

**STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND**

AGREEMENT FOR SERVICES

THIS AGREEMENT, entered into this the 12th day of June 2023, by and between the CITY OF FAYETTEVILLE, a municipal corporation organized and existing under the laws of the State of North Carolina (hereinafter the "CITY") with principal business offices at 433 Hay Street, Fayetteville, North Carolina, 28301, and COOL SPRING DOWNTOWN DISTRICT, INC., (hereinafter "AGENCY"), a corporation with principal business offices at 222 Hay Street, Fayetteville, North Carolina 28301.

WITNESSETH:

WHEREAS, the City of Fayetteville established by Resolution a Municipal Service District for the Central Business District (Downtown Special Tax District) on June 26, 1978, pursuant to Article 23, Chapter 160A of the North Carolina General Statutes, and that a subsequent public hearing would be held five years later to evaluate the program and determine the feasibility of continuing the District; and

WHEREAS, the City of Fayetteville, established by Resolution on May 16, 1983, described the boundaries of the District and found that the Municipal Service District for the Central Business District was in need of one or more of the services, facilities, or functions listed in NCGS § 160A-536 to a demonstrably greater extent than the remainder of the City; and

WHEREAS, the City of Fayetteville, pursuant to NCGS § 160A-542, levies an additional tax (.10) in order to finance, provide, or maintain one or more of the services, facilities, or functions listed in NCGS § 160A-536 to a demonstrably greater extent than the remainder of the City; and

WHEREAS, the City of Fayetteville will contract with the AGENCY to provide services that contribute to the revitalization, support, and grow businesses, expand economic opportunities in the Central Business District, and provide a portion of the taxes collected from the Central Business District.

NOW, THEREFORE, IN CONSIDERATION of the premises and the mutual covenants herein contained, the parties hereto do hereby contract and agree as follows:

1. **TERM:** This Agreement shall begin on July 01, 2023, and terminate on June 30, 2028, contingent on the availability of city funds unless sooner terminated as provided for herein.
2. **EARLY TERMINATION:** The CITY, at its discretion, may terminate this Agreement at any time prior to its normal expiration date upon sixty (60) days advance written

notice to the AGENCY. If AGENCY shall at any time breach any part of this Agreement, this Agreement shall immediately terminate upon receipt of written notice of the same, signed by the CITY, and AGENCY shall refund any unused funds to CITY within five (5) banking days. Unused funds shall mean, for the purposes of this Agreement, any funds appropriated by CITY that are not needed to satisfy any outstanding indebtedness of the AGENCY associated with Section 3, services to be performed, as validated by CITY, on the date of breach and/or termination as provided herein.

3. **SCOPE OF WORK:** In general, the CITY agrees to contract with the AGENCY for the full range of services typically provided by nonprofit agencies engaged in cultural and economic development activities on behalf of a municipality in its downtown area in the State of North Carolina. The AGENCY, in and for the consideration recited in Section 3 herein, agrees to perform those services in accordance with the SCOPE OF WORK stated in Exhibit A attached.

4. **REQUIRED ACTIVITIES:** AGENCY shall perform the activities described in Exhibit A attached hereto and incorporated by reference and work with the Economic and Community Development Department to develop the annual metrics required.

5. **REPORTS AND DELIVERABLES:** On a quarterly basis, the AGENCY shall communicate to the CITY in writing its progress on executing the AGENCY Scope of Work as stated in Exhibit A and the identification of the specific allocation of all financial resources provided through this Agreement to support the services to be provided by the AGENCY. The Quarterly Progress Report is to be submitted to the Economic and Community Development Director by the 15th business day following the end of the quarter for which the Quarterly Progress Report is written. The Quarterly Report is subject to the approval of the CITY and may be modified by the AGENCY as conditions, opportunities, and circumstances arise.

a. **QUARTERLY REPORTS:** The AGENCY shall, no less frequently than quarterly, provide written reports to include applicable performance metrics on the following activities:

- (1) Economic Vitality and Development
- (2) Art and Design Enhancement
- (3) Promotion and Marketing
- (4) Special Events and Programming
- (5) Partnership, Organizational Support, and Conflict Resolution

b. **ANNUAL REPORT:** Agency shall make an Annual Report to the City Council of its activities and accomplishments based on the deliverables stated in Section 5 of this Agreement and the Scope of Work in accordance with Exhibit A.

6. **PAYMENT:** **[TO BE UPDATED BASED ON COUNCIL DIRECTION]**

The CITY will provide financial support to the AGENCY on an annual basis, paid in four (4) quarterly payments within twenty-one (21) days of receipt of payment request from the AGENCY, which shall be submitted during the first fifteen (15) days of the following quarter to the CITY's Economic and Community Development Department. Payments shall be conditioned upon the satisfactory submission of all required reports and deliverables. The CITY's payment shall be authorized by the City Council in the budget for the fiscal year in which the contract is in effect. The additional support of \$100,000 for developing and managing a vibrant Arts and Entertainment District will be paid out in four equal payments. Payment for the management of the municipal service district portion (\$120,000) will also be paid quarterly. Annually, this amount will be adjusted based on the City's projected property tax growth in the City during the budget process.

7. **FINANCIAL RECORDS AND REPORTS:** The AGENCY shall maintain financial records of economic development activities separate and distinct from other services the AGENCY may provide.

- a. Monthly financial activity reports shall be made available for review by the CITY.
- b. Quarterly operational activity reports shall be presented to the Economic and Community Development Department in such detail as required by the CITY and may be subject to presentation to the City Council.

8. **AUDIT:** The AGENCY agrees that it will provide the CITY with a certified audit, a copy of the management letter, and management's response to the auditor recommendations by independent auditors for the fiscal year period ending or including June 30, 2021. The audit will specifically state whether or not the CITY's funds were used exclusively for those purposes stated in Section 3. The audit will specifically describe any exceptions and the amount of the exceptions. It is understood that such audits may not be available upon the commencement of this Agreement. The audit is due to the CITY ninety (90) days after the AGENCY year-end. Suppose at any time the CITY determines the AGENCY is not in compliance with this Agreement or NCGS Chapter 159 or any other federal, state, or local law, policy, or regulation affecting the expenditure of public funds. In that case, the AGENCY shall be notified in writing as to the nature of the deficiency. The AGENCY is responsible at its expense to rectify and/or reconcile any material deficiencies identified by audit or monthly review of financial activity by the CITY. Failure to cure a material deficiency in compliance with NCGS Chapter 159 or the terms of this Agreement within thirty (30) days of receipt of a written notice from the CITY shall constitute a default. It may cause for termination of this Agreement. At any time the CITY deems it necessary or appropriate, the AGENCY agrees that an internal audit by the CITY may be made of the AGENCY's books or records to assess the current financial condition of the AGENCY and compliance with this Agreement.

9. **INDEPENDENT CONTRACTOR:** The AGENCY is a nonprofit corporation of the State of North Carolina and is an independent contractor. AGENCY is not an agent, officer, or employee of the CITY and shall have no authority to act as an agent of the CITY nor enter any agreement for or on behalf of the CITY. AGENCY shall at all times provide CITY

with satisfactory proof of its status as a nonprofit corporation organized to do business in the State of North Carolina.

10. **ASSIGNMENT:** It is the intent of this Agreement to secure the personal services of the AGENCY, and failure of the AGENCY for any reason to make the personal services available to the CITY for the purposes described in this Agreement shall be cause for termination of this Agreement. The AGENCY shall not assign this Agreement without the prior written consent of the CITY.

11. **AGENCY AND AUTHORITY:** The CITY hereby designates the City Manager or his/her designee as its exclusive agent with respect to this Agreement. The City Manager or his/her designee is authorized, on behalf of the CITY, to negotiate directly with the AGENCY on all matters pertaining to this Agreement. The AGENCY agrees that all of its dealings with the CITY in respect to the terms and conditions of this Agreement shall be exclusively with the City Manager or his/her designee. Further, the AGENCY specifically agrees that it shall not implement any requested modifications in the specifications of any of the services subject to this Agreement except in the manner described in Section 12, modification.

12. **MODIFICATION:** This Agreement may be modified only by an instrument duly executed by the parties or their respective successors.

13. **NOTICES:** Any notices to be given by either party to the other under the terms of this Agreement shall be in writing and shall be deemed to have been sufficiently given if delivered by hand, with a written acknowledgment of receipt, or mailed by registered or certified mail to the other party at the following addresses or to such other addresses as either party hereafter from time to time designates in writing to the other party for the receipt of notice:

AGENCY: Bianca Shoneman, President/Chief Executive Officer
Cool Spring Downtown District,
Inc. 222 Hay Street
Fayetteville, NC 28301
Email:
bianca@coolspringfay.org

CITY: Douglas J. Hewett, City Manager
433 Hay Street
Fayetteville, NC 28301 Email:
DougHewett@FayettevilleNC.gov

Such notice, if mailed, shall be deemed to have been received by the other party on the date contained in the receipt.

14. **CHANGES IN BYLAWS, INSURANCE POLICIES, OR BOARD MEMBERSHIP:** In the event of any change in the AGENCY's bylaws, governing body membership, or insurance policies, AGENCY agrees that it shall immediately notify the CITY.

AGENCY shall make compliance with this Agreement a part of its bylaws or have this Agreement approved by its Board of Directors with a copy of the minutes approving this Agreement being submitted to the CITY at the time of execution.

15. **NONAPPROPRIATION:** Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the CITY are from appropriations and monies from the City Council and any other governmental entities. In the event sufficient appropriations or monies are not made available to the CITY to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the CITY.

16. **GOVERNING LAW:** The validity, interpretation, and execution of this Agreement and the performance of and rights accruing under this Agreement are all to be governed by the laws of North Carolina.

17. **COMPLIANCE WITH LAWS:** The AGENCY agrees to comply with all applicable statutes, ordinances, and regulations of the United States, the State of North Carolina, the City of Fayetteville, and units of local government.

18. **FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and *so long as* it is prevented from performing such obligations by an act of war, hostile foreign actions, adverse governmental actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

19. **MORALITY CLAUSE:** If, in the sole opinion of the CITY, at any time AGENCY or any of its owner(s) or employee(s) or agent(s) (collectively referenced as an "Actor") engages in any one or more actions that bring disrepute, contempt, scandal, or public ridicule to the Actor or subject the Actor to prosecution or offend the community or public morals or decency or denigrate individuals or groups in the community served by the CITY or are scandalous or inconsistent with community standards or good citizenship or may adversely affect the CITY 's finances, public standing, image, or reputation or are embarrassing or offensive to the CITY or may reflect unfavorably on the CITY or are derogatory or offensive to one or more employee(s) or customer(s) of the CITY, the CITY may immediately upon written notice to AGENCY terminate this Agreement, in addition to any other rights and remedies that the CITY may have hereunder or at law or in equity.

20. **SEVERABILITY:** The parties agree that if any provision of this Agreement shall be held invalid for any reason, the remaining provisions shall not be affected if they continue to confirm with the purposes of this Agreement and the requirements of applicable law.

21. **E-VERIFY:** The AGENCY acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies, which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. The AGENCY further acknowledges that all employers, as defined by Article 2, Chapter 64 of

the North Carolina General Statutes, must use E-Verify and, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with N.C.G.S. § 64-26(a). The AGENCY pledges, attest, and warrants through execution of this Agreement that the AGENCY complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and further pledges, attests, and warrants that any subcontractors currently employed by or subsequently hired by the AGENCY shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Agreement.

22. **NC IRAN DIVESTMENT ACT CERTIFICATION:** As mandated by NCGS § 147-86.59(a), the AGENCY certifies that it is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to NCGS §47-86.58. The AGENCY further certifies that in accordance with NCGS §147-86.59(b), it shall not utilize any subcontractor found on the State Treasurer's Final Divestment List. The AGENCY certifies that the signatory to this Agreement is authorized by the AGENCY to make the foregoing statement.

(Remaining page intentionally left blank)

IN WITNESS WHEREOF, the CITY and AGENCY have executed this Agreement and caused their seals to be affixed and attested as of the day and year first above written.

CITY OF FAYETTEVILLE

BY: DOUGLAS J. HEWETT, ICMA-CM
City Manager

ATTEST:

PAMELA J. MEGILL, City Clerk

**COOL SPRING DOWNTOWN
DISTRICT, INC.**

By: BIANCA SHONEMAN, PRESIDENT/CEO
Cool Spring Downtown District, Inc.

ATTEST:

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

APPROVED AS TO FORM:

JODY PICARELLA, Chief Financial Officer

KAREN M. MCDONALD, City Attorney

EXHIBIT A

Scope of Work

I. Economic Vitality and Development:

- Actively enhance and grow Downtown Fayetteville's arts, entertainment, culinary, and retail sectors through efforts to attract new businesses. Activities should aim to provide diverse retail, dining, and entertainment options;
- Develop, pursue, and/or advocate for tools, policies, or incentives which aid in business retention/expansion and targeted business recruitment efforts;
- Support development and redevelopment activities/efforts already underway, including but not limited to hotel development, residential and adaptive reuse, and stadium district mixed-use developments;
- Report on the analytics of new business growth, loss, and investment;
- Manage/expand, as needed, a commercial sanitation program for the District; and
- Support the construction of the Crown Event Space.

II. Art and Design Enhancements:

- Work to introduce more public art Downtown;
- Coordinate the installation of holiday decorations and displays;
- Develop partnerships to enhance the economic impact of the arts and entertainment by increasing frequency and variety; and
- Work to support and strengthen local arts and cultural organizations and their participation in Downtown as an arts, entertainment, and culinary destination.

III. Promotion and Marketing:

- Advertise, promote, and showcase collective Downtown retail, dining, and entertainment opportunities;
- Advertise and promote special events, campaigns, themed retail sales, or other collective or cooperative events designed to drive business Downtown;
- Maintain a professional, attractive, constantly-updated, and maintained website promoting Downtown events, activities, attractions map, and resources;
- Lead the efforts for consistent, unique, identifiable branding for Downtown;
- Market Downtown Fayetteville as an arts, entertainment, culinary, and cultural tourism destination;
- Maintain an aggressive, targeted social media presence on behalf of Downtown; and
- Target marketing efforts to attract more active military, veterans, and family members Downtown.

IV. Special Events and Programming:

- Support and enhance efforts to grow established yearly special events and festivals;
- Develop and expand opportunities for street activities, buskers, displays of public art, festivals, sporting events, exhibitions, performances, and other programs or events designed to drive interest, foot traffic, and consumer spending to Downtown;
- Identify and promote opportunities for more recreational activities in Downtown and their connection to the complementary business;
- Develop a plan/program for maximizing spin-off opportunities in relation to the stadium and other festival park activities and events; and
- Create a place-based identity through the use of recognizable branding opportunities.

V. Partnership, Organizational Support, and Conflict Resolution:

- Work closely with other Fayetteville area partner organizations engaged in economic development and redevelopment, tourism, promotions, arts, culture, entertainment, and business advocacy to enhance the local and regional economy as a whole;
- Serve as a consistent voice of advocacy for Downtown business owners and issues that impact Downtown;
- Work closely with Downtown property owners and tenants to solve problems, such as the prevalence of homelessness/panhandling in the Downtown;
- Serve as liaison with City staff and departments on behalf of Downtown property owners, business owners, and residents;
- Provide a mechanism for ongoing public feedback regarding services provided in District;
- Welcome new businesses and residents to Downtown and offer resource information;
- Serve as a convener and facilitator of complex and challenging issues in the Municipal Service District;
- Monitor, evaluate, and provide advocacy for ordinance and/or policy amendments pertaining to Downtown issues regarding signage, parking, vacant buildings, and/or storefronts;
- Provide vigilance in monitoring and reporting safety and security concerns; identify incidents of graffiti, incidents of vandalism, damages to public infrastructure, or similar issues to the maintenance of a quality built and social environment; and
- Communicate promptly with City or contracted staff on reporting any cleaning, maintenance, parking, safety, or lighting issues.