

AGREEMENT BETWEEN
THE CITY OF WILMINGTON
AND
ALLIANCE FOR CAPE FEAR TREES, INCORPORATED

THIS AGREEMENT is made and entered into on the date executed by all parties by and between the CITY OF WILMINGTON (hereinafter called the “City”), a municipal Corporation located in New Hanover County, North Carolina and ALLIANCE FOR CAPE FEAR TREES, INCORPORATED, (hereinafter called the “Recipient”) a nonprofit corporation organized under the laws of the State of North Carolina, having its principal place of business in New Hanover County, North Carolina.

WHEREAS, pursuant to North Carolina General Statutes § 160A-20.1, the City has the authority to provide assistance to and accordingly, has agreed to make public funds available to Recipient, in order that they may render public services to residents in the City of Wilmington; and

WHEREAS the mission of the City’s Parks and Recreation Department includes preservation of the city’s tree canopy and the planting and maintenance of city trees; and

WHEREAS the Alliance is an independent nonprofit organization with federal 501(c)(3) tax-exempt status dedicated to planting, maintaining, protecting, and preserving trees in Wilmington, N.C. and surrounding areas; and

WHEREAS the City is allocating funding to the Alliance for tree planting and maintenance; and

WHEREAS the Department and the Alliance desire to establish general policies and guidelines which shall apply whenever the Alliance and the Department engage in mutual endeavors consistent with the mission, goals and objectives of each organization.

WHEREAS, the City wishes to engage the Recipient to assist the City in utilizing such funds on City owned or controlled property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed upon by the parties, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

1. ACTIVITIES / SCOPE OF WORK

The Recipient shall be responsible for providing services/products during the 2025-2026 and 2026-2027 fiscal year in a manner satisfactory to the City and consistent with any standards required as a condition of providing these funds.

A. Scope of Work

The Recipient agrees to adhere to the performance measures as identified in the Memorandum of Understanding as it relates to planting and maintenance of trees on City owned or controlled lands, executed between the parties and attached hereto as **Exhibit A** and incorporated herein by reference. It is the intent of the parties that this Agreement covers only the funding and use of said funding for the ongoing collaboration between the parties to accomplish the goal of planting and maintaining trees on lands owned or controlled by the City of Wilmington.

B. Use of Funds

The funds provided pursuant to this Agreement to the Recipient shall be used

solely and exclusively for planting trees on City owned and controlled land. This shall include all necessary maintenance of the City's tree inventory and relocation of mature trees. The expenditure of funds provided by the City pursuant to this Agreement shall not be used for any purpose other than planting and maintaining trees on lands owned or controlled by the City. Any funds used for any purpose other than planting and maintaining trees on lands owned or controlled by the City, shall be reimbursed to the City within ten (10) days and shall be placed into the City's tree improvement fund. The terms and conditions for the use of funds prescribed herein this paragraph shall supersede any and all other agreements, contracts, memorandums, letters or documents of any sort or description between the parties.

C. Spending Plan

Funding provided by the City shall be allocated in a spending plan that is provided by Recipient to the City each year on or before July 31. The plan shall include, but is not limited to, the allocation of funds for personnel, materials, supplies, equipment, marketing materials or any other relevant expenditure.

2. ACCOMPLISHMENT

In addition to the normal administrative services required as part of this Agreement, the Recipient agrees to provide the level of services as referenced in Exhibit A. Unless amended by mutual written agreement by the Recipient and the City, the City and the Recipient shall perform the described tasks and complete the tasks in conformance with the City's Land Development Code, all City codes and ordinances, and the North Carolina General Statutes.

3. PERFORMANCE MONITORING

The City shall monitor the performance of the Recipient against goals and performance standards required herein. Substandard performance as determined by the City shall constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the Recipient within thirty (30) days after being notified by the City, contract suspension procedures shall be initiated. In addition to the biannual reports hereinbelow, upon request by the City, the Recipient shall provide the requested information or report no less than thirty (30) days following the request. Failure to submit the requested information or report may result in a suspension or revocation funds and/or ineligibility in future funding opportunities.

4. TIME OF PERFORMANCE

Services of the Recipient shall begin on the 1st day of August 2025 and end on the 30th day of June 2027 . The terms of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Recipient remains in control of any duty or work being performed pursuant to the terms and conditions of this Agreement.

5. FUNDING

The total award to the Recipient shall be \$50,000 each year for the duration of this Agreement from the City's tree improvement fund in a lump sum at the beginning of each year. Any indirect costs charged shall be consistent with the conditions of this Agreement. The City will require a report regarding use of these funds pursuant to the terms herein this Agreement and the Recipient shall provide such supplementary information in the time prescribed herein and in the form and content prescribed by the City. It is expressly understood that any costs incurred prior to the beginning term of this contract will not be eligible for reimbursement. The funds provided to the Recipient by the City pursuant to the terms herein shall be maintained in a separate account and shall not be co-mingled with any other funds of any sort or description.

6. INDEPENDENT CONTRACTOR

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Recipient shall at all times remain an "Independent Contractor" with respect to the services to be performed under this Agreement. The City shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance, and Workers' Compensation Insurance, as the Recipient is an independent contractor.

7. RELEASE AND INDEMNITY

To the fullest extent permitted by law, Recipient shall release, indemnify, keep and save harmless the City, its agents, officials, and employees from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the City, or its persons, and to all property proximately caused by, incident to, resulting from, arising out of, or occurring in connection with, directly or indirectly, the performance or nonperformance by Recipient (or by any person acting for Recipient or for whom Recipient is or is alleged to be in any way responsible), whether such claim may be based in whole or in part upon contract, tort (including alleged or passive negligence or participation in the wrong), or upon any alleged breach of any duty or obligation on the part of Recipient, its agents, officials, and employees or otherwise. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the City, its agents, officials, and employees including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include without limitation the costs incurred by the City, its agents, officials, and employees, in connection with investigating any claim or defending any action and shall also include reasonable attorney's fees by reason of the assertion of any such claim against the City, its agents, officials or employees.

8. INSURANCE

- A. The Recipient shall take out and maintain during the life of this Agreement Commercial General Liability (CGL) Insurance with a total limit of not less than \$500,000 each occurrence for bodily or personal injury; not less than \$300,000 each occurrence for property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to the project/location or the general aggregate shall be twice the required limit. CGL insurance shall be written on Insurance Services Office (ISO) "occurrence" form CG 00 01 covering Commercial General Liability or its equivalent and shall cover the liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- B. The Recipient shall take out and maintain during the life of this Agreement Workers' Compensation and Employers' Liability Insurance covering all of the Recipient's employees involved in the amount required by law.
- C. The Recipient shall take out and maintain Unemployment Insurance during the life of this Agreement in the amount required by North Carolina law, if applicable. This requirement will be considered met if included in the Commercial General Liability policy.
- D. The Recipient shall furnish the City evidence of insurance required under this Agreement

in the form of a Certificate of Insurance attested by the insurance carrier or appointed agent, indicating the type, amount, class of operations covered, effective date, and expiration date of all policies. A copy thereof shall be inserted in each copy of this Agreement and shall become a part of this Agreement. Each insurance policy required by this Agreement shall be endorsed to state that the coverage shall not be canceled by either party except after fifteen (15) days prior written notice has been given to the City addressed to the Parks and Recreation Department, PO Box 1810, Wilmington, NC 28402-1810. The Recipient shall provide that the insurance contributing to satisfaction of insurance requirements in this Agreement shall not be canceled, terminated, or modified to reduce insurance coverage by the Recipient without prior written approval of the City.

9. AMENDMENT

The City or Recipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of both organizations, and approved by the City's Community Development Manager or assignee. Such amendments shall not invalidate this Agreement, nor relieve or release the City or Recipient from its obligations under this Agreement.

The City may, at its discretion, amend this Agreement to conform with Federal, State, or local governmental guidelines, policies, and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the Scope of Services, or schedule of activities to be undertaken as part of this Agreement, such modifications shall be incorporated only by written amendment signed by both City and Recipient.

10. SUSPENSION OR TERMINATION

Either party may terminate this Agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least thirty (30) days before the effective date of such termination. Partial terminations of the Scope of Service hereinabove may only be undertaken with the prior approval of the City. In the event of any termination for convenience, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Recipient under this Agreement shall, at the option of the City, become the property of the City, and the Recipient shall be entitled to receive just and equitable compensation for any satisfactory work completed on such projects, documents or materials prior to the termination.

The City may also suspend or terminate this Agreement, in whole or in part, if the Recipient materially fails to comply with any term of this Agreement, or with any of the guidelines, rules, regulations or provisions referred to herein; and the City may declare the Recipient ineligible for any further participation in the City's contracts, per the City Manager's approval, in addition to other remedies as provided by law. In the event there is probable cause to believe the Recipient is in noncompliance with any applicable rules or regulations, the City may withhold all or any portion of said contract funds until such time as the Recipient is found to be in compliance by the City or is otherwise adjudicated to be in compliance.

11. NON-WAIVER OF RIGHTS

It is agreed that the City's failure to insist upon the strict performance of any provision of this Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Agreement.

12. ENTIRE AGREEMENT

This Agreement, including all Exhibits hereto attached constitutes the entire contract between the parties, and this Agreement shall not be changed except in writing signed by all the parties.

13. BINDING EFFECT

The Agreement shall be binding upon the heirs, successors, assigns, agents, officials, employees, independent contractors, and subcontractors of the parties.

14. CONTINUING OBLIGATION

The parties will make and execute all further instruments and documents required to carry out the purposes and intent of the Agreement.

15. REFERENCE

Use of the masculine includes feminine and neuter, singular includes plural, and captions and headings are inserted for convenience of reference and do not define, describe, extend, or limit the scope of intent of the Agreement.

16. INTERPRETATION

All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and more stringent or higher standard shall prevail over the less stringent or lower standard.

17. DOCUMENTATION AND RECORD-KEEPING

A. Records to be Maintained

The Recipient shall maintain all records that are pertinent to the activities to be funded under this Agreement, such records shall include, but not be limited to:

- a. Records of the spending plan each year for the duration of this Agreement;
- b. Records of all expenditures pursuant to this Agreement;
- c. Records providing a full description of each activity undertaken;
- d. Records demonstrating that each activity undertaken meets the goal of planting or maintaining trees on City owned or controlled land;
- e. Records required to determine the eligibility of activities;
- f. Records required to document the eligibility of volunteers;
- g. Other records necessary to document compliance with terms and conditions of this Agreement

B. Retention

The Recipient shall retain all records pertinent to expenditures incurred under this contract for a period of five (5) years after the termination of all activities funded under this Agreement. Notwithstanding the above, if there is litigation, claim(s), audit(s), negotiation(s) or other actions that involve any of the records cited and that have started before the expiration of the five-year (5) period, then such records must be retained until completion of the actions and resolution of all issues.

C. Reports

The Recipient shall provide to the City biannual reports, due each year on January 31 and July 31, detailing the activities and expenditures pursuant to this Agreement, to include but not limited to:

- a. Detailed interim and final expenditures per the spending plan.
- b. Location, species and corresponding map of tree plantings.
- c. Number of trees planted.
- d. Number of volunteers and total hours contributed.
- e. Completed maintenance activities.

D. Conflict of Interest; Public Inspection of Records

Prior to the receipt of any funds under this Agreement, the Recipient shall report any potential conflict of interest transactions to the City. The Recipient also agrees to make its records and minutes relevant to this Agreement available for public inspection, subject to the North Carolina Public Records Act. Any documents received by the City from the Recipient in connection with this Agreement may be subject to the Public Records Act. The information that might be subject to public inspection includes, but is not limited to, financial statements, income information, credit reports, and statistical information of services provided. The Recipient shall not release or allow public inspection of any confidential information. Confidential information is defined to include (1) social security or employer taxpayer identification numbers; (2) driver license, state identification card, or passport numbers; (3) checking account numbers; (4) savings account numbers; (5) credit card numbers; (6) debit card numbers; (7) personal identification (PIN) code as defined in N.C.G.S. § 14-113.8(6); (8) digital signatures; (9) any other numbers or information that can be used to access a person's financial resources; (10) biometric data; (11) medical information; (12) fingerprints; (13) Biometrical Information; and (14) passwords.

E. Close-Outs

The Recipient obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include but are not limited to: making final payments, disposing of any assets (including the return of all unused materials, equipment or unspent funds), reports, and determining the custodianship of records.

F. Inspections

All Recipient records with respect to any matters covered by this Agreement shall be made available to the City at any time during normal business hours, as often as the City deems necessary, to inspect, audit, examine and make excerpts or transcripts of all relevant data. The City shall send written notice of any deficiencies to the Recipient's within thirty (30) days following audit/inspection. Any deficiencies noted by the City in any report or audit must be fully cleared by the Recipient within thirty (30) days after receipt by the Recipient. Failure of the Recipient to comply with the above requirements shall constitute a violation of this Agreement and may result in the withholding of future funding.

G. Accountability for Non-Profits

To provide greater accountability for nonprofit entities that receive public

funding, per the North Carolina General Statute (§ 55A-16-24), the Recipient shall provide its latest annual financial statements upon written demand from any member of the public. The format of the statements shall be substantially similar to those required under NCGS § 55A-16-20 but shall contain additional details about the amount of public funds received and how those funds were used. Additionally, the Recipient shall provide, upon written demand from any member of the public, a copy of its most recently completed and filed Internal Revenue Service Form 990 or Form 990-EZ, except of any information not required for public disclosure pursuant to 26 U.S.C. § 6104(d)(3), or a copy of the message confirming the corporation's submission of Internal Revenue Service Form 990-N. A corporation may comply with the provisions of this section by maintaining on its public website a financial report as described in this section and a copy of its most recent Internal Revenue Service Form 990, Form 990-EZ, or Form 990-N submission confirmation or by having such materials posted, as part of a database of similar documents of other tax-exempt organization, on a website established and maintained by another entity, provided that the entity does not charge a fee to access the information and provided that the corporation provides a link on its public website to the website maintained by the other entity.

18. COMPLIANCE WITH APPLICABLE LAW

The Recipient will comply with any and all applicable federal, state, and local standards, regulations, laws, statutes, and ordinances regarding toxic, hazardous and solid wastes and any pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. The Recipient will take all reasonably necessary, proper, or required safety, preventative, and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Quality, Health Departments, and any other federal, state, or local agency having jurisdiction, to ensure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder. The Recipient specifically acknowledges and agrees that Recipient, and any contractors it uses, has complied with and shall continue to comply with the provisions of the federal E-Verify program in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes.

19. CONTENT

If any section, subsection, paragraph, sentence, clause, phrase, or portion of this Agreement is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

20. NON-DISCRIMINATION

The Recipient will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in any activity which is the subject of this Agreement because of race, creed, color, sex, age, disability, religion, or national origin. To the extent applicable, the Recipient will comply with all applicable federal, state, and local laws, ordinances, rules, regulations, orders, instructions, designations, and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this Agreement and may result, at the City's option, in a termination or suspension of this Agreement in whole or in part.

21. CONSTRUCTION OF AGREEMENT

This Agreement shall be deemed to have been made in and shall be construed in accordance with and subject to the laws of the State of North Carolina. The captions and headings are inserted for convenience of reference and do not define, describe, extend, or limit the scope or intent of this Agreement.

22. PROCUREMENT

The Recipient shall comply with the current City policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the City upon termination of this Agreement.

23. CONDUCT

A. Assignability

The Recipient shall not assign or transfer any interest in this Agreement without the prior written consent of the City thereto. The Recipient shall not use this Agreement or its anticipated proceeds to borrow money.

B. Subcontracts

i. Approvals

The Recipient shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of the City prior to the execution of such Agreement.

ii. Monitoring

The Recipient shall monitor all contracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

iii. Content

The Recipient shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

24. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

25. NON-APPROPRIATION CLAUSE

In the event that appropriations of money to conduct and administer the presently scheduled funding are lawfully reduced or terminated, or it is deemed in the public interest and necessity for the health, safety, or welfare of the public to so reduce or terminate this scheduled program, the CITY, at its option, has the right to terminate this Agreement effective upon the end of the fiscal year. The CITY shall give the Recipient written notice of termination under the provisions of this paragraph immediately upon receipt of actual notice by the CITY of a reduction or termination of appropriations of money for the scheduled program, or any other necessity to reduce or terminate the program. Following the effective date of such termination the CITY shall

have no further obligation to make any payments; the CITY shall have no right to recover any payments heretofore paid which were due and payable prior to the effective date of such termination.

26. NOTICE

All communications relating to this Agreement shall be through the parties' representatives. The parties may change representatives by written notice as provided herein. All notices under this Agreement must be in writing and given by certified mail, return receipt requested addressed as follows:

If to CITY: Amy Beatty, Parks and Recreation Director
City of Wilmington
P.O. Box 1810
Wilmington, NC 28402-1810

If to RECIPIENT: Isabelle Shepherd
Executive Director
Alliance for Cape Fear Trees
7 Beauregard Drive, Suite 2 | Wilmington, NC 28412

27. COUNTERPARTS

This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

28. TIME

Time is of the essence in this Agreement and each and all of its provisions.

29. IMMUNITY NOT WAIVED

This Agreement is governmental in nature, for the benefit of the public, and is not intended to be for private profit or gain. No Party intends to waive its sovereign immunity by reason of this Agreement.

30. LIABILITY OF OFFICERS AND AGENTS

No officer, agent or employee of the CITY shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent, or employee from the performance of any official duty provided by law.

31. AUTHORITY TO ACT

Each of the persons executing this Agreement on behalf of Recipient does hereby covenant, warrant, and represent that the Recipient is a duly organized and validly existing legal entity authorized to transact business within the State of North Carolina, that the Recipient has full right and authority to enter into this Agreement, and that each and all persons signing on behalf of the Recipient were authorized to do so.

32. ORDER OF PRIORITY

This Agreement shall supersede and have priority over all other agreements, contracts, letters, memorandums, or any other document executed or exchanged between the parties, to include the Memorandum of Understanding executed between the parties on _____, unless expressly stated otherwise in an amendment to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above mentioned.

THIS SECTION INTENTIONALLY LEFT BLANK

By: _____
Becky Hawk, City Manager

Date: _____

WITNESS:

Daryle L. Parker, Purchasing Manager

APPROVED AS TO FORM:

Gina Essey, Assistant City Attorney

FINANCE OFFICER'S CERTIFICATION STATEMENT

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

This ____ day of _____, 2025.

Martha Wayne, Finance Director

Account: Org: Obj: Project:

Amount: **\$50,000.00**

Requisition: #

Federal Tax ID: #56-6000239

ALLIANCE FOR CAPE FEAR TREES, INCORPORATED

By: _____
Corporation President/Board Chair

ATTEST:

(Corporate Seal)
Secretary of Corporation

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, _____, a Notary Public, certify that
_____ personally came before me

this day and acknowledged that he (she) is _____
(Secretary, Assistant Secretary, Treasurer)

of _____, a corporation, and that by
(Name of Corporation)

authority duly given and as the act of the corporation, the foregoing instrument

was signed in its name by its _____, sealed
(President, Vice President, Assistant Vice President)

with its corporate seal and by himself (herself) as its _____.
(Secretary, Assistant Secretary, Treasurer)

Witness my hand and official seal, this the _____ day of _____, 2020.

Notary Public
My Commission expires:

(SEAL)

EXHIBIT A

Reference

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE ALLIANCE FOR CAPE FEAR TREES
AND
THE CITY OF WILMINGTON
PARKS AND RECREATION DEPARTMENT**