

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING

This First Amendment to Memorandum of Understanding , made and entered into this _____ day of _____, 2019 by and between **WAKE COUNTY**, a public body politic and corporate of the State of North Carolina, hereinafter referred to as "the County" and the **TOWN OF MORRISVILLE**, a Municipality of the State of North Carolina, hereinafter referred to "the Town," the County and the Town being jointly referred to herein as "the Parties".

RECITALS:

WHEREAS, the County and the Town entered into a MEMORANDUM OF UNDERSTANDING (the "MOU") dated October 25, 2017 to set forth the understanding and mutual agreement of the Parties as it relates to the conditions that must occur in order to proceed with a Joint Master Plan to investigate the feasibility for the County to construct a new Solid Waste Management Facility and the Town to construct a new Public Works Facility on property currently owned by the Town at 414 Aviation Parkway in Morrisville, North Carolina; and

WHEREAS, the Parties engaged a consultant to develop design alternatives and preliminary cost estimates; and

WHEREAS, a final general alternative and estimate of probable construction cost was developed; and

WHEREAS, the Parties desire to ratify and extend the term of the MOU to further the design development, develop more accurate cost estimates, and permit more time to determine the feasibility of the construction and joint development of the site; and

WHEREAS, the Parties now desire to amend and supplement the terms of the MOU as set forth in this First Amendment.

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

1. PURPOSE AND SCOPE

The purpose and scope of this First Amendment is:

- A. To extend the term of the MOU; and
- B. To amend the scope and to set forth the understanding and mutual agreement of the Parties as it relates to the conditions that must occur in order to proceed with a Schematic Design Plan and to investigate the feasibility for the County to construct a new Solid Waste Management Facility and for the Town to construct a new Public Works Facility on property currently owned by the Town at 414 Aviation Parkway in Morrisville, North Carolina. This MOU is entered for the purpose of expanding the evaluation of the earlier Joint Master Plan in which

MOU for Master Plan for Wake County

CC #3 and Town of Morrisville Public Works Facility

alternatives were developed and preliminary cost estimates were performed based on those alternatives. The final general alternative and estimate of probable construction cost which shall be pursued by the parties is attached hereto as "Attachment A". The next step shall be to refine the design and to develop an accurate cost estimate for both parties to determine the feasibility of moving forward with design, construction, and ground lease agreement for the joint development of the site. "Attachment B" is the proposed design alternative associated with the estimate of probable construction cost shown in Attachment A.

2. GENERAL CONDITIONS

- A. The Parties' obligations with respect to proceeding with the joint design and construction of a new Solid Waste Management Facility with added Multi-Material and Household Hazardous Waste Facilities and the Town Public Works Facility (hereafter referred to as "CC#3/MPWF Schematic Design project" "Schematic Design Project" or "Project") are expressly conditioned upon and subject to each Party receiving proper approval and appropriation of funding from its respective governing board to enter into mutually acceptable written agreements as to all aspects of the funding, site evaluations and master planning for the Project ("Agreements"). Accordingly, except to the extent that specific responsibilities of the Parties are set forth herein, this MOU shall not impose obligations on either Party to proceed with furthering the Project past schematic design and its associated components. Nor shall it otherwise bind the Parties to enter into future Agreements with respect thereto.
- B. Unless and until superseded by written amendment or final Agreements signed by all Parties, this MOU contains the entire understanding of the Parties with respect to proceeding with the Schematic Design Project.
- C. Except as provided in this First Amendment, all of 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 terms and conditions of this First Amendment and the MOU, the terms of this First Amendment shall control.
- D. Description of Project: The CC#3/MPWF Schematic Design Project will consist of an expanded schematic design for the Convenience Center#3 (including Multi-Material and Household Hazardous Waste Facilities) and the Morrisville Public Works Facility and shall evaluate options for additional access to the Cedar Fork District Park. As the cost of the schematic design will be higher than the non-selection threshold, an RFQ for a design consultant will be undertaken, with representation from both the County and Morrisville, and others as deemed helpful by both parties. The Schematic Design shall be based on Wake County's established guidelines for SD's and shall also include a more detailed study of sitework and storm drainage and will document and account for the widening and raising of Aviation Parkway as well as the floodway and flood hazard designations. The Schematic Design shall also provide cost estimating associated with the Project, at a more detailed level than the previous Joint Master Plan Project, including potential land transfer/acquisition and ownership of various facilities.

- E. Ownership of Schematic Design and Master Planning Documents. The County and Town shall retain ownership or use of the work product for the Project, including drawings, renderings, etc. in proportion to their respective contributions to the cost of developing the Master Planning Documents.

3. TERM

The term of this MOU is extended to the earlier of the date of execution of the interlocal agreement contemplated by the MOU; or twelve (12) months from the date of execution of this 1st Amendment by the last party. The Parties may extend this Term or increase the cost by separate written agreement or addendum executed by both Parties, subject to Manager approval. If the Parties agree and obtain all required approvals and appropriation of funding to proceed with the CC#3/MPWF construction, then the Parties contemplate execution of a more formal and detailed Interlocal Agreement and/or Funding Agreement to replace this MOU prior to or at the end of the term. Either Party may terminate this MOU by providing the other (45) days advance written notice of said termination; provided that termination pursuant to this section shall not relieve the terminating party of responsibility for payment of any fees or expenses incurred pursuant to this MOU.

4. RESPONSIBILITIES OF WAKE COUNTY

- A. Design Funding. The County shall appropriate funding for the Schematic Design preparation, based on a percentage of anticipated costs, related to the estimated design and permitting costs outlined in the previously completed Joint Master Plan, in the attached document titled Attachment A. This percentage is to be 40.75% of the total Schematic Design fee. The County's portion of the Schematic Design Fee shall be due regardless of whether the County proceeds with the Project. The total anticipated cost for the Schematic Design phase is \$375,000 for which the County will be responsible for up to \$152,812.50 (40.75%). County portion included in prior and current Fiscal Year CIP (FY20).

- B. Engage and Pay Design Consultant. The County shall lead engagement of a design consultant pre-qualified by Wake County Facilities Design & Construction to provide services for the Project, as per the standard Wake County Professional Services Agreement, with any applicable amendments and attachments that may be necessary. The County shall review pay requests from the consultant and make payments for all work. The County shall invoice the Town for the entire amount of Town's portion of Design Funding as set forth in 5A when the contract with the selected Design Consultant is executed.

- C. Include Town of Morrisville in the Schematic Design Process. Wake County will work collaboratively with the Town on the consultant selection, site evaluation and preparation of the Schematic Design.

- D. Acceptance of Design. The County shall present the Schematic Design Project to the Wake County Board of Commissioners, for their review, input, and final approval.

5. RESPONSIBILITIES OF THE TOWN OF MORRISVILLE

- A. Design Funding. The Town shall appropriate funding for the Schematic Design preparation, based on a percentage of anticipated costs, related to the estimated design and permitting

costs outlined in the previously completed Joint Master Plan, in the attached document titled Attachment A. This percentage is to be 59.25% of the total Schematic Design fee. The Town's portion of the Schematic Design Fee shall be due regardless of whether the Town proceeds with the Project. The total anticipated cost for the Schematic Design phase is \$375,000 for which the Town will be responsible for up to \$222,187.50 (59.25%). Town portion was appropriated in its 2019 annual budget. The Town shall make payment to the County for the Town's share of the project cost within 60 days of receipt of invoice from the County.

- B. Coordination. To provide staff to work with Design Consultant and County as needed during the Schematic Design Process. The Town will be actively involved in reviewing and approving work product submitted by the Design Consultants.
- C. Acceptance of Design. The Town shall present the Schematic Design Project to the Town Council, for their review, input, and final approval.

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

- A. Interlocal Agreement defining the responsibilities of the parties based upon a scope of work to be established based on the results of the Schematic Design Plan.
- B. Any needed rights of entry, Utilization and Cross Access Agreements as determined to be necessary.
- C. Memoranda of any enumerated document requested by the other party for the purpose of recording in the Wake County Registry. The necessary agreements may be consolidated.

7. CONTEMPLATED SEQUENCE OF EVENTS

- A. Morrisville Town Council authorizes the Town Manager to enter into this First Amendment to Memorandum of Understanding.
- B. The Wake County Board of Commissioners authorizes the County Manager to enter into this First Amendment to Memorandum of Understanding.
- C. The County, working collaboratively with the Town, engages design consultants pursuant to an RFQ process to complete the Schematic Design pursuant to this Agreement.
- D. The Schematic Design consultant makes a presentation to the County and the Town for action related to the Schematic Plan.
- E. The Town and the County staff each determine if it is feasible to proceed with recommending the Schematic Design Plan to their respective boards, such recommendation to include the agreed upon apportionment of financial responsibility between the parties for the Project. If a decision is made by either party not to proceed, the events set forth in F through H inclusive shall not occur.

- F. If the decision is made to proceed, the County and the Town prepare, negotiate and finalize the terms of a proposed Interlocal Agreement, the scope of which will be defined based on the results of the referenced Schematic Design. The Parties will reach a mutually agreeable solution to the land rights needed for each of their respective needs.
- G. The Town and County seek approval and appropriation of funding from their respective Boards, as appropriate, to enter into the Interlocal Agreement.
- H. The Parties shall proceed upon the terms established by the Interlocal Agreement, which shall provide for the funding, procurement, construction and use of the facilities to be constructed as part of the Project. The Interlocal Agreement shall replace and supersede all previous documents, agreements, and understandings with respect to the subject matter.

IN TESTIMONY WHEREOF, WAKE COUNTY AND THE TOWN OF MORRISVILLE 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: _____

TOWN OF MORRISVILLE

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.

COUNTY FINANCE DIRECTOR