

STATE OF NORTH CAROLINA

INTERLOCAL AGREEMENT

COUNTY OF CUMBERLAND

Approved by the Fayetteville City Council _____

Approved by the Cumberland County Board of Commissioners October 17, 2022

THIS INTERLOCAL AGREEMENT, made and entered into on the last day the governing board of either party approves it (the "Effective Date"), by and between the City of Fayetteville, a North Carolina municipal corporation organized and existing under the laws of the State of North Carolina (hereinafter "City"), and Cumberland County, a body corporate and politic existing under the laws of the State of North Carolina (hereinafter "County"). Collectively, City and County are the "Parties."

WITNESSETH:

WHEREAS, Part 1 of Article 20 of Chapter 160A of the North Carolina General Statutes authorizes cities and counties to enter into interlocal agreements in order to execute any undertaking on behalf of one another; and

WHEREAS, the North Carolina General Assembly appropriated \$2.5 million to the Fayetteville\Cumberland County Dr. Martin L. King, Jr. Committee, a North Carolina nonprofit corporation, (the "Committee") as partial funding for a project to construct a memorial spire set in a circular, stone meditation plaza in the Martin Luther King, Jr., Memorial Park located in and owned by City (the "Project"); and

WHEREAS, the governing board of City has appropriated \$2.2 million and the governing board of County has appropriated \$2.5 million for the Project; and

WHEREAS, City has agreed to undertake construction of the Project; and

WHEREAS, County has agreed to provide the funding appropriated by its governing board for the Project to City for this purpose.

NOW, THEREFORE, pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes, and in consideration of the respective rights, powers, duties, and obligations hereinafter set forth, City and County agree as follows:

- 1. Purpose:** The purpose of this agreement is to establish the terms by which County will provide its portion of funding for the Project to City. The Project, as approved by County's governing board, consists of the construction of a memorial spire, approximately 100' in height, set in a circular, stone meditation plaza within the Martin Luther King, Jr., Memorial Park owned by City. The final engineering design of the Project and the scope of work used for any contract for construction of the Project must receive approval of County's governing board.
- 2. Duration:** This agreement shall become effective on the Effective Date and shall continue until the Project is completed, subject to the provisions for early termination set forth in Section 8 of this agreement.

3. **No Joint Agency Established:** This agreement shall not create any joint agency between the Parties. The Project shall be undertaken by City as an improvement to its Martin Luther King, Jr., Memorial Park as follows:
 - a. City shall be responsible for obtaining and administering all contracts for the construction of the Project.
 - b. City shall have the sole responsibility to maintain the improvements constructed by the Project as a component of its Martin Luther King, Jr., Memorial Park.
4. **No Appointment of Personnel:** This agreement shall not require the Parties to appoint any personnel to undertake the Project. City shall undertake the Project solely in accordance with its usual personnel and business practices.
5. **Financial Support for the Project:**
 - a. At the time the Parties have entered into this agreement, the total funding for the Project was \$7.2 million, with \$2.5 million having been appropriated by the State of North Carolina directly to the Committee, \$2.5 million having been appropriated by County, and \$2.2 million having been appropriated by City.
 - b. The Parties agree that \$2.2 million appropriated by City and \$2.5 million appropriated by County shall be a continuing contractual obligation of each that may not be avoided by the failure of either to budget the funding committed for the Project by this agreement in subsequent fiscal years or budgets.
 - c. City shall notify County if any additional sources of funding become available for the Project.
 - d. The Project shall be designed and engineered by design professionals selected by the Committee in accordance with the procurement requirements of the funding agreement between the State of North Carolina and the Committee. City shall determine that the design of the Project meets zoning requirements and is in accord with the Project as described in this agreement before commencing construction. Neither City nor County shall pay any portion of the design costs with the design costs to be paid by the Committee from the State funds. Design costs paid by the Committee shall be included in the Project costs.
 - e. City will submit the invoices received from vendors or contractors selected by City for the construction of the Project to County monthly. County shall remit payment of each invoice in the proportionate amount of County's appropriated funding to the total amount of available construction funds within 30 days of receiving an invoice from City. Available construction funds shall be the total funding less the amount spent for Project design prior to commencement of construction.
 - f. The maximum amount of funding to be provided by County is the \$2.5 million appropriated by County's Capital Project Ordinance #B220202. The maximum amount of the funding provided by City is the \$2.2 million appropriated by City.
6. **Ownership of the Project:** At all times, the Project is and shall continue to be owned solely by City as a component of its Martin Luther King, Jr., Memorial Park.

7. **Amendment.** This agreement may only be amended by the mutual agreement of the Parties with a written document approved by the Parties' governing boards and entered into the minutes of the meetings at which it is approved.
8. **Provisions for Early Termination:** The following conditions shall constitute grounds for early termination of this agreement:
 - a. City shall provide County the Project budget at such time as it is developed, to show the source of all funds for the Project and the estimated costs to complete it. In the event the estimated Project costs exceed the funds available, the governing board of either of the Parties may elect to terminate this agreement. Upon termination under this subsection, County shall only be responsible for its appropriated share of the costs incurred by the Project necessary to develop the Project budget.
 - b. If construction on the Project has not commenced by November 1, 2024, or within the construction schedule provisions of the funding agreement between the State of North Carolina and the Committee, County's governing board may terminate this agreement upon giving notice to City. When City determines that construction of the Project will not commence before November 1, 2024, or within the construction schedule provisions of the funding agreement between the State of North Carolina and the Committee, the city manager shall give immediate notice thereof to the county manager. If County's governing board elects to terminate this agreement for construction not commencing before November 1, 2024, County shall have no liability for payment of any invoices for work incurred after City became aware that construction would not commence before November 1, 2024. City shall be responsible to stop all work on the Project upon determining that construction on the Project shall not commence before November 1, 2024.
9. **Other Matters:**
 - a. Neither party may transfer or assign its rights under this agreement except through an amendment of this agreement in accordance with Section 7 of this agreement.
 - b. This agreement shall bind the Parties hereto, respective successors, permitted assignees, and transferees.
 - c. If any provision of this agreement shall be held invalid by any court for any reason, the remaining provisions shall not be affected if they may continue to conform to the purposes of this agreement and the requirements of applicable law.
 - d. If litigation is brought against City or County because of this agreement, each shall have sole discretion to determine its participation in the litigation, if any, and be responsible for its own costs and attorney's fees.
 - e. This agreement between City and County is made subject to the Committee and City complying with the terms of the funding agreement between the State of North Carolina and the Committee.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement in accordance with the actions taken by their respective governing boards on the dates of the meetings at which such action was taken and as indicated on the first page of this agreement.

This interlocal agreement was approved by the Fayetteville City Council
_____, 2022.

CITY OF FAYETTEVILLE

(SEAL)

By: _____

DOUGLAS J. HEWETT, ICMA-CM
City Manager

ATTEST:

PAMELA J. MEGILL, City Clerk

Approved for legal sufficiency:

KAREN M. MCDONALD, City Attorney

This interlocal agreement was approved by the Cumberland County Board of Commissioners
October 17, 2022, 2022.

(SEAL)



CUMBERLAND COUNTY

Amy Cannon
AMY CANNON, County Manager

ATTEST:

Candice M. White
CANDICE WHITE, County Clerk

Approved for legal sufficiency:

Rickey L. Moorefield
RICKEY L. MOOREFIELD, County Attorney