

NORTH CAROLINA

PERFORMANCE

ORANGE COUNTY

AGREEMENT

This Agreement, made and entered into by and between the Town of Chapel Hill, c/o Chapel Hill Town Manager, 306 N. Columbia Street, Chapel Hill, NC, 27516, hereinafter referred to as "Town," and the Chapel Hill Downtown Commission Corporation, 179 E. Franklin Street, Chapel Hill, NC, 27516, hereinafter referred to as the "Commission."

WITNESSETH

WHEREAS, the Commission and the Town are committed to strengthening downtown Chapel Hill as an attractive and active center for economic, service, residential, and social functions;

NOW THEREFORE, in consideration of the above and the mutual covenants and conditions hereinafter set forth, the Town and the Commission agree as follows:

1. Town Support

The Commission will provide the services described in this Agreement. The Town Council proposes to allocate \$60,000 from the Downtown Service District for services through this agreement in fiscal year 2003-04.

The Town does not obligate itself to provide any other support to the Commission this fiscal year or in any succeeding fiscal year.

2. Services of the Commission to the Downtown District

The Commission agrees to provide the services described in the Program of Work, attached hereto as Attachment A and incorporated herein by reference, to properties in the downtown Chapel Hill service district as amended, subject to the following clarifications of the Work Program:

The Commission will maintain an office within the downtown tax district and shall staff such office on a reasonable basis as necessary to conduct its work.

The Commission shall hold public meetings of its Board of Directors at least once each quarter, and shall give public notice of such meetings in accord with the N.C. Open Meetings Law, including advance written notice to the news media at least two business

days before the scheduled date of a board meeting. The notices shall include the time, date, location, and general purpose of the meetings.

Display of downtown business directories in public sidewalk areas shall be subject to applicable sign and other ordinances and may be subject to Town and/or State requirements for encroachment agreements.

~~The Commission or its employees or subcontractor will provide 13 hours per week of sidewalk cleaning. A shortage in the number of hours of cleaning in a given week will be made up in a subsequent week.~~

The Commission will manage and carry out promotional events in accord with the attached Program of Work and will obtain any permits required under the Town's Noise Ordinance, etc. The Commission will not charge admission to any of these events.

3. Payments for Services

The Commission shall submit invoices with a report on services in a form satisfactory to the Town Manager.

Upon proper provision of services and supporting documentation, the Town will mail payments to the Commission within two weeks from the Commission's invoice date.

If the Commission enters into an agreement with the Town for any services to be provided to the Commission by the Town, the Town may deduct its costs for such services from the above payments and recalculate the amounts of monthly payments. The Town shall notify the Commission of any revised monthly payment amount.

4. Financial Records and Reports

The Commission agrees to allow the Town to inspect its financial books and records upon reasonable notice, during normal working hours. In accord with N.C.G.S. 160A-536 and G.S. 159-40, the Commission shall arrange an independent audit of the Commission's use of Town Downtown District monies as of the end of the 2002-03 fiscal year and shall provide a copy of the independent auditor's report to the Town by January 1, 2004.

The Commission shall also have an independent audit performed for the year ending June 30, 2004, regarding Downtown Service District funds and shall provide a copy of this audit report to the Town.

5. Termination for Cause

In the event that the Commission shall cease to exist as an organization, or shall enter bankruptcy proceedings, or be declared insolvent, or liquidate all or substantially all of its assets, or shall significantly reduce its services during the term of this Agreement, or in the event that the Commission shall fail to render a satisfactory accounting as provided herein, then, and in that event, the Commission shall give written notice thereof to the Town Manager and the Town may terminate this Agreement, and the Commission will return all payments already made to it by the Town for services that have not been provided, or of which no satisfactory accounting has been rendered.

6. Indemnification of the Town

The Commission hereby agrees to hold the Town harmless against any claims or actions from damages, injury, or death relating to or arising out of the Commission's use of Town funds or due to acts or omissions of the Commission's officers, employees, contractors, or agents; and shall name the Town as an additional insured on the Commission's general liability policies; and shall provide, upon the Commission's execution of this agreement, a certificate of insurance with an insurer and in a certificate form satisfactory to the Town Manager.

The Town Manager may elect that the insurance coverage naming the Town as an additional insured party not be required to include activities off the premises of the Commission's offices at 179 E. Franklin Street if the cost of such coverage would not be practical in the Manager's judgment.

7. Non-Discrimination

In matters of employment, provision of services and contracting, the Commission agrees to act without regard to race, color, sex, religion, creed, age, national origin, affectional preference, sexual orientation, or disability.

8. Amendments

This Agreement may be amended by mutual agreement of the Commission and the Town.

9. Entire Agreement

This Agreement constitutes the entire Agreement of the parties hereto and shall be amended only by written modification executed by both parties.

IN WITNESS THEREOF, the parties hereunto cause this Agreement to be executed in their respective names.

This is the 24th day of Sept, 2003.

TOWN OF CHAPEL HILL

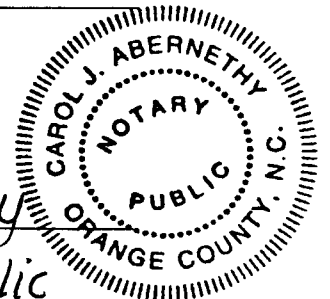
CHAPEL HILL DOWNTOWN
COMMISSION, INC.

Florentine A. Tuller, Acting
Town Manager

Dermot O'Hara
Chair

Joe A. Smith
Town Clerk 9-24-03

Carol J. Abernethy
Attest
(Title) Notary Public
My commission expires 6/9/2004



Approved as to form and authorization: Ralph D. Carpino
Town Attorney

This instrument has been pre-audited in accord with the North Carolina Local Government Budget and Fiscal Control Act.

[Signature]
Finance Director



DOWNTOWN SERVICE DISTRICT

Chapel Hill, N.C.

March 3, 2003

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Legend:

-  Downtown Service District
-  Downtown Buildings

