

**STATE OF NORTH CAROLINA**

**AGREEMENT**

**COUNTY OF CUMBERLAND**

THIS AGREEMENT made and entered into this the 27<sup>th</sup> day of September, 2023, by and between the FAYETTEVILLE/CUMBERLAND COUNTY DR. MARTIN L. KING JR. COMMITTEE (hereinafter referred to as "COMMITTEE"), a nonprofit organization existing under the laws of the State of North Carolina, and the CITY OF FAYETTEVILLE (hereinafter referred to as "CITY"), a municipal corporation organized and existing under the laws of the State of North Carolina, or jointly the Parties.

**WITNESSETH:**

WHEREAS, the COMMITTEE is a nonprofit organization that plans, promotes, and implements activities to educate the Fayetteville-Cumberland County community about the philosophy and ideas of Dr. Martin Luther King Jr.; and

WHEREAS, the CITY has a vested interest in providing educational and recreational activities and parks throughout the City of Fayetteville and Cumberland County; and

WHEREAS, the CITY and COMMITTEE entered into a Memorandum of Understanding ("MOU") dated June 14, 1998, for the CITY to provide 17 acres of land at 739 Blue Street, Fayetteville, North Carolina, for a CITY-owned park by the name of Martin Luther King Jr. Park ("Park"); and to provide the initial Park sign; maintenance and upkeep of the Park including landscaping, equipment, buildings and utilities; and construction management and biddings once the project has been designed and funding secured; and

WHEREAS, the COMMITTEE has secured funding from the State of North Carolina for further construction and enhancement of the Park; and

WHEREAS, the COMMITTEE agreed to provide funding for the design of a memorial structure to be constructed and erected at the Park; and

WHEREAS, the CITY has voted to provide in part and to participate in the funding for construction and development of the Park; and

WHEREAS, Cumberland County voted to provide in part and to participate in the funding for construction and development of the Park; and

WHEREAS, the Parties wish to enhance the Park through further development of the land and construction of a memorial in memory of Dr. Martin Luther King Jr. and for the enjoyment of the general public.

NOW, THEREFORE, for and in consideration of the mutual promises to each other, as hereinafter set forth, the Parties hereto do mutually agree as follows.

**A. TERM:**

This Agreement shall begin on the date indicated in the first paragraph of this Agreement and end on the completion of the project, unless sooner terminated consistent with the provisions of this Agreement.

**B. PROJECT SCOPE:**

The Project is a memorial to Dr. Martin Luther King Jr., including the entire concept plan attached as Exhibit A, as well as the proposal presented to the City Council for the CITY.

**C. PROPERTY OWNERSHIP:**

1. Upon the COMMITTEE's transfer of ownership of the parcels of land identified in Exhibit A attached hereto and incorporated herein, the CITY will complete the following:
  - a. Incorporate the transferred property to be used for the Park.
  - b. Rezone: Take actions necessary to consider the rezoning of the transferred property to a zoning classification that permits the desired use anticipated.
  - c. Recombination Plat: Prepare a plat combining all properties transferred to the CITY or otherwise acquired by the CITY for the Park.

**D. COST SHARING/FINAL ACCOUNTING:**

1. The Chief Financial Officer for the CITY shall have custody and act as fiscal manager, including the receipt, deposit, or disbursement of all funds allocated for the COMMITTEE's Memorial Park Capital investment allocations and allocations provided to the CITY by Cumberland County for the development of the Park. The construction project costs shall not exceed a total of \$4.7 million (\$2.2 million of CITY funds, to include any City administrative costs, and \$2.5 million of Cumberland County funds).
2. The Chief Financial Officer shall keep full and accurate accounts of the finances in books provided for that purpose, and shall cause a statement of assets, liabilities, and expenses paid as of the close of each "month", and of the results of its operations and changes in fund balance for such "month" deliver a copy of the latest such statement to the "COMMITTEE via the COMMITTEE's delegated administrator on or before the 25th of each month."
3. "The City will share all information on administrative costs to the Fayetteville/Cumberland County Dr. Martin L. King Jr. Committee for review,

modifications (as needed), and approval prior to final execution of the State of North Carolina, County of Cumberland Agreement.”

4. “The Chief Financial Officer and the COMMITTEE’s delegated administrator/Architect and construction administrator will be required to approve liabilities and expenses prior to payment.”
5. “Additional funds raised by the COMMITTEE independently, in excess of \$4.7 million shall be managed as outlined in D. Cost Sharing/Final Accounting.”
6. Prior to execution of the State of North Carolina, County of Cumberland Agreement, a budget shall be provided clearly identifying the following:
  - a. City of Fayetteville administrative costs and other costs incurred.
  - b. Committee’s Design Costs
  - c. Committee’s Construction Costs
  - d. Committee’s Construction Contingency Costs
  - e. Committee’s Special Inspection Costs

**E. DUTIES AND RESPONSIBILITIES:**

**1. COMMITTEE’s Duties and Responsibilities**

The COMMITTEE agrees to the following:

- a. The COMMITTEE shall provide the CITY with a list of names and contact information of its Board of Directors and Officers and update said list, as needed, throughout the term of this Agreement.
- b. The COMMITTEE shall acquire the parcels of land identified in Exhibit A which is attached hereto and incorporated by reference in this Agreement and transfer the acquired parcels to the CITY, free of any encumbrances, for inclusion in the Park prior to the CITY beginning any construction.
- c. The COMMITTEE shall obtain an architect to develop construction bid documents suitable for bidding in accordance with North Carolina law, including a complete set of construction drawings for the entire project; and having obtained all required Federal, State, CITY, and PWC permits, the COMMITTEE will submit all obtained documentation to the CITY for acceptance.
- d. The COMMITTEE will provide adequate funding to include appropriate Contingency and Retainage Fees for construction.
- e. All Contract Administration related to the construction project will be the responsibility of the COMMITTEE and the CITY and the architect, obtained and funded by the COMMITTEE from the funds granted by the

STATE, the CITY, and the COUNTY, and any additional funds that the COMMITTEE may obtain, including, but not limited to:

- (1) Preparing project budget to match programs with possible phases of Masterplan;
- (2) Evaluating project schedule;
- (3) Hosting Zoom (virtual) meeting with CITY representatives to verify scope and schedule;
- (4) Completing all final construction documents, including plans and specifications for the site work and monument construction;
- (5) Stormwater and erosion control plan reviews and approvals;
- (6) Complete utility drawings;
- (7) Providing all utility connections;
- (8) Conducting pre-bid meetings for interested bidders;
- (9) Prepare addenda and respond to all bid questions;
- (10) Participate in the prequalification and selection of the General Contractor or General Contractors to be considered to bid with respect to the project;
- (11) Evaluate final bids for scope coverage and viability;
- (12) Participate in the qualification determination and selection of the General Contractor or General Contractors to be considered to bid with respect to the project or projects;
- (13) Conduct on-site construction visits as needed to verify compliance with design documents;
- (14) Host Zoom (virtual) preconstruction meetings with CITY and Contractors;
- (15) Review and approve general contractor payment applications;
- (16) Respond to any RFIs and Change Order requests throughout construction;
- (17) Host Zoom (virtual) construction meetings with Contractors and CITY on a bi-weekly schedule;

- (18) Review submittals for materials and colors for compliance with contract specifications; and
- (19) Complete all final close-out documents.
- f. During project construction, the COMMITTEE will be responsible for all additional design work and consultation services required by the architect.
- g. The COMMITTEE will be responsible for providing funding for all required Special Inspections; including, but not limited to:
  - (1) Steel construction
  - (2) Concrete construction
  - (3) Masonry
  - (4) Wood
  - (5) Soils
  - (6) Driven Deep Foundations
  - (7) Cast-In-Place Deep Foundations
  - (8) Helical Piles
  - (9) Fabricated Items
  - (10) Wind Resistance
  - (11) Seismic Resistance
- h. The costs of the project must be less than or equal to the project budget, notwithstanding funds that the COMMITTEE independently raises as a 501(c)(3) organization.
- i. The COMMITTEE will to the extent of its capability be responsible for any and all construction costs exceeding \$4.7 million, including any needed redesign costs.

2. **CITY's Duties and Responsibilities**

After the COMMITTEE has satisfied its responsibilities in Section E (1) above the CITY together with the COMMITTEE will manage and oversee the project and agrees to the following:

- a. Provide an inclusive topographic land survey of the Park and surrounding parcels, including property lines, existing easements, and all other pertinent details required for permitting and developing bid documents.

The CITY shall contract for and with a contractor acceptable to the COMMITTEE and the CITY to complete all construction of the spire sculpture at the Park, consistent with the design provided by the COMMITTEE and approved by the CITY and Cumberland County.

- b. The CITY will have the ability, upon advance notice to and approval from the COMMITTEE, to deviate from the COMMITTEE's submitted plans to

ensure the survivability and maintainability of landscape features, but not from the original design intended and contemplated through and by virtue of Exhibit A.

- c. CITY construction will begin and funds will become accessible after confirmation that the budget for the construction project does not exceed the budgeted amount of \$4.7 million. In the event the budgeted amount exceeds \$4.7 million, the CITY will only perform and pay for those portions of the project costs that can be performed with the allocated funds by the CITY and Cumberland County, not to exceed \$4.7 million.
- d. Upon completion of the Spire and associated amenities, the CITY and Cumberland County through its combined Parks and Recreation Department will maintain and manage the MLK Park.

**F. GENERAL TERMS:**

1. Transfer, Assignment, Subleasing: Neither party shall transfer, assign, or sublease its rights under this Agreement, nor grant any interest, privilege, or license whatsoever in connection with this Agreement.
2. Independent Contractor: The COMMITTEE is a nonprofit corporation organized and authorized to be conducted as such under the laws of the State of North Carolina and is an independent contractor. COMMITTEE 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. COMMITTEE 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.
3. Non-Appropriation: 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 CITY.
4. Amendment: This Agreement may be amended at any time by written consent of both Parties.
5. Termination:
  - a. Termination for Cause: In the event of substantial failure by COMMITTEE to perform in accordance with the terms of this Agreement, the CITY shall have the right to terminate COMMITTEE upon thirty (30) calendar days' written notice in which event COMMITTEE shall have neither the obligation nor the right to perform further services under this Agreement. Similarly, in the event of substantial failure by CITY to perform in

accordance with the terms of this Agreement, the COMMITTEE shall have the right to terminate CITY upon thirty (30) calendar days' written notice in which event CITY shall have neither the obligation nor the right to perform further services under this Agreement.

b. Termination for Convenience: Upon thirty (30) calendar days' written notice to COMMITTEE, the CITY may, without cause and without prejudice to any other right or remedy legally available to the CITY, terminate this Agreement. Likewise, upon thirty (30) calendar days' written notice to CITY, the COMMITTEE may, without cause and without prejudice to any other right or remedy legally available to the CITY, terminate this Agreement. Upon such notice, neither party has an obligation nor the right to perform services under this Agreement. Unless otherwise stated or agreed upon, the effective date of termination shall automatically occur thirty (30) days after the written notice is sent by the CITY.

6. Notice: Any notice required under this Agreement, unless otherwise indicated, shall be sent by U.S. Mail or by facsimile addressed to the parties hereto (and may in addition, but not in lieu of United States mail to the respective electronic mail addresses):

**COMMITTEE:** Stan Ford, Chairperson  
Fayetteville/Cumberland County  
Dr. Martin L. King, Jr. Committee  
Board of Directors  
P.O. Box 111  
Fayetteville, NC 28302  
Email: sstanamae44@aol.com

Cleopatrice Robinson, Chairperson  
Fayetteville/Cumberland County  
The Dr. Martin L. King, Jr.  
Park Committee  
P.O. Box 111  
Fayetteville, NC 28302  
Email: Cleorobinson2@yahoo.com

**CITY:** Douglas J. Hewett, City Manager  
City of Fayetteville  
433 Hay Street  
Fayetteville, NC 28301

Email: DougHewett@FayettevilleNC.gov

7. Indemnification: To the extent permitted by law, COMMITTEE agrees to defend, indemnify, and hold harmless the CITY, and its elected officials, employees, agents, successors, and assigns, from any and all liability and claims for any injury

or damage caused by any act, omission or negligence of COMMITTEE, its agents, servants, employees, contractors, licensees, or invitees. Indemnification of the CITY by COMMITTEE does not constitute a waiver of the CITY's governmental immunity in any respect under North Carolina law. Similarly, to the extent permitted by law, the CITY agrees to defend, indemnify, and hold harmless the COMMITTEE, and its elected officials, employees, agents, successors, and assigns, from any and all liability and claims for any injury or damage caused by any act, omission or negligence of CITY, its agents, servants, employees, contractors, licensees, or invitees.

8. Compliance with Laws: The Parties agree to comply with all applicable statutes, ordinances, and regulations of the United States, the State of North Carolina, the CITY and units of local government.
9. Governing Law: The Parties expressly agree that if litigation is brought in connection with this Agreement and (1) the litigation proceeds in the Courts of the State of North Carolina, the Parties agree that the appropriate venue shall be in Cumberland County (Twelfth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the Parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina.
10. 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 may continue to conform with the purposes of this Agreement and the requirements of applicable law.
11. E-Verify: COMMITTEE 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. COMMITTEE 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). COMMITTEE pledges, attests and warrants through execution of this Agreement that COMMITTEE 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 COMMITTEE shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Agreement.
12. Capacity: Each party to this Agreement affirms, represents, and acknowledges that the respective parties have the authority and capacity to enter this agreement and to perform under this agreement, and that the agreement has been authorized by the respective governing authorities of the parties. Further, without limiting the generality of the foregoing, the parties acknowledge as provided in N.C. Gen. Stat.

§ 147-86.55-69, any person identified as engaging in investment activities in Iran, determined by appearing on the Final Divestment List created by the State Treasurer pursuant to N.C. Gen. Stat. § 147-86.57(6) c, and pursuant to N.C. Gen. Stat. § 147-86.82, a company identified as boycotting Israel, is ineligible to contract with the State of North Carolina or any political subdivision of the State, including a County or an official in his or her official capacity. Similarly, although not directly required, the parties acknowledge North Carolina Gubernatorial Executive order 251 prohibiting State agencies and state entities from doing business in a manner directly benefitting Russia and providing that local governments in North Carolina are strongly encouraged to adopt similar policies to ensure that public dollars and operations do not directly benefit Russian Entities, nor are they barred by any of the specified applicable statutes, and the parties have the capacity to enter this agreement.

- 13. 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.
- 14. State Auditor Access to Persons and Records: Pursuant to N.C. Gen. Stat. § 147-64.7(a)(4), the parties agree that the State Auditor and the Auditor's authorized representatives shall have ready access to persons and may examine and copy all books, records, reports, vouchers, correspondence, files, personnel files, investments, and any other documentation of or derived from or under his Agreement.
- 15. Entire Agreement: This Agreement constitutes the entire agreement between the Parties. Any proposed change to this Agreement shall be submitted to the CITY for its prior approval. No modification, addition, deletion, etc., to this Agreement shall be effective unless and until such changes are reduced to writing and executed by the authorized officers of each party.

IN WITNESS THEREOF, the Parties have executed this Agreement in duplicate originals, one of which is retained by each of the Parties, effective the day and year first above written.

ATTEST:

Pamela J. Megill  
PAMELA J. MEGILL, City Clerk



CITY OF FAYETTEVILLE

Douglas J. Hewett  
DOUGLAS J. HEWETT, ICMA-CM  
City Manager

Date: 09/27/23

**FAYETTEVILLE/CUMBERLAND  
COUNTY DR. MARTIN L. KING JR.  
COMMITTEE**



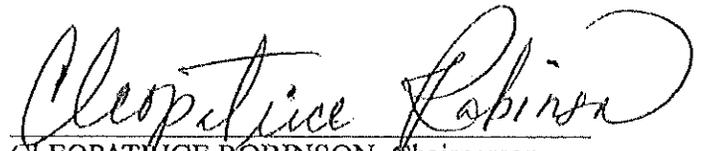
STANLEY FORD, Chairman, Board of  
Directors  
Fayetteville/Cumberland County  
Dr. Martin Luther King, Jr.  
P.O. Box 111  
Fayetteville, NC 28302

Date: 09/13/2023



RONNIE MITCHELL, Vice President, Board of  
Directors  
Fayetteville Cumberland County  
Dr. Martin Luther King, Jr.  
P.O. Box 111  
Fayetteville, NC 28302

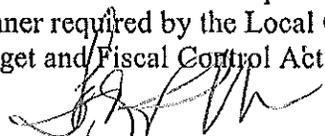
Date: August 11, 2023



CLEOPATRICE ROBINSON, Chairperson  
The Dr. Martin L. King, Jr. Park Committee  
P.O. Box 111  
Fayetteville, NC 28302

Date: 9.12.2023

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



JODY PICARELLA, Chief Financial Officer