

NORTH CAROLINA  
DURHAM COUNTY

**INTER-LOCAL AGREEMENT FOR THE FUNDING OF A SPORTS COMMISSION**

This Inter-local Agreement, (this “Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2020, by and between **DURHAM COUNTY** (“County”), the **CITY OF DURHAM** (“City”), and **DISCOVER DURHAM (Durham Convention and Visitors Bureau, dba DISCOVER DURHAM)**.

**WITNESSETH:**

**WHEREAS**, a group of citizens met in January of 2014 to ponder whether or not Durham should have its own sports commission and what the benefits and drawbacks might be. From this meeting a task force was formed to study the feasibility of creating a sustainable Durham Sports Commission; and

**WHEREAS**, the task force, comprised of representatives from the City of Durham, Durham County, the Greater Durham Chamber of Commerce, Durham Convention & Visitors Bureau, Duke University, North Carolina Central University, the Durham County Stadium Authority, representatives of Durham’s local sports community and several other interested individuals met for more than a year; and

**WHEREAS**, the task force was convinced that visitors attending sports tourism events bring economic value to Durham, that they spend money in hotels, restaurants, retail shops, entertainment and other visitor features; and

**WHEREAS** the task force was convinced that sports tournaments and events provide positive media exposure to host destinations, and with proper leveraging, provide positive awareness of Durham as a place to visit and live;

**WHEREAS** the task force was convinced that the economic impact of sports tourism and the visibility it brings Durham could be greatly enhanced by the creation of a Sports Commission; and

**WHEREAS** a Durham Sports Commission was in fact created as a separate 501(c)3 with funding and a board of directors through an interlocal agreement between the City of Durham, County of Durham, Durham Convention and Visitor’s Bureau (now DISCOVER DURHAM), and the Greater Durham Chamber of Commerce, and

**WHEREAS** the Durham Sports Commission has now operated successfully for three years under the provisions of the initial interlocal agreement, and

**WHEREAS** the parties to the initial agreement have met to consider how to support the ongoing operations of the Durham Sports Commission and have agreed on those provisions, which are contained herein,

**NOW THEREFORE**, for and in consideration of the mutual covenants contained herein and the mutual benefits to result therefrom, the parties hereby agree as follows:

1. **ORGANIZATIONAL STRUCTURE and OPERATIONS.** The membership, governance, and operations of the DSC are governed by a separate inter-local agreement (“Inter-local Agreement for the Creation and Operation of a Sports Commission”) entered into on \_\_\_\_\_, 2020.
2. **FUNDING.** The DSC shall receive funding from the City and County according to the traditional split of occupancy tax revenues (42.5% from City and 57.5% from County) and as follows:
  - a. A total of \$350,000 in FY2019-2020.
  - b. In successive years, the total funding amount from the City and County shall grow or decrease along with the percentage increase or decrease in total occupancy tax receipts in the previous year. For example, if occupancy tax revenue grows 5% in Fiscal Year 2019-2020, the total City and County allocation to the DSC in Fiscal Year 2020-2021 would be 5% on top of \$350,000, or \$367,500. If occupancy tax then goes down in Fiscal Year 2020-2021 by 2%, then the City-County allocation to the DSC in Fiscal Year 2021-2022 would be \$367,500 less 2%, or \$360,150. For budgeting purposes, DISCOVER DURHAM will make an end-of-year growth estimate each February.
  - c. In each new fiscal year, the first payment to the DSC may be invoiced and paid by August 1<sup>st</sup> and shall be equal to 50% of the previous year’s amount. The second payment, which shall be invoiced and paid by January 15<sup>th</sup> shall reflect the balance owed, including the percentage change, based on *actual* occupancy tax growth in the previous year.
  - d. Once funds have been transmitted to the DSC they cannot be reclaimed by the contributing parties.
  - e. If the Durham Sports Commission is dissolved, any remaining assets remain the property of the nonprofit.
  - f. DISCOVER DURHAM shall continue to invest in the DSC as follows:
    - i. DISCOVER DURHAM’s in-kind and direct financial support for the DSC in Fiscal Year 2019-2020 shall be the same as in the previous year.
    - ii. In future fiscal years, DISCOVER DURHAM’s direct financial contribution shall also increase or decrease by the percentage change in the previous year’s occupancy tax revenues (same as City and County).
3. **RESTRICTIONS ON USES OF FUNDS:** DISCOVER DURHAM funds earmarked to operate the DSC are restricted to marketing and promotional activities as authorized in its enabling legislation. County and City funds may be used in whatever way the DSC deems most effective to achieve the desired and stated goals of the DSC. A budget will be prepared by DISCOVER DURHAM and DSC staff annually and approved by the DSC Board of Directors, and all DSC expenditures should be in line with the approved budget. Finally, the DSC will continue to seek and report funds from the private sector to help fulfill its mission
4. **TERM AND RENEWAL:** This Agreement shall commence upon execution by all parties. It shall automatically renew unless the following termination procedures are followed by one or

more of the parties to the interlocal agreement. The agreement shall be reviewed by all parties towards the beginning of the fifth year of the agreement (between January and June 2024) for possible modifications for FY2024-2025 onward, and shall be reviewed in similar fashion every five years thereafter.

**5. TERMINATION**

Any of the parties to this agreement may signal a desire to the other parties that they wish to vacate the agreement by written notice to each of the other parties and call for the completion of negotiation of the terms of their withdrawal within 180 days. It is acknowledged by all parties that the proper role of a sports commission in fulfilling its mission may include making commitments to support and fund events several years in advance. As such, the exiting party must continue to pay their pro-rata share of any financial commitments made by the DSC that extend beyond the term of the current agreement, should they exist. The pro-rata share shall be based upon the percentage of funding contributed by the exiting party compared to the total DSC funding. Financial commitments extending beyond the current fiscal year must be documented by contractual agreements with external parties and do NOT include any associated operating costs. These costs will be invoiced to the exiting party by the DSC in the year in which they are contractually obligated to be paid.

The withdrawal of one or more parties to the agreement does not require the dissolution of the DSC except by agreement by any remaining parties. The party wishing to vacate the agreement will bear the cost of redrafting the agreement to support the negotiated arrangement.

Any party withdrawing from the agreement also vacates its obligations and benefits from the agreement, including its right to appoint members to the DSC board of directors, as of the negotiated date of its withdrawal.

6. **AMENDMENTS**. This Agreement may be amended at any time upon mutual written agreement of the parties. The parties to this agreement shall be the final authorities in approving all amendments. Amendment of this Agreement does not render the Inter-local Agreement for the Creation and Operation of a Sports Commission entered into on \_\_\_\_\_, 2020 invalid.
7. **GOVERNING LAW**. This agreement shall be governed by and in accordance with the laws of the State of North Carolina. All civil actions relating in any way to this Agreement shall be brought in the General Court of Justice in the County of Durham.
8. **SEVERANCE**. The parties understand and agree that if any term, condition, or other provision contained in this Agreement is determined by a court or arbitrator to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or affect all terms, conditions, and other provisions contained herein that are not specifically determined to be invalid or unenforceable.
9. **ENTIRE AGREEMENT**. This Agreement, in conjunction with the Inter-local Creation & Operations Agreement, constitutes the entire understanding between the parties and supersedes all prior understandings and agreements relating to the subject matter hereof.

**IN WITNESS WHEREFORE** this Agreement is executed as of the first date written above.

**COUNTY OF DURHAM**

**ATTEST:**

\_\_\_\_\_  
**Wendell M. Davis, County Manager**

\_\_\_\_\_  
**Monica Toomer, Clerk to the Board**

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

\_\_\_\_\_  
**Susan Tezai, Durham County Chief Financial Officer**

**CITY OF DURHAM**

**ATTEST:**

\_\_\_\_\_  
**Thomas J. Bonfield, City Manager**

\_\_\_\_\_  
**City Clerk**

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

\_\_\_\_\_  
**David Boyd, City of Durham Chief Financial Officer**

**DISCOVER DURHAM**

By: \_\_\_\_\_  
**Susan Amey, President and CEO, DISCOVER DURHAM**

**DURHAM SPORTS COMMISSION**

By: \_\_\_\_\_  
**George Habel, Chairperson, DSC Board of Directors**