

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

THIS FUNDING AGREEMENT AND MEMORANDUM OF UNDERSTANDING, made and entered into this _____ day of _____, 2020 by and between **WAKE COUNTY**, a body politic and corporate of the State of North Carolina, hereinafter referred to as "the County", the **TOWN OF GARNER**, a Municipality of the State of North Carolina, hereinafter referred to as "Town of Garner" or "Garner", and the **TOWN OF FUQUAY-VARINA**, a Municipality of the State of North Carolina, hereinafter referred to as "Town of Fuquay-Varina" or "Fuquay-Varina", with the County and each Town being jointly referred to herein as "the Parties."

WITNESSETH:

WHEREAS, Wake County EMS established a Master Plan for EMS Stations in 2008, updated in 2019, that includes co-location of EMS units within a fire station as a first consideration when deploying ambulances; and

WHEREAS, since 2008, Wake County EMS has been co-located in 19 different fire stations, representing 11 different county and municipal fire departments; and

WHEREAS, the current population, vulnerability data, and demand for service indicate a need to continue to deploy EMS resources in Garner, North Carolina; and

WHEREAS, the current population, planned growth, extension of high speed State Route 540 and projected increase in the demand for service indicate a need to expand fire service by the Garner Fire Department, which serves the Town of Garner and outlying areas of unincorporated Wake County, north of Secondary State Road 1010; and

WHEREAS, the current population, planned growth, extension of high speed State Route 540 and projected increase in the demand for service predict a need to expand fire service by the Fuquay-Varina Fire Department within the next ten years, which serves the Town of Fuquay-Varina and outlying areas of unincorporated Wake County, south of Secondary State Road 1010; and

WHEREAS, Wake County EMS and the Town of Garner desire to co-locate a combined Fire and EMS Station on Garner owned or controlled property on Caddy Road, Garner, NC to meet both the needs of Wake County EMS and the Town of Garner; and

WHEREAS, the Town of Fuquay-Varina has expressed interest in the co-location of fire service within this same station in the future, to meet the needs of the Town of Fuquay-Varina and its outlying fire service areas.

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

1. PURPOSE AND SCOPE

- A. The purpose of this Memorandum of Understanding (MOU) is to set forth the understanding and mutual agreement of the Parties as it relates to the 1) funding of all necessary advance Site Analysis and Schematic Design Work as set forth in this Agreement and 2) conditions which must occur in order to proceed with a plan for Wake County to construct a new Fire and EMS Station (hereafter the “Project”) to be located on property currently owned or controlled by the Town of Garner along Caddy Road in Garner, North Carolina. The parcel of land along Caddy Road is identified as PIN #0699175451, containing 5.19 acres as shown on Exhibit A, which is attached hereto and hereby incorporated by reference.
- B. The scope of work included within this MOU shall include Site Analysis (defined as surveys, environmental studies, and any other studies necessary to design and build the Project including any studies which may be required by governmental agencies), program study, preliminary site planning, development of floor plans, and building elevations in order to present a Schematic Design Package (hereafter “Schematic Design”), including estimates of cost to the parties’ governing boards for approval. Upon the presentation of the Site Analysis and Schematic Design to each party’s governing boards, each party will determine if and how they will proceed further and the MOU will be amended accordingly to provide for proceeding with further development of the design and bid documents and receipt of public bids for the project. In the event that two or more parties agree to proceed with construction, a more detailed Interlocal Agreement (ILA) will be prepared for approval by the parties’ governing boards and a construction contract will be awarded. Final project costs will account for all land acquisition costs, design, permitting, construction, and shared Furniture, Fixtures and Equipment.
- C. Description of the Project Sequence: Following Schematic Design and Site Analysis, the project will consist of the final design phases of Design Development and Construction Documents, and the bid and construction phases of Permitting, Bidding, Construction Contract Awarding, Construction, as well as procurement and installation of Furniture, Fixtures and Equipment for the station.
- D. The Schematic Design Budget shall be allocated to each party at an initial proportion of seventy percent (70%) for the Fire Station portion of the building, to be shared equally between each of the two Towns, and thirty percent (30%) for Wake County EMS, which will be the responsibility of the County, and which is based on a preliminary projected ratio of occupied dedicated space for each entity within the proposed new facility. This ratio shall be used for planning purposes during the Schematic Design phase of the Project. Nothing herein shall prevent the parties from making a subsequent adjustment of this ratio of occupied space within the proposed new facility as plans are developed, provided that proportionate adjustments of subsequent costs are also considered. Should other funding sources become available, those sources along with any related adjustment to funding ratios will be identified by amendment to this MOU or by other agreement between the parties.
- E. In the event that the parties decide upon a joint ownership structure, between the Town of Garner and Wake County, the Town and County shall each have an interest proportionate to the respective financial contribution of each to the Project, taking into account the costs paid

for raw land, design, and construction, and each shall be responsible for maintenance, repair and replacement costs proportionate to ownership as provided in the contemplated future ILA. It is contemplated that Fuquay-Varina will lease the fire station portion of the space.

- F. The ownership of the Project is a decision reserved for consideration after the objectives of this MOU have been met, and prior to entering an Interlocal Agreement.
- G. In the event that the parties decide that the Town of Garner shall own the Project, then the County shall have a ground lease, right of use, license or tenancy, for a Term that is a minimum of 25 years or as agreed by the parties, with no payments due under this Lease from County to Town or Town to County for the Term; provided that the parties may be liable for a proportionate share of maintenance, repair and operational costs as provided in a future ILA. Likewise, a separate lease arrangement would be developed for the Town of Fuquay-Varina.
- H. In the event that the parties decide that County shall own the Project and one or both Towns shall each have a ground lease, right of use, license, or tenancy, for a Term that is a minimum of 25 years or as agreed by the parties, with no payments due under this Lease from County to Town or Town to County for the Term; provided that the parties may be liable for a proportionate share of maintenance, repair and operational costs as provided in a future ILA.

2. GENERAL CONDITIONS

- A. The Parties' obligations with respect to proceeding with the construction of the Project are expressly conditioned upon and subject to the Parties receiving proper approval and appropriation of funding from their governing boards to enter into mutually acceptable written agreements as to all aspects of the ownership, funding, site analysis and 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 the Project, its associated components or 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 Project.
- C. Project Overview: The full scope of the Project is envisioned as a shared Fire/EMS Station, to serve the Garner Volunteer Fire Department, Fuquay-Varina Municipal Fire Department and Wake County EMS, with an approximate 16,000 SF, with four (4) full apparatus bays along with related sitework providing approximately forty-five (45) parking places on property currently owned or controlled by the Town of Garner. The precise and final square footages and parking spaces will be confirmed through the design process.
- D. Future Expansion Space: Should the Town of Fuquay choose to have their designated portion of the station constructed as a future expansion, the initial constructable building area will then be reduced to approximately 13,100 SF. In such a case, the building shall be designed so that a fourth apparatus bay and associated support space, along with additional parking can be added for future expansion of fire service, unless the Town of Garner wishes to build this space at the outset.

- E. Ownership of Documents: The County, Town of Garner and Town of Fuquay-Varina shall each have equal access to the Schematic Design documents including drawings, renderings, surveys, studies, and other site evaluations. The party who retains ownership of the completed facility shall retain ownership of the Documents.

3. **TERM**

The term of this Memorandum of Understanding shall be for a period of twelve (12) months from the date of execution by the last party, or until such time as all documents set forth in Section 7 herein shall be fully and finally executed, whichever is shorter. The Parties may extend this Term by separate written agreement or amendment executed by both Parties. If the Parties agree and obtain all required approvals and appropriation of funding to proceed with the Project from their respective governing boards, then the Parties shall execute an Interlocal Agreement containing at a minimum the provisions described in Paragraph 8B. The executed Interlocal Agreement shall supersede and replace this Memorandum prior to or at the end of the term. Any Party may terminate this MOU by providing the other parties ten (10) 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 set forth in this MOU.

4. **RESPONSIBILITIES OF WAKE COUNTY**

- A. Engage Consultant(s). Subject to the requirement of subsection B, the County shall engage a design consultant pre-qualified by Wake County Facilities Design & Construction to provide planning services for the Project, as per the standard Wake County Professional Services Agreement, with any applicable amendments and attachments that may be necessary. In addition, the County may hire other consultants to conduct additional site analysis including boundary or topographical surveys, geotechnical surveys, environmental assessments, wetland delineations or any other studies necessary for design and development of the Project.

Subject to the conditions herein, the County shall advance all costs for Site Analysis and Schematic Design up to a maximum amount of One Hundred Thirty Thousand and no/1.00s Dollars (\$130,000.00) with no minimum amount due, and shall invoice each Town in accordance with the allocation of cost described in Section 1, with costs specifically defined in Section 7. The County will provide copies of all bills/charges from the design consultant and other necessary consultants, as requested by each Town, and the County shall not pay the consultants for services attributed to modifications requested by each Town beyond what is included in the executed Services Agreements without first receiving approval and funding or a funding commitment for the cost from each Town.

- B. Include Town of Garner and Town of Fuquay-Varina in the Process. Wake County will work collaboratively with each Town on the Schematic Design and any subsequent Design Activities and the County shall ensure that representatives from each Town are closely involved in the hiring and design process for the Project. The County will seek input, commentary and design approval from each Town and its governing boards where applicable.

- C. The County will also provide periodic updates on the design and Project schedule, and will ensure that the Project's design meets all requirements of the North Carolina State Building Code and the Unified Development Ordinance for the Town of Garner, within whose jurisdiction the site is located.
- D. Acceptance of Design. The County, together with each Town staff, shall present Schematic Design of the Project for approval by their governing boards and will assist one another to the degree that is necessary.
- E. Receive Rights of Entry from the Town. The County, with cooperation from the Town of Garner, shall be allowed to enter upon the property in order to conduct site evaluations and studies. The County will cooperate with the Town of Garner in regard to providing advance notice and restoring the property to its pre-study condition where possible.
- F. Review of Work. In a coordinated effort with each Town staff, the County shall review the Schematic Design, and staff shall make a recommendation to present the results of the Schematic Design to the Wake County Board of Commissioners for review and approval of a proposed co-location of County EMS and Town Fire services, proposed ownership structure of the facility and approval to proceed with development of an Interlocal Agreement with each Town.
- G. Owner's Representative. It is the expectation of the parties that the County will act as the sole Owner's Representative for the work undertaken in this MOU, and if the Project proceeds to the construction phase, for construction of the project. In this capacity, the County will assume responsibility for the bidding and construction of the Project to include all site development activities, building construction, and site improvements, subject to the terms of a subsequent Interlocal Agreement to be entered into by and between the parties. The County will 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 each Town; and that the County shall determine the appropriate delivery method of services required to complete the Project. Final execution of all agreements described in this MOU is subject to acceptance of construction bid prices and the approval of an Interlocal Agreement by both parties' governing boards.

5. RESPONSIBILITIES OF THE TOWN OF GARNER

- A. The Town of Garner controls the property and has the authority to permit the development of the site for the Project.
- B. The Town of Garner shall be responsible for rezoning the subject property and recombining its boundaries if necessary. The County will assist as needed and will facilitate engagement of the associated professional design services. Garner will facilitate all public hearings in regard to rezoning and Special Use permitting and will provide legal counsel and representation for the Town and County as needed for planning board meetings, council meetings, and any other hearing as may be required for the development of the subject property for the Project.

- C. Upon execution of the MOU, the Town of Garner shall provide \$20,000 to the County as an initial payment toward the cost of developing the Schematic Design and Site Analysis phases of the project.
- D. Coordination. The Town shall provide staff to work with the County and Design Consultant as needed during Schematic Design and any subsequent design phases including the construction of the Project. The Town will be actively involved in reviewing and approving the Schematic Design work submitted by the County and their Consultants.
- E. Review of Work. In a coordinated effort with the County staff, Town staff shall review the Schematic Design, and make a recommendation to present the Schematic Design to the Town Council for review and input as to whether to pursue entering into an agreement to amend this MOU as needed and to ultimately enter into an Interlocal Agreement with the County, and potentially, the Town of Fuquay-Varina for final design and construction of the Project.
- F. Acceptance of Design. Within Forty Five (45) days of the design consultant delivering Schematic Design, scope of design, and estimated cost of construction, the Town shall inform the County in writing if the Schematic Design, scope of design, and estimated cost of construction for components to be funded by the Town are acceptable and whether the Town is prepared to move forward with the Project. The Town may request additional time for review and approval, but such a request must be approved by the other Parties to the MOU.

6. RESPONSIBILITIES OF THE TOWN OF FUQUAY-VARINA

- A. Coordination. The Town of Fuquay-Varina shall provide staff to work with the County and Design Consultant as needed during Schematic Design and any subsequent design phases including the construction of the Project. The Town will be actively involved in reviewing and approving the Schematic Design work submitted by the County and their Consultants.
- B. Upon execution of the MOU, the Town of Fuquay Varina shall provide \$20,000 to the County as an initial payment toward the cost of developing the Schematic Design and Site Analysis phases of the project.
- C. Review of Work. In a coordinated effort with the County staff, Town staff shall review the Schematic Design, and make a recommendation to present the Schematic Design to the Town Council for review and input as to whether to pursue entering into an agreement to amend this MOU as needed and to ultimately enter into an Interlocal Agreement with the County and Town of Garner for final design and construction of the Project.
- D. Acceptance of Design. Within Forty Five (45) days of the design consultant delivering Schematic Design, scope of design, and estimated cost of construction, the Town of Fuquay-Varina shall first inform the County and Town of Garner in writing, if the Schematic Design, scope of design, and estimated cost of construction for components to be funded by the Town of Fuquay-Varina are acceptable. Secondly, the Town shall confirm to the other parties whether they wish to move forward with construction of their portion of the project at that time, or instead, chose to postpone it and either indicate an interest in a potential future expansion, or decide to terminate their participation in this Project and the agreement

altogether. The Town may request additional time for review and approval, but such a request must be approved by the other Parties to the MOU.

7. PROJECT FUNDING

A. Project. The Schematic Design costs shall be authorized to the limits and proportional allocation to each party per the terms and conditions of this MOU. Schematic Design costs, including Site Analysis are budgeted as follows:

| | |
|---|-------------------|
| Schematic Design Fees Including Reimbursables | \$ 88,000 |
| <u>Allowance for Site Analysis & Investigation Services</u> | <u>\$ 42,000</u> |
| Total Schematic Phase Budget | \$ 130,000 |

The Schematic Design Budget of \$130,000 as itemized above will be allocated as follows:

- \$ 45,500 to Town of Garner/Fire (35%)
- \$ 45,500 to Town of Fuquay-Varina/Fire (35%)
- \$ 39,000 to Wake County EMS (30%).

The County shall allocate the initial amount of One Hundred Thirty Thousand Dollars (\$130,000) for funding Schematic Design and further Site Analysis for the referenced Fire and EMS station as noted in the Responsibilities outlined above.

- B. Each Town shall provide \$20,000 to the County as an initial payment toward the cost of developing the Schematic Design and Site Analysis phases of the project as noted in the Responsibilities outlined above.
- C. At the completion of the Schematic Design Phase, the County will reconcile payment of all expenses related to the Schematic Design and Site Analysis activities and present an invoice to each Town for the balance of each Town’s portion of the cost paid for Schematic Design, less the initial payments of \$20,000 from each. The remaining 30% for the total cost shall be the responsibility of the County, as described in Section 7A above.
- D. Upon approval of Schematic Design by the Garner Town Council, and either approval of Schematic Design or decision to forego participation in the initial construction of the facility by the Town of Fuquay Varina, the County shall enter into an agreement with the design consultant to complete all required remaining design services for the Project. Prior to contracting for further design services, the associated design fees will be addressed and allocated in the Interlocal Agreement or amendment(s) to the MOU with particular attention to availability and timing of funding as approved by the governing boards.
- E. Land Acquisition: The Town acquired the property through the Garner Economic Development Corporation in 2019. The County conducted and funded Site Due Diligence in collaboration with the Town in 2019. The following are the total of those land acquisition costs:

| | |
|-------------------------------------|--|
| Initial Site Due Diligence | \$ 6,550 (paid by County) |
| <u>Site Acquisition Costs</u> | <u>\$ 230,000 (paid by Town of Garner)</u> |
| Total Land Acquisition Costs | \$ 236,550 |

- F. Reimbursement to either party for Land Acquisition Costs shall be considered with particular attention to the final ownership structure of the project and availability and timing of funding as approved by the governing boards.
- G. Regardless of whether any or all of the parties proceed with the Project, there shall be no reimbursement of amounts paid by any party for Schematic Design, Site Analysis, Initial Site Due Diligence, or Site Acquisition Costs unless agreed upon by all parties in the Interlocal Agreement or amendment(s) to the MOU.

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

- A. Amendment to this MOU as may be required to clarify and amend the terms herein.
- B. Interlocal Agreement setting forth the funding transaction, payment terms, delivery of construction services and identifying the mechanism for determining operational cost sharing and allocations for the Project, and the responsibilities of both parties and the ownership interests that will exist for the Project for the real property and improvements, and any other subject matter necessary to define the joint undertaking of the parties. The construction contracts for the Project are expected to be submitted for approval by the Wake County Board of Commissioners contemporaneous with the approval of the Interlocal Agreement . The construction contract(s) shall not be entered until the Interlocal Agreement is approved by the governing board of each party and executed by all parties.
- C. Rights of Entry, Use Agreement, and/or Lease Agreement, related to all or portions of the facility as may be defined in the Interlocal Agreement that may require additional clarity or agreements.

9. CONTEMPLATED SEQUENCE OF EVENTS

- A. The Wake County Board of Commissioners authorizes the County Manager to enter into this Memorandum of Understanding.
- B. Garner Town Council authorizes the Town Manager to enter into this Memorandum of Understanding.
- C. Fuquay-Varina Town Council authorizes the Town Manager to enter into this Memorandum of Understanding.
- D. Upon execution of the MOU, the County engages a Consultant(s) to complete the Schematic Design and Site Analysis portion of the Project.
- E. The Design Consultant makes a presentation together with staff to the County and each Town's elected boards for action related to the approval, cost estimate, and Schematic Design for the Project. This milestone is contemplated to be achieved by May 31, 2021. At this time, each party will determine whether to proceed with the project.

- F. If the Town of Garner and Wake County elect to proceed with the project, these parties will collaboratively prepare, negotiate and finalize the terms of an Interlocal Agreement and any other agreements necessary to clarify the use and or funding terms of the Project. The level of participation by the Town of Fuquay-Varina will also be finalized at this time.
- G. Contingent upon the negotiation of mutually acceptable terms, the County and one or both Towns seek approval from their respective Boards, as appropriate, to enter into the Interlocal Agreement. Even if the Schematic Design and cost estimate are satisfactory to both parties, neither the County or either Town is obligated to proceed with this transaction unless and until the terms of the Interlocal Agreement are acceptable to, and executed by each party along with any other agreements that are required and approved by the governing boards.
- H. Upon execution of the Interlocal Agreement and Construction Contract(s), Wake County shall begin construction.
- I. The Parties shall proceed upon the terms established by the Interlocal Agreement, which shall provide for the completion of the Project. The Interlocal Agreement shall replace and supersede all previous documents, agreements, and understandings with respect to the subject matter and may be amended to clarify or amend the terms and conditions herein.

IN TESTIMONY WHEREOF, WAKE COUNTY AND THE TOWN OF GARNER 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

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

Wake County Finance Officer

Approved as to form: _____
County Attorney

TOWN OF GARNER

By: _____
Title: Town Manager

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

Town of Garner Finance Director or designee

Approved as to form: _____
Town Attorney

TOWN OF FUQUAY-VARINA

By: _____
Title: Town Manager

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

Town of Fuquay-Varina Finance Director or designee

EXHIBIT A Property Identification

PIN # 0699175451

