

NORTH CAROLINA
WAKE COUNTY

FUNDING AGREEMENT

THIS AGREEMENT entered into as of the _____ day of _____, 2021, by and between the COUNTY OF WAKE, a body politic and corporate of the State of North Carolina (the "County") and the TOWN OF CARY, a North Carolina municipal corporation ("Town" or "Cary") (together referred to as the "Parties").

PRELIMINARY STATEMENT

WHEREAS, pursuant to Session Law 1991-594, Wake County authorized a prepared food and beverage tax of up to 1% of the sales price of prepared food and beverages sold at retail; and

WHEREAS, pursuant to Session Law 1991-594, Wake County and City of Raleigh subsequently entered an Interlocal Agreement ("ILA") designating funds from the Occupancy and Prepared Food/Beverage Taxes for the purpose of acquiring, constructing, or financing convention centers, civic centers, performing arts centers, coliseums, auditoriums, and facilities related to sports and cultural events; and

WHEREAS, the terms of the ILA and subsequent amendments provide a basis for distribution of funds by the City of Raleigh and County consistent with the enabling legislation; and

WHEREAS, the Town owns and maintains sports facilities including WakeMed Soccer Park, USA Baseball National Training Complex, and Cary Tennis Park (also referred to herein as "Cary Sports Venues") that provide recreational opportunities for Wake County residents and visitors; and

WHEREAS, Wake County and the Town recognize benefits of maintaining sports facilities to enhance the sports and recreation appeal in Cary and Wake County for residents and visitors and the ongoing attractions of tournaments including those held by the NCAA, which provide an economic impact to the Town and Wake County; and

WHEREAS, between March 2019 and July 2019, Wake County and the City of Raleigh engaged community stakeholders in a review of the Countywide Room Occupancy and Prepared Food and Tax Revenues governance and financial models; and

WHEREAS, during this review, the Town submitted a request for funding support for Town Sports Facilities to allow them to remain competitive and attract sporting events based on results of a Comprehensive Capital Improvement Plan funded by Hospitality Tax funds and completed in November 2018; and

WHEREAS, as a result of this review, the Raleigh City Council and Wake County Board of Commissioners adopted the 21st Amendment to the Revised Interlocal Agreement Between Wake County and The City of Raleigh Relating to Room Occupancy and Prepared Food and Beverage Tax Revenues; and

WHEREAS, the 21st Amendment establishes that Wake County would provide Three Million and no/100 Dollars (\$3,000,000) annually to the Town for capital maintenance of the Cary Sports Venues (WakeMed Soccer Park, USA Baseball National Training Complex, and Cary Tennis Complex) beginning in FY20 through FY34; and

WHEREAS, pursuant to the 21st Amendment, the payment terms and reporting requirements for this annual funding are to be established in a funding agreement to be executed by and between Town and Wake County; and

WHEREAS, the global coronavirus (COVID-19) pandemic resulted in reduced occupancy and prepared food and beverage tax revenues in Wake County necessitating an adjustment of the funding commitments relating to Room Occupancy and Prepared Food and Beverage Tax Revenues; and

WHEREAS, the 22nd Amendment establishes that Wake County will provide the reduced amount of Two Million and no/100 dollars (\$2,000,000) for FY21 for capital improvements to the Cary Sports Venues instead of the previously committed amount of \$3,000,000; and

WHEREAS, pursuant to Section 2.3 of the 21st Amendment, the revenue assumptions relating to Room Occupancy and Prepared Food and Beverage Tax shall be revised annually through agreement by the County and City Managers for consideration of the next fiscal year budget for this funding such that adjustments in funding may occur through the execution of future amendments to the Revised Interlocal Agreement and this Funding Agreement.

WHEREAS, the parties acknowledge that the Town has asked for consideration by the County and City Managers of a future allocation of the \$1,000,000 of the \$3,000,000 previously committed for FY 21 at a time when the Major Facilities Capital Trust is of an amount to make said distribution.

NOW THEREFORE, in consideration of the mutual promises contained herein, County and Town agree as follows:

1. The Cary Sports Venues eligible to receive funding for capital improvements under this Agreement shall be limited to:
 - a. the WakeMed Soccer Park at 201 Soccer Park Drive, Cary, North Carolina. The lease for WakeMed Soccer Park was assigned to the Town by Wake County on August 12, 2008. Wake County continues to own the existing facilities built at

WakeMed Soccer Park and an agreement between the Town and Wake County provides for all operation and maintenance.

- b. the USA National Training Baseball Complex at 200 Brooks Park Lane, Cary, North Carolina. The Town is the owner of the land and facilities at the Baseball Complex.
 - c. the Cary Tennis Park at 2727 Louis Stephens Drive, Cary, North Carolina. The Town is the owner of the land and facilities at the Tennis Park.
2. The term of this Agreement shall be for period of fifteen (15) years ("Term"). The funding under this Agreement was calculated to fund approximately 75% of the capital improvement costs identified for the three facilities in the 2018 Capital Maintenance Plan prepared by Venue Solutions Group, LLC. The improvements shall occur over the Term of the Agreement with funding for additional improvements to be provided by the Town or other funding sources.
3. For the **Fiscal Year 2020**, the County's annual funding commitment to the Town for capital improvements to Cary Sport Facilities shall remain unchanged at **Three Million and no/100 dollars (\$3,000,000)**.
4. For the **Fiscal Year 2021**, the County's annual funding commitment to the Town for capital improvements to Cary Sport Facilities shall be reduced to **Two Million and no/100 dollars (\$2,000,000)** instead of the original three million and no/100 dollars (\$3,000,000).
5. For **Fiscal Years 2022 through 2034**, the County's annual funding commitment to the Town for capital improvements to Cary Sport Facilities shall be **restored to Three Million and no/100 dollars (\$3,000,000)** annually provided that the annual funding commitment for each FY between 2020-34 is **contingent upon receipt of occupancy and prepared food and beverage taxes budgeted for this purpose**, and is subject to further adjustment based upon availability of funds.
6. The County agrees that, the \$1,000,000 previously committed for FY 21 shall be considered by the County Manager in making future funding commitments consistent with the Interlocal Agreement and fair consideration of all adjustments to funding. The parties acknowledge that such consideration is subject to the Major Facilities Capital Trust being of an amount to consider the funding and would require the agreement of the City of Raleigh and the County and the execution of future amendments to the Revised Interlocal Agreement.
7. Funding provided under this agreement shall be used only for the venue improvements included in the then current Capital Maintenance Plan of the year within which the funding is spent. No portion of the funding shall be used for ongoing non-capital maintenance or operating costs of the venues.

8. All procurement and construction activities paid for with the funding under this Agreement shall be performed in accordance with the requirements of the North Carolina General Statutes.

9. Method and Timing of Payments.

- a. The Town shall maintain all funds received pursuant to this Agreement in a separate account within the general capital reserve fund, said account being used solely for said funds and for no other purpose ("Fund Account").
- b. On or before August 1 of each year of the Term, The Town shall provide an annual report to the County as to the status of funds spent from and contained within the Fund Account and detailing how said funds have been or are planned to be spent to support the maintenance needs of each of the three Cary Sports Venues during the preceding fiscal year (July 1 through June 30) ("Annual Report"). The Annual Report shall include a description of any improvements made during the preceding report year, a reference to any planned improvements from the then current Capital Maintenance Plan, the percent completion of any ongoing improvements, and a current accounting of the status of the Fund Account (collectively "Supporting Documentation").
- c. Upon receipt of an Annual Report, Wake County shall have 30 days to review the report for the purposes of confirming that Fund Account funds have been and are being used to support the maintenance needs of Cary Sports Venues. Wake County may request other information and documentation from the Town as needed to assess the Annual Report.
- d. Should Wake County be satisfied that a submitted Annual Report confirms Fund Account funds are being used to support the maintenance needs of Cary Sports Venues, Wake County shall make a lump sum payment of the annual amount allocated to the Town as listed in the applicable amendment to the ILA for the respective year. Wake County shall make payment within 30 days of finishing its review of the Annual Report.
- e. Should Wake County believe that an Annual Report shows the Town is using Fund Account funds in a manner that does not support the maintenance needs of Cary Sports Venues, Wake County shall, as soon as is practical, provide the Town notice of its decision, the reasons behind it, and a statement on what the Town can do to address its concerns. Town shall have 30 days from receipt of notice of Wake County's decision within which to take any actions necessary to address Wake County's concerns.
 - i. If the Town addresses Wake County's concerns within this 30-day cure period, Wake County shall then make payment within an additional 30 days.

- ii. If the Town fails to address Wake County's concerns within this 30-day cure period, Wake County may withhold making payment for that respective year. In addition, if an Annual Report shows that Fund Account funds have been spent within the preceding fiscal year in a manner that does not support the maintenance needs of Cary Sports Venues, the Town shall repay to Wake County any such misspent funds.
 - f. The Parties acknowledge that the terms outlined in this section are subject to the terms of any future amendments to the ILA.
10. The Town acknowledges that neither this Agreement nor the Plan shall commit the County to provide funds over and above the funding commitment or to provide operating or capital funds for the completion of any part of the improvements funded by this Agreement.
11. If the Town does not meet the conditions precedent to disbursement for this Funding Commitment, then such funds shall remain a part of the Major Facilities Capital Trust free and clear of any further obligation to the Town under this Agreement.
12. Further Agreements. The Town and County agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of this Agreement and to work together in good faith and with all due diligence to provide for and carry out the purpose of this Agreement.
13. Amendment. Any extension of the term of this Agreement and/or change to the content of this Agreement shall be by written amendment executed by the parties.
14. Notices. Any notice given pursuant to this Agreement shall be deemed given if delivered by hand or if deposited in the United States Mail, postage paid, certified mail, return receipt requested and addressed as follows:
- a. If to the Town:
Town
Attn: Town Manager
PO Box 8005
Cary, NC 27512
 - b. If to Wake County:
Wake County
Attn: Denise Foreman, Asst County Manager
P.O. Box 550
Raleigh, NC 27602

15. Verification of Work Authorization. All Parties, and any permitted subcontractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes.

16. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

17. Electronic Version of Contract. Town 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.

Executed as of the day and year first above written.

TOWN
Town Manager
316 N. Academy St
Cary, NC 27613

COUNTY OF WAKE
County Manager
PO Box 550
Raleigh, NC 27605

Town Manager

County Manager

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

Town Finance Officer

Wake County Finance Officer