

## **MEMORANDUM OF UNDERSTANDING**

### **Fayetteville State University Foundation Fayetteville State University City of Fayetteville**

THIS AGREEMENT, made and entered into this the \_\_\_\_th day of December 2018, by and between the Fayetteville State University Foundation, (hereinafter referred to as "Foundation"), Fayetteville State University (hereinafter referred to as "University") and the City of Fayetteville (hereinafter referred to as "City").

#### **WITNESSETH**

THAT WHEREAS, the Foundation is a North Carolina nonprofit corporation qualified under Section 501(c)(3) of the Internal Revenue Code and exists for the purposes of aiding and promoting educational and charitable purposes and lawful activities of the University; and

WHEREAS, the University is a public comprehensive regional university that promotes the educational, social, cultural, and economic transformation of southeastern North Carolina and is one of the largest land owners on the southern Murchison Road Corridor and has over the years taken the lead in economic transformation initiatives;

WHEREAS, the City has a vested interest in the Murchison Road Corridor and has identified the former Washington Drive Jr. High School and the surrounding area as a catalyst site in the CITY OF FAYETTEVILLE LAND USE AND ECONOMIC DEVELOPMENT PLAN: MURCHISON ROAD CORRIDOR FINAL REPORT May 30, 2008 (version 5); and

WHEREAS, the City has identified \$5.5 million in funding from a General Obligation Bond for the construction of a senior center to replace the one currently located on Blue St.; and

WHEREAS, the University has identified \$5.5 million in resources for the construction of a wellness center to be opened by August 1, 2021; and

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. PROJECT SCOPE**

All three parties shall put forth their best efforts to contribute and acquire the 31 parcels described below, complete a recombination plat, initiate a rezoning process, solicit Designer and Construction Manager at Risk proposals, and award Design and Construction contracts for the University's Wellness Center and a fully developed site (hereinafter referred to as "Project.").

#### **B. DUTIES AND RESPONSIBILITIES**

##### **1. Foundation's Duties and Responsibilities**

The Foundation agrees to the following:

- a. On behalf of University, to contribute the twelve (12) parcels identified as Exhibit A-1 to the Project, and
- b. On behalf of University, to make a reasonable effort to acquire two (2) additional parcels, identified as Exhibit A-2, for the Project.

## **2. University's Duties and Responsibilities**

The University agrees to the following:

- a. To solicit proposals for the design, construction management and building commissioning of the site located at the intersection of Murchison Road and Filter Plant Road, depicted in Exhibit B in accordance with UNC System and Office of State Construction policies/procedures/guidelines. Such selections will be complete, and contracts awarded in 2019.
- b. To manage said contracts and satisfy invoices for work performed as agreed upon with contractors.
- c. To support the consultants and contractors in the completion of their work and to ensure that the City benefits from the site development work to the same degree as the University.
- d. To work with the City to develop a site plan of the recombination plat (hereinafter referred to as "Development Area") identified in Exhibit B. Such site plan shall be consistent with the development objectives and permit requirements of the parties and depicting at a minimum the following:
  - the parcels to be conveyed to each party for development,
  - the location of all shared and required infrastructure, and
  - any easements to be reserved for the benefit of the parties.

## **3. City's Duties and Responsibilities**

The City agrees to the following:

- a. To contribute the three (3) parcels identified as Exhibit A-3 to the Project.
- b. To make a reasonable effort to acquire fourteen (14) additional parcels, identified as Exhibit A-4, for the Project.
- c. To take all necessary actions to develop the Development Area utilizing the parcels contributed by the Foundation and the City, and any other relevant parcels. Such recombination plat shall be consistent with the agreed site plan and include two separate development parcels.
- d. To convey at no cost to the University (or its designee) the portion of the Development Area identified for the University's use, along with any easements or other interests identified thereby.
- e. To prepare and submit an application for zoning change of the Development Area following the recording of the new recombined plat map. Such shall be consistent with the development plans approved by the parties.

- f. To reimburse the University for the City's share of any invoices and expenses paid in pursuing the completion of the agreed scope of work. The scope of work is considered complete when the site development of both parcels and the construction of the University's Wellness Center is complete. The site development of both parcels includes:
- Site preparation
  - Erosion control and environmental protection
  - Demolition, excavation, removal
  - Earthwork
  - Hardscape construction – curbs, paving, markings, retaining walls, signage
  - Plantings
  - Drainage
  - Utilities – sanitary sewer, water, electrical, natural gas
  - Irrigation
  - Site lighting
  - Site furniture and amenities

## **C. GENERAL TERMS**

### **1. Termination**

This Memorandum of Understanding may be terminated by either party giving the other thirty (30) days advanced written notice of such intent. (Such termination for convenience shall not affect the payment obligations for work completed prior to the notice of termination.) Neither party shall enter into or otherwise create new obligations relative to this Memorandum of Understanding following receipt of such notice, without the written consent of the other party.

### **2. Effective Date**

This agreement is effective as of the date of signature by all authorized representatives indicated below and the terms and conditions shall continue for two years thereafter. This agreement may be extended or amended to allow for related cooperative efforts by mutual agreement of the parties.

### **3. Notices**

Unless otherwise provided herein, all notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand or sent by certified mail, return receipt requested, postage prepaid, and addressed to the appropriate party(s) at the following address or to any other person at any other address as may be designated in writing by the parties:

**For the Foundation**

Fayetteville State University Foundation  
c/o Executive Director  
Office of Institutional Advancement  
1200 Murchison Road  
Fayetteville, NC 28301

**For the University**

Fayetteville State University  
c/o Vice Chancellor for Business and Finance  
1200 Murchison Road  
Fayetteville, NC 28301

**For the City of Fayetteville**

City of Fayetteville  
Office of the City Manager  
433 Hay Street  
Fayetteville, NC 28301

Notices shall be effective upon receipt regardless of the form used.

4. **Entire Agreement**

This Agreement constitutes the entire agreement of the parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions and agreements that have been made in connection with the subject matter hereof. No modifications or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto. All prior negotiations, agreements and understandings with respect to the subject matter of this Agreement are superseded hereby.

5. **Amendment**

This Agreement may be amended or revised only in writing and signed by all parties.

6. **Severability**

In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the Agreement which shall remain in full force and effect and enforceable in accordance with its terms.

7. **Governing Law**

This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of North Carolina.

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:

**CITY**

\_\_\_\_\_  
PAMELA MEGILL, City Clerk

\_\_\_\_\_  
DOUGLAS J. HEWETT, ICMA-CM  
City Manager

\_\_\_\_\_  
Date

**FOUNDATION**

**UNIVERSITY**

\_\_\_\_\_  
EARNEST CURRY  
Chair

\_\_\_\_\_  
CARLTON SPELLMAN  
Vice Chancellor for Business and Finance

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Exhibit A – Site Parcels

LOT NUMBER	PARCEL NUMBER	ACREAGE	2018 TAX VALUE
<b>Exhibit A1</b>			
11	0437-19-4758	0.20	\$500
12	0437-19-5708	0.20	\$500
13	0437-19-5787	0.40	\$750
14	0437-19-6756	0.20	\$500
16	0437-19-7756	0.20	\$500
17	0437-19-8794	0.90	\$1,250
25	0437-19-7527	0.25	\$500
26	0437-19-6588	0.07	\$125
27	0437-19-6548	0.13	\$250
28	0437-19-5670	0.23	\$500
29	0437-19-4691	0.11	\$250
30	0437-19-4642	0.09	\$125
		2.98	\$5,750
<b>Exhibit A2</b>			
23	0437-19-8585	0.51	\$35,551
24	0437-19-7595	0.17	\$375
		0.68	\$35,926
<b>Exhibit A3</b>			
10	0437-19-5954	0.76	\$9,000
19	0437-29-0783	0.23	\$5,000
31	0437-19-6419	0.88	\$1,875
		1.87	\$15,875
<b>Exhibit A4</b>			
1	0438-20-0025	0.70	\$4,500
2	0437-29-1931	0.24	\$4,000
3	0437-29-0849	0.34	\$625
4	0437-19-9940	0.34	\$3,125
5	0437-19-8941	0.33	\$3,125
6	0437-19-7992	0.01	\$60
7	0437-19-7962	0.19	\$2,500
8	0437-19-7925	0.24	\$4,500
9	0437-19-6965	0.24	\$2,250
15	0437-19-7706	0.20	\$500
18	0437-29-0723	0.20	\$1,250
20	0437-29-1747	0.20	\$8,551
21	0437-29-2816	0.38	\$5,625
22	0437-29-2851	0.17	\$2,813
		3.78	\$43,424
		9.31	\$100,975

# Exhibit B – Proposed Project Site

The proposed project site will include the area outlined in white below.



The proposed project site current thirty-one parcels are highlighted below.

