

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK) AGREEMENT

This Agreement made and entered into this 17th day of November, 2003, by and among York County, South Carolina, a body politic and political subdivision of the State of South Carolina, hereinafter referred to as "County"; York County Cultural and Heritage Commission, a commission created by an Ordinance adopted by the York County Council, hereinafter referred to as "Commission" and York County Culture and Heritage Foundation, a non-profit charitable foundation created, organized and existing under the laws of the State of South Carolina and qualified as a tax exempt entity under Section 501(c)(3) of the Internal Revenue Code, hereinafter referred to as "Foundation",

WITNESSETH:

The parties to this Agreement, in consideration of the mutual promises, covenants and conditions herein contained and imposed and the mutual benefits accruing to the parties, the receipt, adequacy and sufficiency of which is hereby acknowledged, intending to be legally bound, have and do agree:

1. Recitals.

1.1 York County is a body politic and political subdivision of the State of South Carolina organized and existing under the laws of the State of South Carolina, having such powers as are conferred upon counties under the provisions of Article VIII of the

South Carolina Constitution of 1895, as amended, the Home Rule Act, S.C. Code Ann. § 4-9-10, et seq., and the general law.

1.2 The York County Cultural and Heritage Commission is a commission, organized and existing under an ordinance enacted by the York County Council on October 20, 1997, which ordinance is codified as Section 32.35, et seq., of the York County, South Carolina Code of Ordinances, with such structure, organization, composition, governance, purposes, objectives, powers and duties as are prescribed in Section 32.35 et seq. of the York County, South Carolina Code of Ordinances and the general law.

1.3 The Culture and Heritage Foundation is incorporated under the laws of the State of South Carolina and recognized and qualified as a tax exempt entity under Section 501(c)(3) of the Internal Revenue Code. The Foundation has such organization, composition, purposes, objectives, powers and responsibilities as are prescribed by its charter, bylaws, and duly enacted policies and resolutions.

1.4 County, Commission and Foundation desire and intend by this Agreement to better define their respective roles, duties and responsibilities; promote better understanding of the role of County, Commission and Foundation; encourage cooperation among County, Commission and Foundation; define and pursue common goals of the parties; clarify the separate and distinct duties, responsibilities and liabilities of each party; and coordinate

planning, cooperation and implementation of common goals and objectives.

2. Obligations, duties and powers of Commission.

2.1 Commission covenants, agrees and represents to and with County and Foundation as follows:

(a) Commission shall operate, maintain and make available to residents of York County one or more museums, historical sites, planetariums, collections, repositories or other projects and provide programs as may be suitable for use by Commission in order to preserve the cultural, historical and natural heritage of the county and its citizens;

(b) Commission shall locate, select, conserve, restore, develop, appropriately mark and preserve sites, buildings, rooms, facilities, equipment, exhibits, displays, collections, artifacts, manuscripts, services, photographs, memorabilia, government records, books, buildings, grounds or other sites or items suitable for use by Commission in order to preserve the cultural, historical and natural heritage of the County and its citizens;

(c) Commission shall establish and implement policies and carry out programs and projects in order to implement the objectives and purposes stated in Section 32.40 of the Code of Ordinances of York County, South Carolina;

(d) Commission shall accept donations of or purchase art, artifacts, services, manuscripts, photographs, memorabilia,

government records, books, buildings and grounds, and other property and collections suitable for use by Commission in order to preserve the cultural, historical and natural heritage of York County citizens;

(e) Commission shall serve as an official repository of County government records on loan or entrusted to the care of Commission by the governing body of the County at a historical center maintained by Commission located in McCelvey Center, which historical center shall not be relocated by Commission to any other locations without the prior written approval of the York County Council;

(f) Commission shall apply for and seek the approval of the York County Council for the purchase, sale, lease, use or exchange of real property for the use of Commission or any related entity;

(g) Commission shall purchase, lease, acquire, receive, hold, own or use personal property, artifacts, collections, displays, exhibits, manuscripts, photographs, memorabilia, government records, books and other items suitable for use by the Commission in the name of the Commission;

(h) Commission shall continue to maintain an organization, composition and structure and elect officers consistent with the provisions of Section 32. 20 et seq., of the Code of Ordinances of York County, South Carolina, and Commission shall have such purposes, objectives, powers and duties as are prescribed by

Section 32.35 et seq. of the Code of Ordinances of York County, South Carolina, as amended from time to time by the York County Council.

2.2 Commission shall continue its efforts to establish and create a new museum on property donated to the York County Culture and Heritage Foundation, located on or near the Catawba River in York County, South Carolina, and if a new museum is constructed on such property, the Commission shall develop programs for such new museum, including programs which emphasize, preserve and perpetuate the Cultural, Historical and Natural Heritage of York County and its citizens. Commission shall continue its efforts to improve other sites that it operates as approved by York County.

2.3 Commission shall preserve the authenticity and unique character of Historic Brattonsville as a historical site and living history museum and continue, maintain, mark and preserve programs marking and preserving the authenticity and unique character of Historic Brattonsville.

2.4 Commission shall restore, preserve and protect the authenticity and unique character of Hightower Hall.

2.5 Commission may, from time to time, upon approval of its governing commission board, request Foundation to conduct fund-raising activities on behalf of Commission or on behalf of Foundation for the benefit of Commission.

2.6 Commission acknowledges that the primary source of funds for the construction of a proposed new museum must be donations, gifts and contributions from foundations, corporations, private donors and fund-raising activities. Commission acknowledges that appropriations by the York County Council for the construction and creation of a proposed new museum are limited and will be paid over a period of years. Commission further acknowledges that Foundation has entered into or intends to enter into an agreement with Ketchum, Inc. to organize and manage a fund-raising campaign. Commission and Foundation acknowledge that County is not a signatory party to the agreement between Foundation and Ketchum, Inc. and that County has no liability or responsibility for performing any obligation, promise, covenant or agreement of Foundation under such agreement.

2.7 Commission and Foundation acknowledge and recognize the importance of the fund-raising campaign and promotional materials to Commission's efforts to construct a new museum. Commission agrees to permit no more than three employees (or the equivalent of three full-time employees) of Commission to be transferred to the capital campaign and fund-raising activities of Foundation for a period of not more than three years. Commission agrees to continue the salaries and benefits of such transferred employees while assigned to the capital campaign and fund-raising activities of Foundation seeking donations and contributions for the construction

of a proposed new museum. Commission and Foundation agree to cooperate in coordinating all fundraising activities undertaken by Foundation for the benefit of Commission.

2.8 Foundation agrees to execute and deliver deeds conveying the footprint of the proposed new museum to York County by general warranty deed free of all liens, encumbrances, reservations, exceptions and restrictions on or before the earlier of: (a) the execution of a construction contract for the construction of a proposed new museum; or (b) twenty-four months from the date of this agreement. Commission will provide any necessary assistance in order for Foundation to convey the footprint of the new museum to York County.

2.9 Commission agrees that it shall maintain a board of directors and officers separate and distinct from the board of directors and officers of Foundation and shall maintain bylaws and rules of procedure not inconsistent with Section 32.35 et seq. of the Code of Ordinances of York County, South Carolina; other applicable provisions of the Code of Ordinances of York County, South Carolina; the South Carolina Freedom of Information Act; the South Carolina Ethics, Government Accountability and Campaign Reform Act; other York County ordinances and policies; other South Carolina statutes and laws; and all applicable federal statutes, laws and regulations.

2.10 In consideration of the services to be provided by Foundation and the benefits accruing to Commission, Commission has, with approval of County Council, advanced to Foundation from current Commission funds a sum not exceeding One Hundred Ninety Thousand (\$190,000.00) Dollars as start-up funds in order for Foundation to commence a fund-raising campaign and enter into an agreement with Ketchum, Inc. to organize and manage such fund-raising campaign. All funds advanced by Commission to Foundation shall be repaid to Commission by June 30, 2004 from contributions, donations, grants and other funds donated or raised by Foundation. County and the York County Council hereby ratify and approve funds advanced by Commission to Foundation before the effective date of this agreement.

2.11 Commission and Foundation shall each maintain and keep separate records, ledgers and books relating to fund-raising and other activities conducted by Foundation for Commission: Foundation shall keep and maintain separate records and accounts for its capital building and endowment funds. Foundation shall provide Commission and County with status reports and records of receipts and disbursements quarterly. Commission and Foundation each shall annually file a detailed report of its operations and expenditures for the previous fiscal year with the York County Council within ninety days after the close of the fiscal year of each entity. County shall have the right to review and audit all

books, records and financial ledgers of Commission and Foundation at any time.

2.12 Commission shall not make or enter into any contract or agreement involving or requiring an expenditure of funds in excess of funds appropriated by the York County Council or made available to the Commission from other sources such as grants, contributions, admission charges, or sales from museum shop(s) or other Commission revenues.

3. Obligation, duties and power of Foundation.

3.1 Foundation covenants, agrees and represents to and with Commission and County as follows:

(a) Foundation is duly incorporated as a charitable or non-profit corporation under the laws of the State of South Carolina and is in good standing as a corporation in the State of South Carolina, having filed all documents required to be filed with the South Carolina Secretary of State or the South Carolina Department of Revenue.

(b) Foundation is recognized and qualified as a tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code.

(c) Foundation has such organization, composition, purposes, objectives, powers and responsibilities as are prescribed by its charter or certificate of incorporation and bylaws and policies and resolutions duly and properly adopted by Foundation's Board of Directors.

3.2 As provided in Article VI of its bylaws, Foundation acknowledges it is organized and at all times shall operate exclusively for the benefit of museums, historic sites, nature conservancies and cultural facilities operated by or supported by the Cultural and Heritage Commission of York County by raising, investing, and managing endowment, capital, building, acquisition and operating funds for, and disbursing such funds to, the Commission.

3.3 Foundation agrees to conduct, provide and administer such fund-raising activities as Commission may request by appropriate action of Commission's governing board from time to time. Foundation agrees that all funds and income, after deducting all necessary expenses incident to its operation and administration, shall be utilized "exclusively for the benefit of museums, historic sites, nature conservancies, and cultural facilities operated by and/or supported by the Cultural and Heritage Commission of York County." Commission shall expend such funds solely and exclusively for Commission capital projects; the administration of Commission programs; the acquisition of collections, artifacts and exhibits; Commission educational programs; maintenance of Commission property; acquisition and maintenance of collections and exhibits; and usual and customary Commission disbursements, costs and expenses, including salaries of personnel in conformity with the provisions of Section 32.35 et seq., Code of Ordinances of York

County, South Carolina, and other applicable county ordinances, state statutes and laws and federal statutes and regulations.

3.4 Foundation agrees to donate, transfer and convey the footprint of a proposed new museum on Foundation property located near the Catawba River in York County, South Carolina, by general warranty deed, free of all liens, encumbrances, reservations, exceptions or restrictions not later than the earlier of twenty-four months from the date of this agreement or the execution of a construction contract for the construction of a proposed new museum. Foundation further agrees to execute and deliver non-exclusive perpetual easements for access, ingress and egress to the footprint of the proposed new museum for all necessary and appropriate utility services required to provide water, sewer, electric, telephone, natural gas and other necessary and appropriate utility services to the proposed new museum site.

3.5

(a) Foundation acknowledges that a new museum to be operated by Commission cannot be constructed, created and maintained without a well-organized and successful fund-raising campaign. Foundation acknowledges that County appropriations to a proposed museum are and will be limited and will not be sufficient to construct the proposed new museum.

(b) Foundation agrees to organize, administer, conduct and manage a fund-raising campaign and to retain professional fund-

raisers to assist in the organization, management, planning, administration and implementation of a fund-raising campaign for the benefit of the Commission in order to generate funds sufficient to design and construct a proposed new museum on the Catawba River in York County, South Carolina.

(c) As provided in Article IV and Section 1 of Article VI of its bylaws, Foundation acknowledges and agrees that the proceeds of the fund-raising campaign for the proposed new museum, after deducting all necessary expenses incident to the operation and administration of the campaign, including the fees, costs and expenses of a professional fund-raising company, shall be donated, granted, transferred and conveyed by Foundation to Commission as necessary to meet the planning, design, development and construction and maintenance costs for the new museum.

(d) Except to the extent provided in this agreement, no funds of the Commission and the Foundation shall be commingled.

The parties to this agreement recognized that Foundation may engage in other fund-raising activities to support other museum programs and to create an endowment fund to provide for future needs of the Commission.

3.6

(a) Foundation acknowledges and agrees that Commission will assign not more than three Commission employees to Foundation for a period not to exceed three years to assist in fund-raising

campaigns and activities for the benefit of Commission in the design, planning, and construction of a proposed new museum. Commission employees assigned to the Foundation may also assist in other fund-raising activities for the benefit of Commission.

(b) The salaries and benefits of Commission employees assigned or loaned to the Foundation shall be paid by Commission, and Foundation agrees to reimburse Commission for the salaries and benefits of such assigned or loaned employees from donations, contributions, grants and other funds received by Foundation as a result of fund-raising campaigns and activities. The director of Commission may not receive or be paid a salary or other compensation by Foundation without the express written consent of the York County Council.

3.7 Foundation acknowledges and agrees that it will be acting as an independent contractor and not as an agent, employee, partner, joint venturer or representative of Commission or County in conducting fund-raising activities, performing obligations under this agreement, entering into contracts with professional fundraisers or performing or omitting to perform any act of Foundation. No provision of this Agreement shall be interpreted, construed or applied to render County or Commission, their respective officers, officials, agents or employees liable or responsible for any act, conduct, omission or activity of Foundation, its board of directors, agents, employees, contractors

or their respective heirs, successors, personal representatives and assigns.

3.8 Foundation agrees to indemnify and hold harmless County and Commission, their respective successors, officials, agents, employees and assigns of and from any and all claims, demands, losses, injuries, liabilities, actions and suits of every nature, kind and description arising out of or caused by or relating to acts, omissions, activities or conduct of Foundation, its board of directors, officers, agents, employees and assigns whether arising in the performance of obligations under this Agreement or caused by or related to other acts, conduct or omissions of Foundation, including, but not limited to, attorney's fees, court costs and other costs, expenses, losses or damages.

Section 4. Role of County.

4.1 County is a body politic and political subdivision of the State of South Carolina, having all powers conferred upon counties upon the provisions of Article VIII of the South Carolina Constitution of 1895, as amended, the Home Rule Act, S.C. Code Ann. § 4-9-10 et seq., and the general law.

4.2 Commission was created by York County Ordinance 6797, adopted by the York County Council on October 20, 1997, with the composition, structure, organization, powers, duties and functions established by Section 32.35, et seq., Code of Ordinances of York County, South Carolina.

4.3 County, acting through the York County Council, annually appropriates in its budget, sums for Commission capital projects, administration of Commission programs and Commission activities. Such funds are supplemented by donations, fundraisers, grants, gifts, contributions, admission fees and funds received from other sources.

4.4 County acknowledges Commission's efforts to design, plan and construct a new museum on the Catawba River in York County, South Carolina, on property owned by Foundation. County further acknowledges and recognizes that the primary source of funds for the construction of a proposed new museum must be donations, gifts and contributions from foundations, corporations, private donors and fund-raising activities. County acknowledges and represents that appropriations by the York County Council to Commission are limited and will be paid over a period of years. County acknowledges that appropriations by the York County Council will not be sufficient to fund the design, planning, construction and creation of a proposed new museum or fund all capital projects and programs of Commission. County recognizes the importance of fund-raising campaigns and efforts undertaken by Commission to construct a new museum and fund capital projects and Commission programs.

4.5 County commends Commission and Foundation for their efforts to organize, administer, conduct and manage a fund-raising campaign and retain professional fundraisers to assist in the

organization, management, planning, administration and implementation of one or more fund-raising campaigns for the benefit of Commission in order to generate funds sufficient to pay the costs to design, plan for, construct and maintain a proposed new museum on the Catawba River in York County, South Carolina.

4.6 County shall appropriate such funds as the York County Council, in its sole discretion, may determine from time to time for Commission capital projects, administration of Commission programs, maintenance of Commission grounds, buildings and collections and Commission staff and employees.

4.7 County agrees to accept title to the footprint of the proposed new museum upon receipt of satisfactory assurances that adequate funds have been received to complete construction of a new museum, and upon the execution and delivery of non-exclusive perpetual easements required to provide water, sewer, electric, telephone, natural gas and other utility services to the proposed museum site.

Section 5. Termination.

This Agreement may be terminated by any party upon thirty (30) days' written notice to other parties to this Agreement. Upon termination, each party shall perform its obligations, duties and responsibilities to other parties under this Agreement through the date of termination. All funds due any party under this Agreement shall be promptly remitted to such party without delay. Upon

termination, no party to this Agreement shall be required to perform the obligations, duties and responsibilities of any other party to this Agreement.

Section 6. Default.

Any material breach or failure to perform any material obligation of this Agreement by Commission or Foundation shall constitute a default. Upon a default as defined herein, the non-defaulting party shall notify the defaulting party that it is has thirty (30) days after receipt of notice of default within which to cure the default to the satisfaction of the non-defaulting party. The non-defaulting party shall have the affirmative duty to use its best efforts to minimize any losses or damages as a result of any default.

Section 7. Remedies.

In the event of a default under this Agreement, the parties shall seek to mediate and resolve a default or dispute of or under this Agreement within thirty (30) days after notice of such default or dispute. If the parties are unable to resolve such default or dispute through mediation, any non-defaulting party may seek declaratory relief, specific performance of the obligation, a money judgment against the defaulting party, a temporary or permanent mandatory or prohibitory injunction requiring the performance of some other action by the defaulting party or a temporary or permanent restraining order against the defaulting party. The non-

defaulting party may, in addition, as a part of the same proceeding or in a separate proceeding, recovery reasonable attorney's fees and costs incurred in such proceeding. The remedies provided in this section of the Agreement shall be cumulative and non-exclusive to any other right, remedy or action of the non-defaulting party against the defaulting party under this Agreement.

Section 8. Enforceability.

All of the terms, provisions and conditions of this Agreement shall be binding upon and enforceable by the parties, their respective elected representatives, legal representatives, agents and employees and their respective successors.

Section 9. Amendment.

This Agreement may be amended or modified only by a written document which has been signed by the parties hereto or by their duly authorized officials or representatives.

Section 10. Non-Waiver.

No waiver of a breach of any of the covenants, promises or provisions contained in this Agreement shall be construed as a waiver of any succeeding breach of the same covenant or promise or any other covenant or promise thereof.

Section 11. Governing law; choice of forum.

This Agreement shall be governed by the laws of the State of South Carolina, and by execution of this Agreement, the parties

consent to the exclusive jurisdiction of the courts of York County, South Carolina, for resolution of any dispute arising hereunder.

Section 12. Severability.

In the event that any part or provision of this Agreement shall be determined to be invalid and/or unenforceable, the remaining parts and provisions which can be separated from the invalid and/or unenforceable provision or provisions shall continue in full force and effect.

Section 13. Captions.

The captions and headings of the paragraphs of this Agreement are for convenience only and are not to be used to interpret or define any or all of the provisions of this Agreement.

Section 14. Notices.

All notices pertaining to this Agreement shall be in writing and addressed as set forth below, and shall be deemed properly delivered, given or secured when (i) personally delivered or (ii) sent by overnight courier, or (iii) four days has elapsed following the date mailed by certified or registered mail, postage prepaid.

NOTICES TO FOUNDATION:

Robert L. Thompson, Jr., Chairman
York County Culture and Heritage Foundation
955 Blakeley Walk
Rock Hill, SC 29732

NOTICES TO COMMISSION:

York County Cultural and Heritage Commission
c/o Van Shields

Museum of York County
4621 Mount Gallant Road
Rock Hill, SC 29732

NOTICES TO COUNTY:

Chairman, York County Council
P. O. Box 66
York, South Carolina 29745

York County Manager
P. O. Box 66
York, South Carolina 29745

Section 15. Further documents.

Each party will, whenever and as often as it shall be requested by another party, promptly and within a reasonable time execute, acknowledge and deliver or cause to be executed, acknowledged and delivered such further instruments or documents as may be necessary to carry out the intent and purpose of this Agreement.

Section 16. Assignment.

Except as otherwise provided by applicable law, this Agreement may not be assigned by any party without the written consent of the other parties.

Section 17. Successors.

This Agreement shall be binding upon and inure to the benefit of any successors to the parties.

Section 18. No third-party beneficiaries.

No rights in any third party are created by this Agreement, and no person not a party to this Agreement may rely on any aspect

of this Agreement, notwithstanding any representations, written or oral, to the contrary, made by any person or entity.

Section 19. Multiple counterparts.

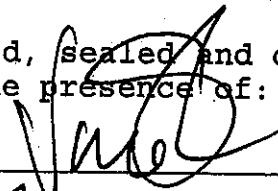
This Agreement is executed in multiple counterparts, each of which shall be deemed an original, but all of which collectively shall constitute one and the same agreement.

Section 20. Prior agreements; entire agreement.

All obligations of the parties, each to the other, relating to the subject matter of this agreement, contained in any other document or agreement or based on any other communication prior to the execution of this Agreement are superseded by this Agreement. This Agreement constitutes the entire agreement among the parties relating to the subject matter hereof.

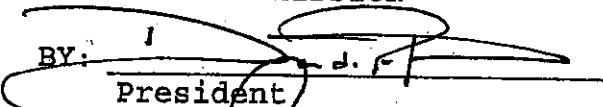
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives the day and year first above written.

Signed, sealed and delivered
in the presence of:




Ann A. Spencer

YORK COUNTY CULTURAL AND
HERITAGE COMMISSION

BY: 

President

Attest: 

Secretary

Signed, sealed and delivered
in the presence of:

[Signature]
Ann A. Spencer

Signed, sealed and delivered
in the presence of:

[Signature]
Diane P. Simpson

YORK COUNTY CULTURE AND HERITAGE
FOUNDATION

BY: Robert L. Thompson
President

Attest: W.C. Kimball

YORK COUNTY

BY: [Signature]
Chairman, York County
Council

Attest: [Signature]

Alfred W. Greene
County Manager