the library for the Town. The approvals resulted in an increase in the scope of Cary's portion of the Cary Regional Library Project from that contemplated by the MOU. On September 19, 2016, the Wake County Board of Commissioners approved the schematic design plans and increased participation of Cary for the Cary Regional Library Project as approved by the Cary Town Council; and

WHEREAS, on November 21, 2016, Wake County and Cary entered into a First Amendment to Memorandum of Understanding setting forth the increased scope and cost of the Project; and

WHEREAS, on the 22nd day of February, 2018 Wake and Cary entered into a Second Amendment to Memorandum of Understanding setting forth modifications to the description and scope of work for the Parking Deck (as defined therein) to reflect a naturally ventilated multi-level parking deck with 600 parking spaces and without decorative sheathing on the north, east or south facades and without an integrated public art wall on the north façade, an increase in the height of the elevator and the addition of a second elevator and other items related to a Parking Deck expansion, and accepting the construction bid prices for the Parking Deck. The Deck expansion described in the Second Amendment is called the Deck Modification and Expansion; and

WHEREAS, the County has incurred or expects to incur costs for design services, design development, and construction administration which have been or will be shared by County and Cary; and

WHEREAS, the County will serve as the lead agency for all aspects of bidding, design and construction of the Project; and

WHEREAS, the Parties intend to enter into a Ground Lease and Utilization Agreement for the area upon which the Library is constructed but such Ground Lease and Utilization Agreement will not be in effect at the commencement of construction. In addition to permitting County to serve as lead agency and to enter into construction

contracts as 'Owner' to the Project, this Agreement is intended to grant County the right to possess and use the Project Site for construction of Project; and

WHEREAS, the County and Cary have each appropriated funds for their respective portions of the cost of construction of the Project; and

WHEREAS, the County acknowledges that to fulfill the vision of the CCP, Cary desires to develop or cause to be developed Cary owned property adjacent to the Cary Regional Library Project and to use the Cary parking deck in connection with that mixed-use development, which may require that the parking deck be a condominium; and

WHEREAS, Cary acknowledges that any future declaration of condominium affecting the Parking Deck is acceptable to County only if County is not required to share in the cost of any alterations to the Parking Deck necessitated by the declaration of condominium and County preserves all rights in the Ground Lease and Utilization Agreement to be executed, including the right to an equal or greater number of parking spaces allotted to the Cary Regional Library in substantially the same location of the Parking Deck as provided by this ILA; and

WHEREAS, the Parties pursuant to Articles 3, 12 and 20 of Chapter 160A of the North Carolina General Statutes are authorized to enter into this Agreement and joint planning and implementation efforts for the Project.

NOW THEREFORE, in consideration of the respective rights, powers, duties and obligations hereinafter set forth herein, the Parties agree as follows:

ARTICLE I RECITALS and PURPOSE

1.01 Recitals

The Recitals are incorporated into this Agreement.

1.02 Purpose

The purpose of this Agreement is to set forth the agreement of the Parties to undertake the design and construction of the Cary Regional Library Project on property owned by the Town, a portion of which (Library Site) will be leased to County. Wake County shall serve as lead agency under the construction management at risk form of construction contract pursuant to GS 143-128.1 and in accordance with schematic design plans approved by the governing boards of both Parties and the Plans and Specifications approved by the Parties. This Agreement addresses the cost, construction, ownership, use, future maintenance and other rights and responsibilities for the Project necessary to commence construction, and evidences Cary's appointment of Wake County as sole agent to carry out all phases of the Project on behalf of Cary as Property owner and as owner of the parking deck. A Ground Lease and Utilization Agreement will be

developed and executed by the Parties addressing the long-term lease of Library Site and additional aspects of Project.

ARTICLE II DEFINITIONS

2.01 “Approved Change Orders” means change orders for Town Components prepared and executed in accordance with Exhibit D.

2.02 “Approved Construction Budget” means the budget for construction of Town Components, as approved by the Cary Town Council.

2.03 “Approved Plans and Specs” means and refers to the plans and specifications to be prepared by the Architect and approved by the Parties and by Cary in its regulatory capacity and other governmental authorities, as the same may be subsequently modified in accordance with this Agreement.

2.04 “Architect” means and refers to Clearscapes, P.A., a North Carolina professional corporation who entered into a Professional Services Agreement with Wake County to lead the design team for Project and prepare the Plans and Specifications for the Project. The term Architect includes collectively all engineers and other sub-consultants retained by Architect to perform services required of the Architect in the Professional Services Agreement.

2.05 “Construction Documents” means the written instruments executed by Wake County as lead agency, procurement agent and ‘Owner’ and the Construction Manager at Risk (“CM”) and includes contractor bidding requirements, contract forms, contract conditions (general, supplemental, and other), architectural and construction information, drawings, Plans and Specifications (as approved by Parties), addendum issued prior to issuing the contract, all related to Project, which will be binding on the CM. The CM Guaranteed Maximum Price Contract is also considered a construction document.

2.06 “Construction Manager at Risk” or “CM” means Balfour Beatty Construction LLC, and its authorized and designated representatives.

2.07 “Construction Agreement” means the contract executed by the Contractor and the CM.

2.08 “Contractor” means the person or entity with whom the CM contracts for the construction of the Project, customarily referred to as “Trade Contractor” or Subcontractor”

2.09 “Construction Costs” mean the labor, materials, and construction management costs to construct the Project.

2.10 “Design Costs” mean the actual costs and expenses paid in connection with design, engineering, surveying, testing, inspections, construction administration, and close-out of the Project.

2.11 “Final Completion of Town Components” means the point at which the CM has, as determined by County and the Architect and with the consent of the Town: completed the Town Components, with the exception of guaranty and warranty obligations; the Town has taken beneficial occupancy of Town Components; all punch lists have been completed; all as-built drawings, operations and maintenance manuals, warranties and other Project records related to Town Components have been delivered to Town; all waivers and releases have been negotiated and executed; and all consents of surety to final payment have been delivered and the one year guaranty and/or warranty period has expired.

2.12 “Final Completion of Project” means the point at which the CM has, as determined by County and the Architect and with the consent of the Town: completed the Project the Parties have taken beneficial occupancy of the Project; all punch lists have been completed; all as-built drawings, operations and maintenance manuals, warranties and other Project records have been delivered to the Parties; all waivers and releases have been negotiated and executed; all consents of surety to final payment have been delivered and the one year guaranty and/or warranty period has expired.

2.13 “Ground Lease” means a Ground Lease executed in accordance with authority granted by N.C.G.S. §160A-274 by Cary as lessor to Wake County as lessee for the Library Site, and which shall include provision for:

- A. County’s use and occupancy of, and share of Operational Costs for a total of 120 general parking spaces which can be used by library patrons. Of this 120 spaces, 60 spaces shall be striped and reserved allocated to for Wake County for Library use only during the hours in which the library is regularly open, as well as one half hour before and after such hours, at certain locations in the deck on the west side as close as possible to the Library on the P2, P3, and P4 levels, with appropriate way-finding signage as described in 4.06. The parties acknowledge that this proximity is necessary to accommodate accessibility for library patrons and employees. These 60 spaces shall be part of the premises comprising the Ground Lease and shall not be modified by any future Declaration of Condominium. The remaining 60 spaces shall be for general non-exclusive, non-dedicated use, but shall be available for Library needs on an equal basis with other Deck users. The Town shall have the right to use reserved spaces for general use outside of the designated hours.
- B. Utilization Agreement defining the County and Town’s use and occupancy of, right and responsibility to alter and operate the Library and share of Operational Costs, if any, for Town Components of Library; Library trash disposal, and Library Stormwater management obligations (as described in 6.09). The Utilization Agreement shall be entered into within 3 months prior to receipt of the anticipated Certificate of Occupancy for the Library and shall be approved by the Wake County Manager and Cary Town Manager.

- C. Matters of mutual concern concerning Parking Deck and Library, including such matters as hours of operation, maintenance of common shared areas and other matters which may arise.
- D. Access issues supporting Library access and use;
- E. Memorandum of Ground Lease in recordable form.
- F. A right to terminate based upon default.
- G. An apportionment of responsibility for loss arising out of use of the Parking Deck according to ownership of the Parking Deck

The Ground Lease shall have a term of forty (40) years. The Ground Lease shall provide that the Library building shall be operated and used as a library facility, with the exception of space leased by the Town. The Ground Lease and Utilization Agreement shall state that none of its provisions or the entitlements of either County or Town as described herein may be altered by a Declaration of Condominium or any future use of the deck without the written agreement of the Parties. The Parties shall use good faith efforts to enter into the Ground Lease and Utilization Agreement and Memorandum of Ground Lease to be recorded in the Wake County Registry no later than June 30, 2019.

In any event, the Ground Lease must be executed and recorded prior to or contemporaneous with any Declaration of Condominium related to the Parking Deck by a third party or by Town of Cary.

2.14 “Library Site” means that area of Project Site necessary to accommodate the Library and its associated sitework. The Parties will enter into a Ground Lease and Utilization Agreement for Library Site.

2.15 “Operational Costs” mean the costs to operate, clean, maintain, repair and periodically service components of the Project. Operational Costs will be further defined and allocated in Ground Lease and Utilization Agreement. Operational Costs do not include the costs to operate, clean, maintain, repair or service (A) Limited common areas and facilities as defined by N.C.G.S. 47A-3(7) or (B) Limited common elements (as defined by N.C.G.S. § 47C-1-103(16), nor does it include those costs that are extraordinary for urban parking decks in the Raleigh-Durham-Chapel Hill Combined Statistical Area. For purposes of example only, the installation and operation of concierge services in the Parking Deck would constitute such an extraordinary cost.

2.16 “Parking Deck” means the approximately 600 space parking deck that is part of Project. Parking Deck will be clad with standard brick façade on the west facade and will be naturally ventilated. Parking Deck includes connected sitework, hardscape and landscaping. The Town shall pay the cost of constructing the Parking Deck as set forth in this Agreement. The Town shall allocate to County the use of at least 120 spaces in the Parking Deck for Library needs. The County has committed one million dollars (\$1,000,000) toward the design and construction of the Parking Deck as discussed in Article VI. The County has paid the amount of \$66,264 toward design costs, leaving a balance of \$933,736 to be paid toward construction. The County and Town will share proportionately the Operational Costs of the Parking Deck incurred by Town (“Parking

Deck Operational Costs”) according to use as set forth in Ground Lease. The County’s portion of Operational Costs of the Parking Deck shall be determined by multiplying the parking spaces that can be used by Library patrons (60 reserved plus 60 general use) over the total number of spaces in the Parking Deck (Operational Costs X (120 spaces (or actual number if less than 120) /total no. of spaces). The County shall at no time have responsibility for prorated Operational Costs greater than a fraction equivalent to actual spaces (not to exceed 120 spaces) over total spaces, even if a future Declaration of Condominium increases the spaces available for general use. The Operational Costs borne by the County on a per space basis will not in any event exceed the Operational Costs borne by any other party on a per space basis. Such Operational Costs shall be paid annually. The Parties shall set forth the allocation of County parking spaces; the method of determining the County’s share of Operational Cost of the Parking Deck, and such other matters as may be necessary or desirable in Ground Lease. Any future Declaration of Condominium for the Parking Deck shall provide for users other than the County to share in the Operational Costs of the Parking Deck. The County shall not be required to pay Cary for any future Common expenses (as defined by N.C.G.S. § 47A-3(2)) or expenses for Limited common elements (as defined by N.C.G.S. § 47A-3(3)) which are not provided for in this Agreement or unless agreed to in writing by the County. The County acknowledges that it will not be the beneficiary of any such Limited common areas and facilities or any such Limited common elements unless agreed to in writing by Cary.

2.17 “Project” or “Cary Regional Library Project”, means (i) the new Wake County regional branch library of approximately 31,000 SF with approximately 24,000 SF of library program space (“Library”), (ii) the Cary Parking Deck and with space for approximately 600 vehicles (“Parking Deck”), and (iii) associated sitework which includes a plaza, walkways and utilities associated with Project, all as approved by the governing bodies of the Parties.

2.18 “Project Costs” mean the Design Costs and the Construction Costs, including all costs related to permitting and utility connections, and project contingency. Cary’s share of Project Costs shall not exceed Approved Construction Budget without approval of Cary’s Town Council.

2.19 “Project Site” means that area of Town property necessary to accommodate the Project as further described in Article IV and on the approved site plan. The approved site plan at the execution of this Agreement is attached as Exhibit “A” and incorporated herein by reference. The Deck portion shown on Exhibit A may be revised as required by Deck Modification and Expansion.

2.20 “Substantial Completion of Town Components” means that point at which the Work, and Work by other Contractors on or in connection with the Project, as determined by the Architect, is sufficiently complete in accordance with the Contract Documents that it can be beneficially occupied by the Town, and the Work can be utilized by the Town for its intended use, and all necessary permits and permissions for beneficial occupancy and utilization having been obtained by the Contractor, and point at which guarantees and warranties commence.

2.21 “Town Components” mean the 600 space Parking Deck, associated Site work including pedestrian accessible pathways and stairs, Town Components of Library, and mutually approved changes to these Town Components, including those made by Approved Change Order. “Town Components of Library” means:

- a) 1,100 SF of finished male, female, family restrooms and associated storage on the lowest level of the Library which will have an at-grade entrance on the east side (“Finished Restrooms”);
- b) 2,200 SF of unfinished, minimally conditioned space adjacent to the Finished Restrooms on the lowest level of Library for future Town use, which may include community activity or office space. Wake County by agreement with Cary may finish this space for a modest food and beverage service area, as permitted by the public health division of Wake County Human Services, but such area shall not include food preparation area, or require construction or building systems that would impact the library space on the upper two floors of the building. Utilities for this space will be stubbed up for future connection by Cary and exterior walls will be designed to accommodate windows and doors that may be constructed in the future; and
- c) a monumental stair on the north side of the Library substantially like that shown in Approved Plans and Specifications, walkways and ramps (as necessary) to connect the Town’s performance space and street level along Dry Avenue/Kildaire Farm Road to the lower level plaza on the east side of the Library which will be one story lower in elevation. The walkways will also connect the performance space to the future Town Park.

2.22 “Work” means the all the work and services to be performed by Architect, CM, and Contractor in designing and constructing the Project.

ARTICLE III TERM, AMENDMENT, and TERMINATION

3.01 Term. This Agreement shall become effective upon the properly authorized execution of the Agreement by both Parties and shall continue until the Final Completion of Project (“Term”). The Parties may agree to an earlier termination when all responsibilities of this Agreement have been completed or replaced with superseding documents.

3.02 Amendment. This Agreement may only be amended by a writing signed by the Parties. To propose an amendment to Agreement either Party may submit the proposed amendment and the reasons for the proposed amendment in writing to the other Party per the Notice provisions in this Article III. If the Parties agree to the proposed amendment, a

written amendment to Agreement shall be executed. The Parties may enter into amendments that do not have financial implications for either Party with the approval of and execution by their respective Managers. All other amendments shall require approval by the respective governing boards of the Parties.

3.03 Disputes. Notwithstanding any other provision of this Agreement, either Party may contest any decision, action or inaction of the other Party, or an alleged failure of the other Party to comply with the terms of this Agreement. If any such dispute cannot be informally resolved, then such dispute shall be resolved as provided in 9.08.

3.04 Termination. This Agreement may be terminated by either Party upon breach of this Agreement by the other Party, provided that the non-breaching Party has notified the breaching Party in writing and provided thirty (30) days from the notification to allow the breaching Party to cure the breach. If the breach remains uncured after thirty (30) days, or any reasonable mutual extensions thereof, the non-breaching Party may terminate this Agreement upon ten (10) days written notice. In the event of breach, the Parties shall be entitled to such legal or equitable remedies as may be available, including specific performance.

3.05 Notice. Any notice required by this Agreement shall be in writing and delivered to the Parties at the following addresses:

For Wake County: Wake County Manager
Wake County Justice Center
301 S. McDowell St.
Raleigh, NC 27601

With a copy to Wake County Attorney
Wake County Justice Center
301 S. McDowell St.
Raleigh, NC 27601

For Town of Cary: Town Manager
Town of Cary
PO Box 8005
Cary, NC 27512

With a copy to Town Attorney
Town of Cary
P.O. Box 8005
Cary, NC 27512

3.06 MOU Superseded. Upon the execution and delivery of this Agreement, this Agreement shall constitute the definitive Agreement between the Parties regarding all

matters relating to the Project, including the MOU dated April 28, 2016, as amended, is terminated.

3.07 Survive Termination. Those obligations concerning enforcement of warranties and representations which must survive the termination of this Agreement in order for the beneficiary thereof to recognize substantially all of the benefits of such warranties and representations, shall survive the termination of this Agreement.

ARTICLE IV DESCRIPTION OF PROJECT AND DESIGN

4.01. Ownership of Project Site. The Town owns approximately 12 acres bordered by Walnut Street to the south, Kildaire Farm Road, Dry Avenue and Academy Streets to the west, South Walker Street to the east, and Park Street to the North ("Town Property"). The Project will be constructed on the approximately 4.6 acre site located at the southern portion of the Town Property. Exhibit A shows the Project Site. The Town owns, and shall continue to own, the Project Site. From the execution of this Agreement until final acceptance of the Project, the Town of Cary grants Wake County possession of the Project Site for the construction of Project, for the purpose of discharging construction responsibilities under this Agreement. The Town shall execute such other and further documents as may be requested by the County from time to time to effectuate this purpose.

The Parties acknowledge and accept that the Town intends to incorporate the Parking Deck into a downtown development project under N.C.G.S. §160A-458.3, intended to be constructed on the adjacent Town Property. Such project is presently expected to be a mixed-use development consisting of approximately 75,000 SF of commercial office space, 34,500 SF of retail space and 150 residential units ("Mixed -Use Development"). Such Mixed- Use Development, if and when undertaken, is the Town's initiative and shall be the sole responsibility of the Town to construct and finance. Town agrees that the Mixed Use Development shall not interfere with the construction of the Project. County agrees to cooperate with Town reasonably, diligently, and in good faith to coordinate the Town's execution of the Mixed-Use Development with the execution of the Project. Cooperation may include but not be limited to working with the Town and third-party developer to allow entry to the Deck, or sharing construction progress and timelines. The County is not required to agree to any change in scope or a change order which would result in unreasonable delay of opening the Library or Deck, or increased cost to Wake County solely attributable to hard or soft costs associated with adding the Mixed Use Development without executing a written amendment to this Agreement.

4.02 Ground Lease for Library Site. For no additional monetary consideration and in furtherance of their mutual objectives, the Town and County shall enter into Ground Lease, for the Library Site, including all elements set forth in 2.13 and 2.16, which shall be considered material conditions.

- A. The Ground Lease shall be conditioned on the Library being fully and continuously operated as a Wake County regional branch library providing

such library programs and services as are typically provided in a Wake County regional library. The Ground Lease shall permit County to own, operate and maintain the Library, require that County be responsible for the care and maintenance of the Library and the Library Site, and provide that the Library and all improvements become the property of the Town upon termination of the Ground Lease for any reason. The Ground Lease will contain such other terms and conditions as may typically be found in a Ground Lease between units of government.

- B. The Ground Lease shall permit Town to develop, plan, design, construct, operate and maintain Town Components of Library and, contribute to County's Library Operational Costs based on the services defined in the Use Agreement and provided to Town in connection with Town operations of Town Library Components of Library.
- C. The Ground Lease and Utilization Agreement shall provide for a collection point for trash removal by Town staff. Due to the lack of exterior space on the Library Site for a trash collection point, a trash collection room shall be located in the ground floor service section of the Library. Town staff will have access to this trash collection room for removal of Library trash and recycled materials. The Ground Lease and Utilization Agreement will address details and costs of trash and recycled materials removal.
- D. The Ground Lease shall allocate to general use at least 120 parking spaces constructed in the Parking Deck on terms consistent with Paragraphs 2.13 and 2.16 above. Wake County has requested that the Parking Deck meet or exceed minimum standards for safety, security and loss prevention ordinarily required by Wake County for parking decks managed by Wake County. The Parties will work diligently, reasonably and in good faith to evaluate and achieve consensus on the installation and operation of Security Video Surveillance/Cameras and Emergency Call Stations in the Parking Deck, as described more particularly by Protus3 in its memorandum to Wake County dated October 5, 2017, as set forth in Exhibit "E". The Parking Deck is to have security features consistent with standards for urban parking decks in the Raleigh-Durham-Chapel Hill Combined Statistical Area. Each Party will fund acquisition and installation of agreed upon security features from previously authorized expenditures in the construction budget for the Parking Deck in proportions set forth in (A) and (B) immediately below; or if funding is not allocated, shall promptly propose to its governing board that it authorize the encumbrance and expenditure of funds for the acquisition and installation of such security devices as follows: (A) The County's portion of such acquisition and installation costs shall be determined consistently with the proration of Parking Deck Operational Costs to be borne by Wake County pursuant to Paragraph 2.16, and (B) The balance of such acquisition and installation costs shall be borne proportionately by the Town of Cary and/or other owner(s) of the Parking Deck.

4.03 Wake as Lead Agency and Procurement Agent.

- A. Agency created. This Agreement confirms and ratifies the Town of Cary's appointment of Wake County as its sole agent to procure, design and construct the Project through Final Completion of Project. Wake, has served as the lead agency for all bidding and procurement requirements and shall continue to serve as lead agency for design and construction of the Project. Wake is the designated "Owner" in Construction Documents. Cary hereby grants County permission to encroach onto the Project Site and shall have possession of Project Site for the construction of the Project. Wake shall, as lead agency and "Owner" under Construction Documents take all steps to assure that Cary's interests as Property owner are protected, including to assure that Project representations, warranties and guarantees run to Town or that County is in a position to enforce for the Town. Cary, as Property owner, shall have full access, at reasonable times and in a reasonable manner to all Construction Documents and agreements related to the Project. Cary shall have full access, as Property owner and as a regulatory authority, to the Project Site.
- B. The County is responsible for applying for and pursuing all permits and other approvals necessary for construction of the Project.
- C. The Project shall conform to the approvals granted by the Town of Cary and by the governing board of the Town of Cary and shall be designed and constructed to meet all requirements of the North Carolina State Building Code, the Town's Land Development Ordinance, the approved site plan and all other applicable laws and regulations.
- D. The County shall ensure that Town representatives are and remain closely involved in the final design process for the Parking Deck Modification and Expansion and have the opportunity to provide input and commentary and to provide design approval, including any design decisions that may become necessary during construction of the Project. The Town shall also be involved in the final design process for Library, to provide input, commentary and design approval, including any design decisions that may become necessary during construction, with regard to Town Components of Library.
- E. Town shall be named as an additional insured on all insurance policies obtained or maintained in connection with Project. Wake County shall ensure that the Construction Documents and its contracts with Architect and CM require Architect and CM to purchase and maintain insurance as is appropriate for the Work being performed for the duration of Project, and that such insurance requirements are imposed by Architect and CM on their Trade Contractor, subcontractors and consultants. The Town shall be named as an additional insured (except Worker's Compensation and Employer's Liability insurance) on all Project insurance.

Any indemnification of County in Construction Documents or any other agreement in connection with Project shall also run to and indemnify the Town.

- F. County shall work with the Town on developing a communications plan prior to commencement of construction on Project Site. The communications plan shall be designed to inform the Town and the public of any traffic control, lane closures, and/or other disruption of services to citizens. The communications plan shall be designed to provide public notice of disruptions at least one week in advance of the disruption.
- G. County shall take all actions reasonably necessary to bring Project to Final Completion in accordance with all milestones. The Construction Documents entered into by the County will include commercially standard time of the essence and liquidated damages provisions to promote timely completion of the Project. The County will enforce such provisions of the Construction Documents diligently, reasonably, and in good faith; provided that County may take into account any offset defenses presented by CM at Risk in enforcing or negotiating payment pursuant to such provisions. The Town of Cary shall have an opportunity to participate in any discussions or negotiations involving liquidated damages or the allocation of any payments of liquidated damages actually realized pursuant to the Construction Documents. The Parties will allocate any such payment of liquidated damages equitably between themselves after diligent, reasonable, and good-faith consideration and negotiation.

4.04 Library. The County has and shall continue to manage Architect to provide planning, design, preparation of Construction Documents, filing for permits, bidding assistance, construction administration and other related design services for the Library portion of the Project, in accordance with the Wake County Professional Services Agreement, and associated amendments and attachments ("Professional Services Agreement"). The Architect has assembled a team which is led by Architect. Wake County is responsible for compensating the Architect for all Library work except for sums related to Town Components of Library as further defined in Article VI "Project Funding" which are the responsibility of Cary as provided herein.

4.05 Parking Deck. The County has engaged and managed the Architect, with the Town's approval, to provide planning, design, preparation of Construction Documents, filing for permits, bidding assistance, and construction administration, for the Parking Deck portion of the Project, in accordance with the Professional Services Agreement. County shall continue to manage Architect in providing such services. County shall assure that Architect is responsible for providing coordination services with the Town's contracted artist for incorporation of any integrated public art into the Parking Deck. The Town shall be responsible for the cost of the Architect's services related to the Parking Deck as provided for in Approved Construction Budget as defined further in Article VI "Project Funding". **Parking Deck** has been planned to accommodate parking needs for the Library in addition to such public, Mixed-Use and venue parking as Town shall determine appropriate from time to time. The Town intends to make the Parking Deck part of a Mixed-Use project under N.C.G.S. §160A-458.3, all aspects of which downtown

development project are the sole responsibility of Town and shall not interfere with the construction of the Project. Contemporaneous with or after the execution of the Ground Lease and Utilization Agreement, Town may allocate or sell spaces in Parking Deck to third parties and may make the Deck a condominium, provided that the declaration of condominium does not interfere with any of Wake County's entitlements and rights of use in the Ground Lease and Utilization Agreement as set forth in 7.02. The Town shall fund the cost of constructing the Parking Deck in accordance with Approved Construction Budget and the County shall contribute to the cost of constructing the Parking Deck as set forth in Article VI. Wake County will, if requested in writing by a lender financing any private development adjacent to the Parking Deck and intended to benefit from appurtenant rights to use the Parking Deck, enter into a subordination of Wake County's rights under this Agreement and the Ground Lease and Utilization Agreement to the lien of a Declaration of Condominium governing the Parking Deck or, alternatively, the lien of a declaration of restrictive covenants governing the Parking Deck, provided however, no such subordination document or declaration may in any event:

- (A) Adversely impact the rights of Wake County to the Parking Deck as set forth in this Agreement or the Ground Lease and Utilization Agreement;
- (B) Obligate Wake County to pay for the construction, installation, operation, maintenance, repair or restoration of any "Limited common element" (as defined in N.C.G.S. §47C-1-103(16)) of the Parking Deck (or any feature of the Parking Deck with substantially all of the characteristics of a Limited Common Element) for the benefit of any other party holding rights to use the Parking Deck; or
- (C) Obligate Wake County to pay for the construction, installation, operation, maintenance, repair or restoration of any feature or fixture of the Parking Deck which is extraordinary for urban parking decks in the Raleigh-Durham-Chapel Hill Combined Statistical Area. For purposes of example only, the commission of an original work of art to be installed in or incorporated into the Parking Deck would constitute such an extraordinary feature or fixture of the Parking Deck.

Wake County shall not owe any payment directly to a Declarant as defined by N.C.G.S. § 47C-1-103(9) or to a declarant pursuant to a Declaration as defined by N.C.G.S. § 47A-3(6). To the extent that Wake County's rights are subordinated to a Declaration of Condominium in the future, Town of Cary shall not assess any payment against Wake County under the terms of the Ground Lease and Utilization Agreement for contribution to a payment to an Association of Unit Owners as defined in N.C.G.S. § 47A-3(1) or an Association or unit owners' associations as defined in N.C.G.S. § 47C-1-103(3) inconsistent with Wake County's rights and obligations as set forth herein.

4.06 Project Signage. The County and Town shall work collaboratively to plan and locate appropriate exterior directional signage for the Project, to include wayfinding signage for library patrons, citizens attending other downtown venues and potential future residents and patrons living and working in, and/or patronizing the proposed surrounding

private development. The County and Town shall endeavor to incorporate the County's signage standards within the Town's downtown's signage standards.

4.07 Acceptance of Final Construction Documents for the Parking Deck. Within twenty (20) days of the Architect delivering final Construction Documents that include Deck Modification and Expansion for review by County and Town, the Town shall confirm to the County in writing whether the Town accepts the design and cost of construction for the Parking Deck Modification and Expansion, which includes the 600-space parking Deck. Construction of the Parking Deck shall not commence until the Town has accepted the scope of design, including that for Deck Modification and Expansion, and cost of construction for this purpose.

4.08 Ownership of Design Documents. For the term of Ground Lease and Utilization Agreement, the County shall retain ownership and use of the design work product for the Library, and all areas included within the Library Site including drawings, renderings, etc. The Town shall own and retain ownership and use of the design work product for the Town Components of Project, including Parking Deck, and the remainder of the Project Site under its ownership and control, including drawings, renderings, etc. and the Architect's Professional Services agreement, and ancillary agreements, shall include a provision to that effect.

ARTICLE V PROJECT CONSTRUCTION AND DELIVERY

5.01 Recombination of Property. The Town is responsible for recombining the Project Site and subdividing or recombining it appropriately in order to accommodate the Ground Lease and Utilization Agreement and interests and uses intended in accordance with the requirements of the Town's Zoning Ordinance. Nothing herein is intended to modify the legal requirements of any governmental authority having jurisdiction with respect to any portion of the Project Site.

5.02 Management of Procurement. Unless specifically set forth in this Agreement, the County shall manage and conduct the procurement process for the Project as the procuring agent and lead agency for the Parties in accordance with the terms of Article 143 of the North Carolina General Statutes.

5.03 Management of Project Construction. The County shall be and act as the agent and representative of Town for the purpose of managing the construction of Project ("lead agency" or "lead agent"). County shall act in the capacity of Owner in entering into and managing all professional services contracts, (except for the contract for Integrated Public Art) and in managing the Construction Documents for the Project. As lead agency, the County shall control all aspects of the development and build out of this Project, subject to the input, participation of, and appropriate review and approval of costs, expenses and directives by the Town for the Parking Deck and other Town Components; and shall determine the appropriate delivery method of Work required to complete the Project, subject to Town approvals and consents as set forth in this Agreement. As lead agency, County shall act to assure that Project is constructed in

accordance with approved concept plans and Plans and Specifications and to protect the interest of Town as set forth in this Agreement.

The County shall have the sole right and responsibility to administer the Construction Documents and manage the construction process for the entire Project, including the sole right to approve or reject applications for payment from the CM, subject to Town approvals and consents as set forth in this Agreement. The County will provide the Town with updates on the progress and status of the Project throughout the construction process. Both Parties have accepted the construction bid price, the Town for construction of Town Components and County for the Project on Feb 22, 2018 Cary Town Council meeting and Feb 19, 2018 Wake County Board of Commissioners meeting.

5.04 Control of Project Site. For the purpose of Project construction management and subject to the terms of this Agreement and in reliance upon the insurance requirements hereof, the Town transfers to County and the County accepts control of the Project Site at all times from the effective date of this Agreement through and until Final Completion of Project. The County may delegate control of the Project Site, including on-site safety responsibilities, to the selected CM, with appropriate contractual requirements protecting County and Town. All contractors performing work on the Project Site shall be contractually required to maintain insurance coverage in amount and kind reasonable to the work being performed and in limits no less than the requirements set forth in the CM Agreement.

5.05 Project Delivery Method. The County is utilizing the Construction Management at Risk (CM) delivery method. This delivery method allowed the County to select a construction management firm that will act as a consultant to the County in its own capacity and as lead agency, during the design and bidding phases (preconstruction), and then act as the general contractor during the construction phase. Balfour Beatty Construction, LLC has been selected through a publicly advertised qualification-based process, with representation on the selection panel by Town representatives, as the CM. No changes shall be made to the CM without the consent of the Town. The CM is responsible for providing constructability advice and cost analysis services during the design phase, preparation and coordination of bid packages, scheduling control, cost control, value engineering, and administration of construction.

5.06 The Town's Right to Observe and to Approve. Subject to County's right to control the Project Site as defined in 5.04 and provided it does not unreasonably interfere with the progress of the Work, Wake County shall during the construction process permit the Town, its agents, contractors, and representatives, to have access to the Project Site for the purpose of observing the Work. Town shall have the right to receive and comment on and approve responses to and decisions about requests for information, change orders, claims and other decisions relating to or arising out of Town Components. County shall update Town at least biweekly on Project status. If Town desires to make on-site visits, Town agents, contractors, or representatives must contact County to arrange such visits so as not to interfere with County's control of Project site, defined as that area contained within the construction limits as documented in the Approved Plans and Specs. In no event will Town agents, contractors, or representatives be delayed or deterred from

entering the Project Site for more than twenty-four hours (24 hrs.) after notice from the Town. In no event does this term prevent or restrict the Town acting in its regulatory capacity.

The Town shall cause such observations to be conducted in such a manner as not to interfere with or delay the Work. The County may have its representatives, the Architect, the CM, or other consultants or construction-related experts accompany the Town during Town observations.

If the Town observes any aspect of the Project which the Town reasonably believes to deviate from the Approved Plans and Specs, the Town shall make good faith efforts to immediately notify Wake County in writing of such deviation. In the event of a dispute between the County and the Town regarding the interpretation of the requirements of the Approved Plans and Specs pertaining to Parking Deck or other Town Components, the Town and County shall work diligently and in good faith to resolve the dispute. This obligation does not bind the Town in its regulatory capacity.

5.07 Changes to Construction Contract Scope for Town Components. Upon the execution and delivery of contracts for Project construction, changes to the Approved Plans and Specs for Town Components (including upfitting the interior of the ground floor of the Library), shall be subject to the change approval process described in Exhibit “D” “Construction Scope Change Procedures”. To the extent this change approval process results in an Approved Change Order to the construction contract, any such approved Change Order shall be funded from the Project contingencies identified in Exhibit “C” “Approved Construction Budget for Project”, or as otherwise directed by the Town.

ARTICLE VI PROJECT FUNDING

6.01 Acceptance of Construction Bid Prices. The County received construction bids in November 2017. The County awarded a Guaranteed Maximum Price (“GMP”) contract to the Construction Manager at Risk (“CM”) for the Project on February 19, 2018. The Cary Town Council accepted this bid award via its approval of the Second Amendment to the MOU on February 22, 2018. The Bid Price for the GMP contract will be **\$23,730,816**, which is the combined cost of the Parking Deck and Library and related items:

Library Structure and Associated Sitework	\$ 10,716,671
<u>600 space 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

6.02 Library

- A. **County Commitment.** The County has appropriated a total of \$15,060,000 (Fifteen Million Sixty Thousand Dollars and no/100s Dollars) for the planning, design, construction and furnishing of the Library. County shall pay all costs for the design, construction, furnishings, operation and maintenance of the Library for its defined program of service within budgeted appropriations, subject to the contributions of funding by Town for Town Library Components as set forth in this Agreement. Currently, the scope of design within the Library does not include any other programmed space beyond the standard program of service for a Wake County regional library, or beyond the aforementioned Town Library Components on the Ground Floor.
- B. **Town Commitment.** Based on construction bid prices, the cost to construct the Town Components of Library as described in the Article 2.21 is \$525,000. This Cost will be added to the Town's responsibility for the Project. Should the Town request any additional space within the Library for Town uses that are outside of the County's standard regional library program, the Town agrees to provide funding for all design and construction of such additional space prior to the commencement of such design and construction. The Town also agrees to reimburse the County for any Operational Costs, if any, for such additional Town requested space, such payments to be defined in the Ground Lease and Utilization Agreement.

6.03 Parking Deck. Pursuant of Article 2.16, the Parking Deck, originally planned for 340 spaces will be expanded to 600 spaces. This will require redesign. The cost of redesign shall be the responsibility of Town.

Town of Cary staff and County staff and the project team shall meet as necessary to so the Town can provide prompt review and approval of specific changes to the layout, appearance and features of the Parking Deck Modification and Expansion so that the design can be completed as soon as possible. Town staff shall also coordinate with the County on any and all design and construction activities related to the adjacent future private development, as it impacts the Cary Regional Library Project.

6.04 Adjustment to Total Project Costs

- A. A final adjusted cost for the Parking Deck Modification and Expansion will be determined based on the revised design and engineering construction documents.

- B. The revised "Cary Total Project Cost" including additional design and engineering fees for the Parking Deck, construction cost for the Town Components of Library, construction of the Deck Modification and Expansion scope, less the County's contribution of \$1,000,000, now totals \$13,946,964 ("Revised Cary Total Project Cost"). Revised Cary 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.

6.05 Payment. The Revised Cary Total Project Cost 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 600-Space Parking Deck + Library Space	\$ 12,080,409
<u>Revised Construction Contingency</u>	<u>\$ 601,555</u>
Total Payment	\$ 13,946,964

6.06 Additional Work.

This Interlocal Agreement does not commit either party to funding additional Work, or professional services related to the Project except as set forth herein. In the event that one or both parties desire additional Work or professional services to be performed in any amount exceeding the contingencies built in to the Project budget, the requesting party or parties must seek approval of its governing board(s) to appropriate needed funding and amend this Section. In the event of additional design services that may be necessitated by impacts from the design of the private development that arises while the Deck is under construction, the Town shall seek approval of its governing board to appropriate needed funding and amend this Section.

6.07 Development Plan Review and Parking Deck Building Permit.

Development Plan Review approval for the Project was received from the Town of Cary in its regulatory capacity on November 6, 2017. Due to the Town's 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 (elsewhere called Site Plan) approval, including assisting in clarifying review comments and work expeditiously and in good faith with County and the Project team to keep Project on schedule. 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.

6.08. Development and Impact Fees. The Parties agree to utilize such Business Improvement District incentives as may be available for development fees associated with downtown development.

6.09 Stormwater Management Construction. Due to the fact that adjacent property owned by Town remains undeveloped, Project will not require a stormwater management device at this time. Based on the approved stormwater calculations for this Project, which factored in the treatment for the Project stormwater runoff on the Town owned WC TOC Cary Regional Library Project

undeveloped sites outside the Project limits, it is anticipated that future additional impervious areas will be created necessitating the creation of a regional Stormwater Management device for the Project Site. Therefore, while there will be no construction or annual maintenance cost attributed to either Party as part of this Project, if the Project or any addition to the Project later requires stormwater management, Town shall design and construct the stormwater device to manage the Project Site's stormwater runoff at no cost to County. Wake County shall however be charged a cost share on the annual maintenance costs of the Stormwater Management device for the area of the Project. Such obligation shall be addressed in the Ground Lease and Utilization Agreement.

6.10 Status of Funding Commitment. It is possible that the final cost of the Parking Deck will increase beyond the Approved Construction Budget. Any Town approved increases in the cost of the Parking Deck shall be reconciled through additional payments by the Town. Any decreases in the cost shall be reconciled through credits to the Town. The remaining balance from the Town's funding commitment from this point for Town funded components is therefore \$13,206,964.

6.11 Payment of Project Costs. All Project Costs shall be paid by County, in its capacity as Lead Agency, in accordance with the terms of the County professional agreements and Construction Documents entered into for the Project.

For the purpose of ensuring that Wake County has sufficient funds encumbered and appropriated for entering contracts for the completion of the Parking Deck and all other Town Components, within thirty (30) days of the execution of this Agreement, the Town will pay to the County an initial payment of \$1,000,000 of its Approved Construction Budget towards the total Project Cost, identified above, with payment of the balance by way of quarterly progress payments on anticipated materials and construction billing and based upon the following payment schedule:

\$ 1,000,000.00 upon execution of this Agreement;
\$ 3,000,000.00 on or before July 1, 2018;
\$ 4,000,000.00 on or before October 1, 2018;
\$ 3,000,000.00 on or before January 1, 2019;
\$ 2,000,000.00 on or before April 1, 2019; and
\$ 206,964.00 on the Addition Commencement Date.

Total: \$13,206,964

Wake County may at its option make the final installment of the Allowance due upon the Final accounting and settlement of Project Costs, but in no event earlier than the Substantial Completion Date.

The County shall segregate and track these amounts on a separate accounting template for the construction of the Parking Deck and Town Library Components and use the amount to pay construction invoices for the Parking Deck and Town Library Components. Any of this amount unused for the Parking Deck or Town Library Components at the completion of the Project shall be returned to Town.

6.12 Payment for Changes in the Construction Documents. All construction contract Approved Change Orders to Town Components shall be funded from Project contingency funds identified in Exhibit "C", or in other funds which may be identified, with approval of the Town and in accordance with Construction Scope Change Procedures set forth in Exhibit "D".

6.13 Sales Tax. Each contractor under contract with the CM shall include sales and use taxes to the Project that are legally enacted at the time the Guaranteed Maximum Price contract is established. The CM shall maintain all tax records during the life of the Project and furnish the County with a complete listing of all taxes paid by taxing authority, invoice number, date, amount, etc.

The County will track sales tax separately for the respective for work of the County and Town as accurately as possible. For those scopes of construction that cannot cleanly be separated between each of the Parties, the Parties will endeavor to establish a fair and equitable approximation of sales tax paid, and ultimately refundable for each Party.

6.14 Books and Records; Right to Audit

Wake County will keep complete and detailed books and records which accurately reflect the Project Costs. Such books and records and any and all supporting data (including work papers) relating to the Project Costs shall at all reasonable times during the course of construction and for three (3) years after Substantial Completion be open and available for inspection, audit, and photocopying by the Town, its authorized representatives, and its inside and outside auditors. Wake County acknowledges that the Town is a public entity, and all books, records, and supporting data relating to the Project and Project Costs shall be public records pursuant to the laws of North Carolina, and County agrees to comply with all applicable laws relating to such records and information. Prior to disposing of such books and records, County shall inform Town of its intention to dispose or purge such records, and upon request of Town, County shall provide such books and records to Town.

ARTICLE VII PROJECT OWNERSHIP AND USE

7.01 Ownership and Maintenance. Upon Final Completion of Project, pursuant to the Ground Lease and Utilization Agreement the County will have possession and administrative and security control over the Library Building, and exclusive right to perform alterations or modifications to the Library, subject to Town control of Town Components of Library as defined in the Ground Lease and Utilization Agreement, and the Town, as Property owner, will have administrative and security control over the Parking Deck and related elements, and exclusive right to perform alterations or modifications to the Deck, subject to the Ground Lease and Utilization Agreement. The Parties will cooperate on matters of mutual concern, including such matters as hours of

operation, maintenance of common shared areas and other matters which may arise, all of which should be addressed in Ground Lease and Utilization Agreement. Cost of operations for the Town Components of the Library and the County's component of the Parking shall be further defined by the Ground Lease and Utilization Agreement.

7.02 Rights of Use. The Ground Lease and Utilization Agreement shall address access by County and Town to Project components and shall address the terms and conditions associated with operation and maintenance of Library including shared areas and areas in Town possession as follows:

- A. Parking Deck consistent with Paragraphs 2.13 and 2.16 above
- B. Library Ground Floor Restrooms (Town possession)
- C. Library Ground Floor Shell Space (Town possession)
- D. Library Entrance Bridge, Exterior Plazas and Walkways (shared use)

ARTICLE VIII EXHIBITS AND RELATED DOCUMENTS

8.01 Exhibits

The following exhibits are attached hereto and incorporated by reference into this Agreement as if fully set forth herein:

- A. Exhibit "A" Area Site Plan (showing Project Site)
- B. Exhibit "B" Library Parking Deck Elevations (Preliminary Design to Date*)
 - * As of date of this ILA, design of Parking Deck Elevations is not yet complete. Final Elevation design is expected to be substantially similar to that shown in this Exhibit. Should final design differ substantially, such changes shall be addressed in an amendment to this ILA
- C. Exhibit "C" Lower Level Library Floor Plan
- D. Exhibit "D" Construction Scope Change Procedures
- E. Exhibit "E" Security Standards

8.02 Related Documents. The Parties acknowledge that the Ground Lease and Utilization Agreement must be developed and shall be executed as soon as reasonably possible and in no event later than receipt of a certificate of occupancy for the project, but before declaration of condominium of the parking deck.

ARTICLE IX OTHER PROVISIONS

9.01 No Third-Party Beneficiaries. This Agreement is not intended for the benefit of any third party. The rights and obligations contained herein belong exclusively to the

Parties hereto, and shall not confer any rights or remedies upon any person or entity other than the Parties hereto.

9.02 Ethics Provision. The Parties acknowledge and shall adhere to the requirements of N.C.G.S. §133-32, which prohibits the offer to, or acceptance by any state or local employee of any gift from anyone with a contract with the governmental entity or from a person seeking to do business with the governmental entity.

9.03 Governing Law, Venue. The Parties acknowledge that this Agreement shall be governed by the laws of the State of North Carolina. Venue for any disputes arising under this Agreement shall be in the courts of Wake County, North Carolina.

9.04 Entire Agreement. The terms and provisions herein contained constitute the entire agreement by and between the Parties hereto and shall supersede all previous communications, representations or agreements, either oral or written between the Parties hereto with respect to the subject matter hereof.

9.05 Severability. If any provision of this Agreement shall be determined to be unenforceable by a court of competent jurisdiction, such determination will not affect any other provision of this Agreement.

9.06 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original.

9.07 Representations and Warranties. The Parties each represent, covenant and warrant for the other's benefit as follows:

(a) Each Party has all necessary power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and this Agreement has been authorized by Resolution spread upon the minutes of each Party's governing body. This Agreement is a valid and binding obligation of each Party.

(b) Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Agreement, results in a breach of the terms, conditions and provisions of any agreement or instrument to which either Party is now a party or by which either is bound, or constitutes a default under any of the foregoing.

(c) To the knowledge of each Party, there is no litigation or other court or administrative proceeding pending or threatened against such Party (or against any other person) affecting such Party's rights to execute or deliver this Agreement or to comply with its obligations under this Agreement. The Party's execution and delivery of this Agreement, and its compliance with its obligations under this Agreement, does not require the approval of any regulatory body or any other entity the approval of which has not been obtained.

9.08 Dispute Resolution. In the event of conflict or default that might arise for matters associated with this Agreement, the Parties agree to informally communicate to resolve the conflict. If any such dispute cannot be informally resolved, then such dispute, or any other matter arising under this Agreement, shall be subject to resolution in a court of competent jurisdiction. Such disputes, or any other claims, disputes or other controversies arising out of, and between the Parties shall be subject to and decided exclusively by the appropriate general court of justice of Wake County, North Carolina.

9.09 No Waiver of Non-Compliance with Agreement. No provision of this Agreement shall be deemed to have been waived by any Party hereto unless such waiver shall be in writing and executed by the same formality as this Agreement. The failure of any Party hereto at any time to require strict performance by the other of any provision hereof shall in no way affect the right of the other Party to thereafter enforce the same. In addition, no waiver or acquiescence by a Party hereto of any breach of any provision hereof by another Party shall be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

9.10 Governing Law. The Parties intend that this Agreement be governed by the law of the State of North Carolina.

9.11 Assignment. No Party may sell or assign any interest in or obligation under this Agreement without the prior express written consent of the other Parties.

9.12 Liability of Officers and Agents. No officer, agent or employee of any Party will be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents or employees will be deemed to execute such documents in their official capacities only, and not in their individual capacities. This section will not relieve any such officer, agent or employee from the performance of any official duty provided by law.

9.13 Execution in Counterparts/Electronic Version of Agreement. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Any Party may convert a signed original of the Agreement to an electronic record pursuant to a North Carolina Department of Natural and Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of the Agreement shall be deemed for all purposes to be an original signed Agreement.

9.14 Iran Divestment Act. The Parties hereby certify that they, and all permitted subcontractors, if any, are not on the Iran Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. §147-86.58.

9.15 Companies Boycotting Israel. Any organization defined under N.C.G.S. §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 N.C.G.S. §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.


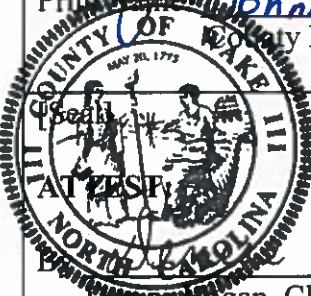

9.16 Headings. Section and paragraph headings contained in this Agreement are solely for the convenience of the Parties and shall not affect in any way the meaning or interpretation of this Agreement.

9.17 Regulatory Authority. Nothing in this Agreement shall restrict or inhibit a Party's police powers or regulatory authority.

9.18 Further Actions. The Parties agree to cooperate fully and execute any and all further documents and to take all further actions that may be necessary to give full force and effect to the intent of this Agreement.

[The remainder of this page is left blank on purpose. Signatures appear on the next page.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their corporate names by their duly authorized officers, all by the Resolution of their governing board, spread across their minutes, as of the date first above written.

WAKE COUNTY, NORTH CAROLINA By:  Prim <u>Johana L. Rogers for</u> County Manager  ATTEST: <u>Hogan</u> Domenec Hogan, Clerk to the Board	This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act. <u>NIA</u> Finance Director Wake County, North Carolina 
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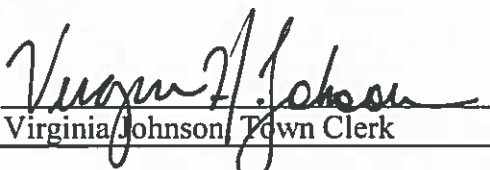

TOWN OF CARY By:  Russ Overton, Deputy Town Manager	This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act. <u>Shawn Hill</u> Finance Director Town of Cary, North Carolina
ATTEST: By:  Virginia Johnson, Town Clerk	

Exhibit "A"
Area Site Plan

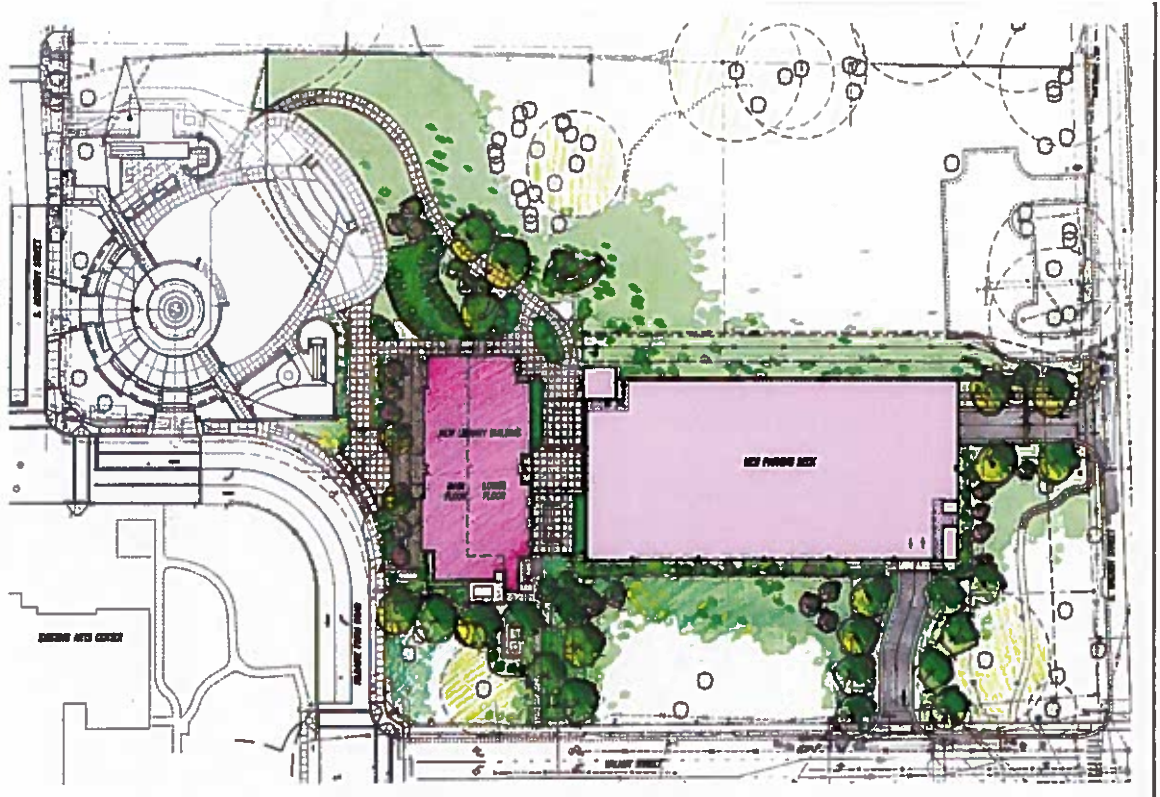
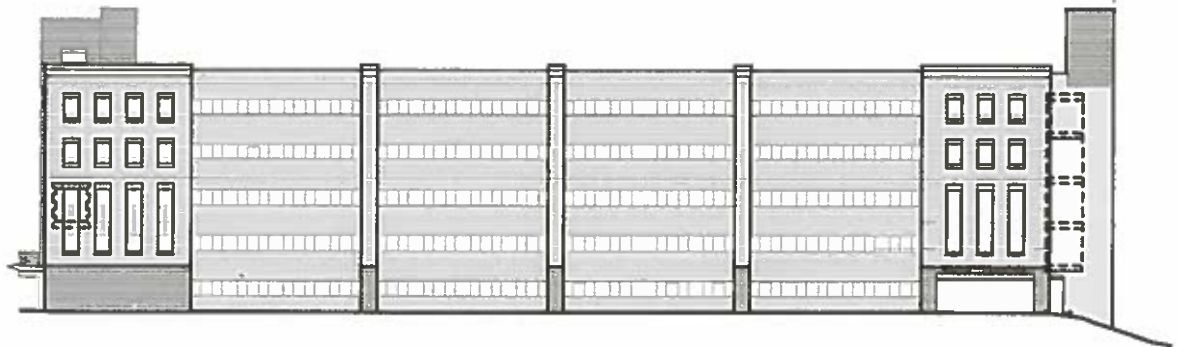


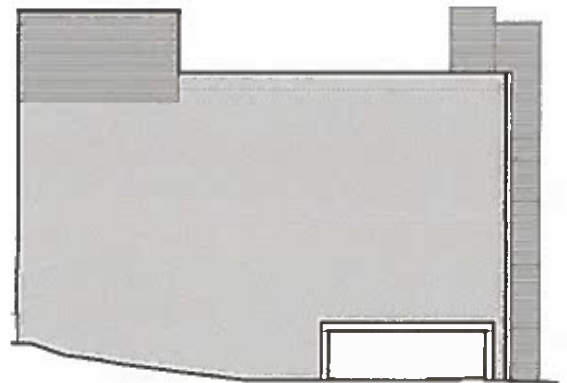
Exhibit "B"
Parking Deck Façade Elevations
(Preliminary Design)



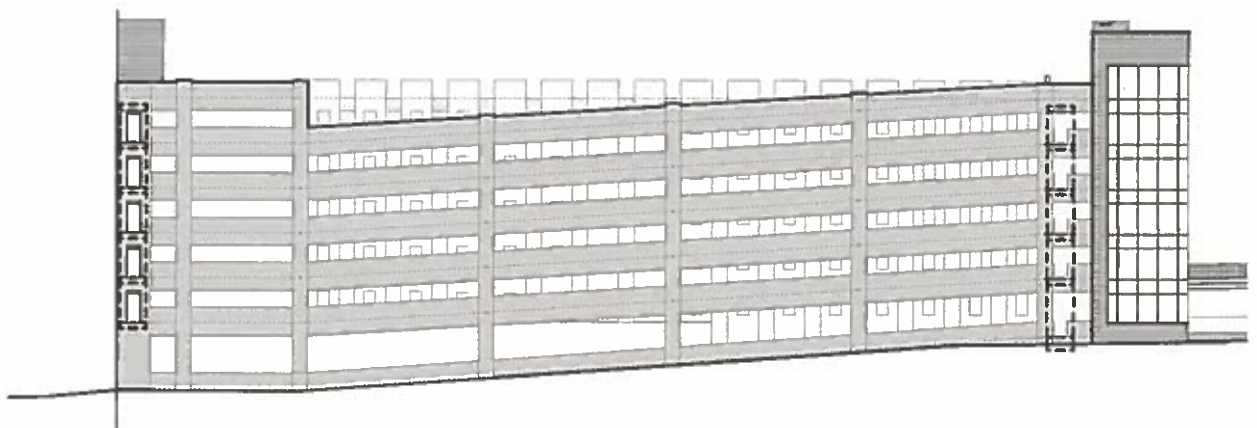
SOUTH ELEVATION



WEST ELEVATION



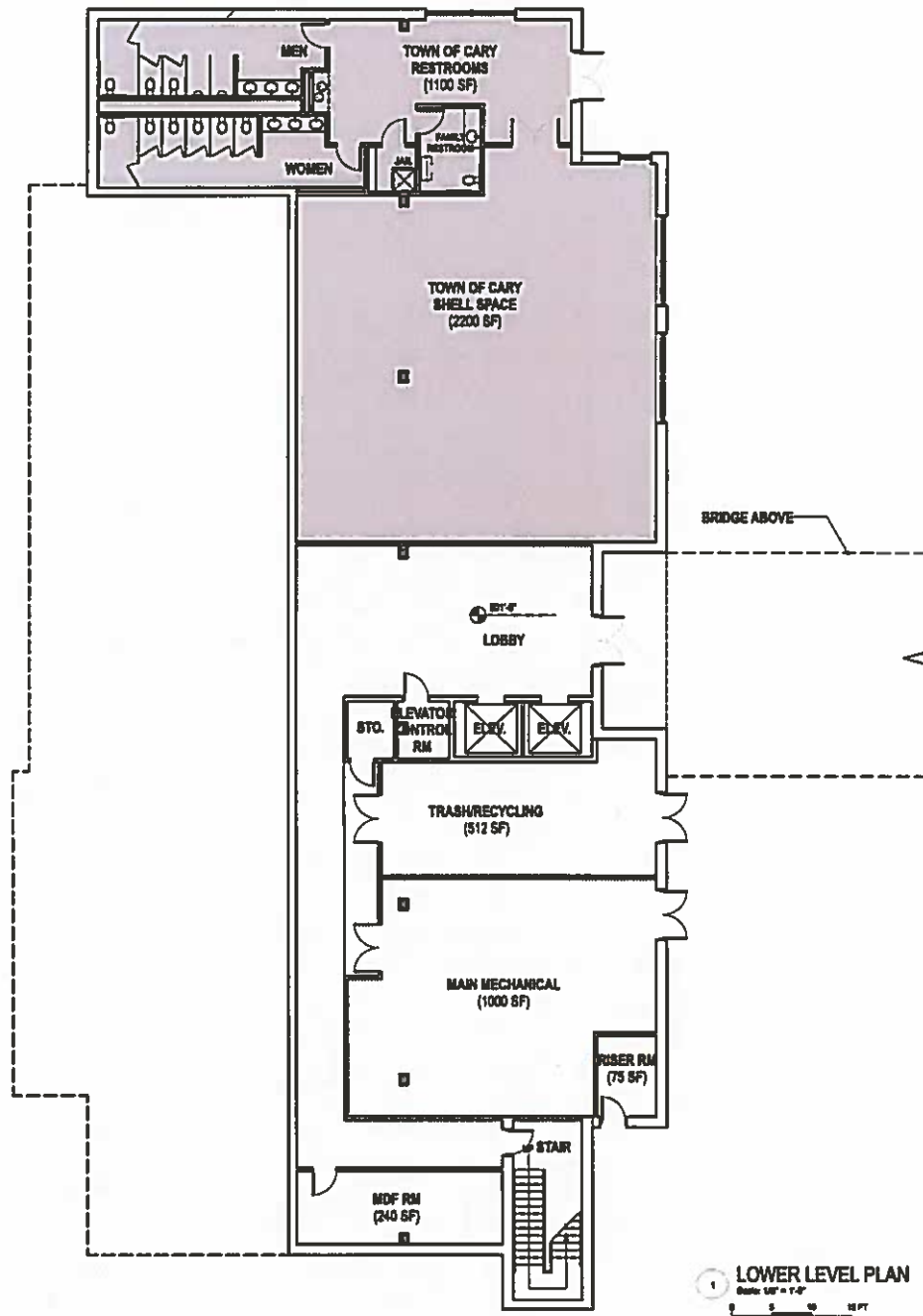
EAST ELEVATION



NORTH ELEVATION

DOWNTOWN CARY PARKING DECK - EXTERIOR ELEVATIONS

Exhibit "C"
Lower Level Library Floor Plan



Library Lower Level Floor Plan
 Town Components Shown in Gray

Exhibit "D"

Construction Scope Change Procedures for Town Funded Components

D-1 Introduction. This Exhibit shall set forth the rights and obligations of Wake County and the Town with respect to construction scope change procedures for the construction and installation of the Town Components to this Project. The County, in its capacity as lead agency, will represent the Town of Cary as owner of the Town Components. The County has entered into Construction Documents as "Owner" with authority to approve payment requests as well in executing various construction contracts and other documents upon Town consents and approvals as provided in Agreement. From time to time, during the course of construction of the Project, certain modifications to the Approved Plans and Specs may become necessary, based on the following various factors:

- 1) Field Orders for Minor Variations
- 2) Changes requested by the Town of Cary
- 3) Governmental Requirements (i.e. permit inspection required modifications)
- 4) Unforeseen Site Conditions
- 5) Conflicts in the Approved Plans and Specifications
- 6) Other construction circumstances (i.e. material shortage, alternative assembly method, etc.)
- 7) Fees by Utility Companies (i.e. power, gas, water, fiber, etc.) outside the construction contract but necessary to completion of the Project.

D-2 Field Orders for Minor Variations.

Field Orders prepared by the Project Architect that do not require a change order and/or minor variations required to effect the construction of the Project or some part of portion thereof, shall not require pre-approval by the Town so long as the variation does not affect the functionality or intended use of the affected Town Component (for example, moving the location of an electrical outlet), or the aesthetics of the work and provide clarifications or interpretations of the Construction Documents. Field order shall be handled as per the General Conditions of the CM Contract and shall not invalidate the Contract Documents nor release the surety. Field Orders shall not alter the Contract Price and/or provide an extension to Contract Time. The County shall provide copies of all Field Orders issued by the Project Architect or County to the Town within three (3) days. Field orders that require a change order shall be handled according to Article D-4.

D-3 Changes requested by the Town of Cary

The Town shall communicate any requested changes to the Approved Plans and Specifications to the County in writing. The County will then issue this request through the defined chain of communication from the Architect to the CM. As soon as reasonably practicable thereafter, the County shall provide the Town with an estimate from the CM of the adjustment, if any, in the total Construction Costs required by such Requested Change Order, and the extent of the adjustment, if any, on the Project Schedule of such Requested Change Order. Wake County and the

Architect shall thereafter exercise reasonable efforts to complete negotiations of such change acceptable to the Parties as soon as reasonably practicable, but within the limits defined in Wake County's General Conditions for Construction, which are part of the Construction Contract, which the Town shall use its own internal processes and procedures to review. If the Town then affirmatively elects, in writing, to proceed with a Requested Change Order, such changes shall be deemed an "Approved Change Order" and Wake County shall then promptly direct the Architect to make any needed changes to the Plans and Specifications and direct the CM to proceed with such changes.

D-4 Changes Resulting from Other Factors. Wake County shall communicate promptly, in writing, to the Town with any changes to the Approved Plans and Specifications that are required by the circumstances described in Article D-1 Items 3-6, and any cost impacts, to the extent such costs can be defined. Time being of the essence for this construction project, it will be imperative for the Town to promptly respond to any time sensitive conditions that arise in this manner. Therefore, the Town shall respond within three (3) business days to the County's notification of change with approval or alternative direction. It will be incumbent upon the County to provide adequate information for the Town to respond. Should the Town fail to respond within (3) business days, the County shall act on behalf of the Town with an appropriate directive to the Construction Team. Wake County shall then promptly direct the Architect to make any needed changes to the Construction Costs or Project Schedule and direct the CM to proceed with such changes. If County fails to provide notification of these changes to the Town within the timeframe given above then the County shall be responsible for such changes, including cost and time added, to the Construction Contract.

D-5 Utility Installation Premiums. Wake County shall communicate promptly to the Town with any additional costs related directly to utilities for Town Components that are outside the construction contract and identified after the date of this Agreement. The Town will respond promptly on how it plans to pay for any utility fee that is identified as Town responsibility.

D-6 Emergency Changes
Wake County shall be permitted to make emergency changes to this scope of work which would otherwise compromise, in the opinion of Wake County, the Architect or the CM, the integrity or structural strength of the Project, provided that written notice of said changes and associated costs are forwarded to the Town as soon as practicable after notification of such changes of Town Components.

D-7 Change Order Process. Wake County, as lead agency shall review all change order requests with the Architect and Construction Team on at least a monthly basis, and any change order request for Town Components shall be promptly presented (as per D-4) to the Town for review and approval. With Town approval, Wake County shall have the authority to execute change orders to the construction contract on behalf of the Town, for all Town Components. Town is responsible for increased costs incurred pursuant to an Approved Change Order entered unless

attributable to errors of the Architect, the CM or the County or for failure to notify the Town as described in D-4 of this Exhibit.

D-8 Contingency Funds for Approved Change Orders. Funding for approved Change Orders for Town Components shall be from the Project Contingencies defined as follows:

- a) CM Contingency as defined in Article D-9
- b) Project Contingency as defined in Article D-10 and as shown in Exhibit "C"
- c) As otherwise directed by the Town of Cary

D-9 CM Contingency. CM Contingency is an amount reserved *within* the construction contract used in the Construction Management at Risk delivery method for the CM to defray costs caused by a limited set of circumstances defined within the construction contract. This amount is customarily limited to 2% of the Cost of Work. CM Contingency is not intended to be used to defray costs to expand the scope of the Project.

D-10 Project Contingency. Project Contingency is the fund reserved and controlled by the Owner *outside* of the construction contract to fund the cost of the change orders to the construction scope of work, as opposed to the CM at Risk's Contingency, which is reserved within the CM's contract.

Exhibit "E"

October 5, 2017 Memo Re: Area Parking Deck Security Devices



MEMO

To: Dave Goodwin
Director Wake County General Services

From: Dana Frentz

Date: October 5, 2017

Re: Area Parking Deck Security Devices

Protus3 has been asked to assist Wake County GSA in researching current security controls used in area municipal parking decks.

Parking areas possess inherent vulnerabilities for all organizations. Typically, parking decks/garages are the least protected areas for an organization. Parking areas are the access point for visitors and employees as they come to the facilities. Parking areas may be classed as crime generators because of the vehicles containing target items or the pedestrians following predictable routes carrying items of value from the areas. It is important to apply sufficient security resources to parking lots and decks to afford the population the opportunity to "see and be seen" through mutual casual surveillance and to provide deterrence through sufficient formal security presence.

Protus3 consultants found various levels of security throughout 20 area municipal parking decks. There are four municipalities represented among these decks. All but one of the 20 decks have some sort of physical security controls. In an effort to more easily organize the findings Protus3 has separated the decks into 5 categories.

Restricted/Credentialed Access

3 decks are restricted to employees or those with access credentials and have no public access. These 3 decks also have emergency call stations/blue phones and security video surveillance.

Restricted and Free Access

1 deck has both an area that is restricted which requires valid credentials to park and an area that is not controlled and is open for the public to park.

Controlled Access

15 decks have controlled access requiring the public to take a ticket to park in the deck.

Security Video Surveillance/Cameras**16 decks have Security Video Surveillance****Emergency Call Stations/Blue Phones****12 decks have Emergency Call Stations****X=has listed controls**

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Restricted/ Credentialed Access	X	X	X																	
Restricted and Free Access (Public)				X																
Controlled Access					X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Security Video Surveillance /Cameras	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X				
Emergency Call Stations/Blue Phones	X	X	X	X	X	X	X	X	X	X	X	X								

A portion of this data is based on findings from studies conducted by two municipalities. One of the municipalities commissioned a security assessment for their parking lots and decks in 2011 and another municipally commissioned a study in 2013. One study recommended additional security features including 24/7 security patrols, and both studies made recommendations for adding security video surveillance and assuring all security controls are maintained and functioning properly.

Based on the information above, there is clearly an established standard of care that dictates a minimum of Security Video Surveillance/Cameras and Emergency Call Stations to be deployed in parking structures. The use of access control is dependent on the operational need and use of the deck, but is not an established standard of care.