



City of Fayetteville

433 Hay Street
Fayetteville, NC
28301-5537
(910) 433-1FAY (1329)

Meeting Agenda - Final City Council Regular Meeting

Monday, June 13, 2022

7:00 PM

Council Chamber

1.0 CALL TO ORDER

2.0 INVOCATION

3.0 PLEDGE OF ALLEGIANCE

4.0 ANNOUNCEMENTS AND RECOGNITIONS

5.0 CITY MANAGER REPORT

6.0 APPROVAL OF AGENDA

7.0 CONSENT AGENDA

7.01 [22-2786](#) Approval of Meeting Minutes:
April 25, 2022 - Regular
April 28, 2022 - Special
May 2, 2022 - Work Session
May 9, 2022 - Discussion of Agenda Items
May 9, 2022 - Regular
May 18, 2022 - Agenda Briefing
May 23, 2022 - Discussion of Agenda Items
May 23, 2022 - Regular
May 26, 2022 - Budget Work Session
June 2, 2022 - Budget Work Session

Attachments:

[042522 Reg](#)
[042822 Special - GO Bond](#)
[050222 WKS](#)
[050922 Discussion of Agenda Items](#)
[050922 Reg](#)
[051822 Agenda Briefing](#)
[052322 Discussion of Agenda Items](#)
[052322 Reg](#)
[052622 Budget WKS](#)
[060222 Budget WKS](#)

- 7.02** [22-2750](#) Approval of Proposed Leases for Avis Rent A Car System, LLC, Budget Rent A Car System, LLC, Enterprise Leasing Company Southeast, LLC, Enterprise Leasing Company, Southeast d/b/a National/Alamo, ILM Transportation, Inc. and The Hertz Corporation, and Sierra Nevada Corporation, Their Successors or Assigns at the Fayetteville Regional Airport
- Attachments:** [AvisLease2022 \(Final- Clean\)](#)
[BudgetRentACarSystemLease2022\(Clean\)](#)
[EnterpriseNationalAlamoLease2022FinalClean](#)
[EnterpriseSoutheastLease2022FinalClean](#)
[HertzLease2022Final Clean](#)
[2022-04-19 - Fayetteville Building - New Lease \(SNC\)](#)
[AirportCarRentalResolution](#)
[SierraNevada](#)
[ILMTransportationLease2022FinalClean](#)
- 7.03** [22-2746](#) Acceptance of Aviation Career Education (ACE) Academy Grant Offer
- Attachments:** [ACE Academy Grant Agreement](#)
- 7.04** [22-2577](#) Approval for City Manager to Execute a Construction Contract with Mohammad Construction, LLC for Site Work for Mazarick Park Tennis Center
- Attachments:** [Tennis Center Site Work Bid Tabulation](#)
- 7.05** [22-2715](#) Adoption of Special Revenue Fund Project Ordinance 2022-14 for a North Carolina Department of Commerce Rural Economic Development Grant for ChenMed, LLC
- Attachments:** [SRO 2022-14 Rural Economic Development Grant ChenMEd, LLC](#)
[Dedicated North Carolina Holding LLC - Grant Agreement](#)
[Dedicated North Carolina Holding LLC - Reuse Application](#)
- 7.06** [22-2733](#) Authorize the City Manager to Execute a Subrecipient Agreement with the North Carolina Office of Recovery and Resiliency (NCORR), Adopt Capital Project Ordinance Amendment 2022-64 to Appropriate \$1 Million of Funding From NCORR, and Authorize the City Manager to Execute a Contract with Muter Construction for Construction of the Homeless Day Resource Center
- Attachments:** [City of Fayetteville NCORR CDBG-DR SRA Revised 4-14-2022](#)
[NCORR CDBG-DR Fayetteville Revised Project Specific Award Letter 04-1](#)
[CPOA 2022-64 Homeless Day Resource Center](#)
[BID TAB Fayetteville DRC Certified 2022-05-26](#)

- 7.07 [22-2738](#) Adoption of Capital Project Ordinance Amendment 2022-63 to Appropriate \$150,000 from PCH Development Co. for the Purchase of an Elevator for the Hay Street Parking Deck
- Attachments:** [CPOA 2022-63 Hay Street Parking Deck](#)
- 7.08 [22-2754](#) Adoption of Special Revenue Fund Project Ordinance 2022-12 to Appropriate FTA Grant NC-2022-025 FTA for Section 5307 - American Rescue Plan Act Funding
- Attachments:** [SRO 2022-12 FTA Grant 2022-25 Hoke and Harnett Counties](#)
[NC-2022-025-00 \(Executed\)](#)
- 7.09 [22-2755](#) Adoption of Special Revenue Fund Project Ordinance 2022-13 to Appropriate Grant NC-2022-026 for FTA Section 5310 Fayetteville Urban Area Elderly and Disabled Program
- Attachments:** [SRO 2022-13 FTA Grant 2022-026 Enhanced Mobility for Seniors](#)
[NC-2022-026-00 \(Executed\)](#)
- 7.010 [22-2771](#) Approval of the FY2022 Audit Contract and Annual Communications from the Independent Auditors Regarding the FY2022 Audit
- Attachments:** [Igc-205-standard-audit-contract-form-2022](#)
[City of Fayetteville - 06 30 2022 Arrangement Letter - as issued \(04 21 2022 v2\)](#)
[City of Fayetteville - 06 30 2022 SAS Letter FY22 \(GAS\) - as issued](#)
[City of Fayetteville - 06 30 2022 SAS Letter FY22 \(Single Audit\) - as issued](#)
- 7.011 [22-2760](#) Addition of Certain Streets to the City of Fayetteville System
- Attachments:** [Streets Acceptance 2022 JUNE](#)
- 7.012 [22-2764](#) Approval of Municipal Certificates with NCDOT for speed limit reduction to 45 mph on Cliffdale Road between Raeford Road and Reilly Road
- Attachments:** [Cliffdale Road Enact 45 mph](#)
[Cliffdale Road Repeal 50 mph](#)
[Cliffdale 50 mph to 45 mph MAP](#)
- 7.013 [22-2765](#) Approval of Municipal Certificates with NCDOT for speed limit reduction to 45 mph on Pamalee Drive/Country Club Drive between Bragg Boulevard and Ramsey Street
- Attachments:** [CC Pamalee lower from 50 to 45 MAP](#)
[Country Club Enact 45 mph](#)
[Country Club Repeal 50 mph](#)

- 7.014** [22-2783](#) Approval of Municipal Certificates with NCDOT for speed limit reduction to 45 mph on Stoney Point Road between Dundle Road and the Hoke County line

Attachments: [Enact Ordinance Stoney Point Road](#)
 [Repeal Ordinance Stoney Point Road](#)
 [Stoney Pt Rd lower speed 55 to 45 MAP](#)

- 7.015** [22-2770](#) Bid Recommendation - Re-Roofing Cross Creek Transfer Thickening Bldgs., & Water Resources and Electric Vehicle Sheds

Attachments: [Bid Recommendation - Re-Roofing Building](#)

- 7.016** [22-2751](#) Resolution Authorizing a Quitclaim Deed of the City's Title to the County in Order to Expedite the Sale of Land located at 521 Martin Road

Attachments: [521Martin](#)
 [521Martin](#)

- 7.017** [22-2785](#) Bid Recommendation - U-5528FA Rosehill Road Sidewalk (Country Club Drive to Shaw Mills Road)

Attachments: [Bid Tab - Rosehill Road Sidewalk](#)

- 7.018** [22-2794](#) Adoption of Capital Project Ordinance Amendment 2022-65 for Parks and Recreation, 2nd Tranche, General Obligation Bond Issuance Cost

Attachments: [CPOA 2022-65 Parks and Rec Bond Issuance](#)

8.0 PUBLIC FORUM

9.0 PUBLIC HEARINGS

For certain issues, the Fayetteville City Council may sit as a quasi-judicial body that has powers resembling those of a court of law or judge. The Council will hold hearings, investigate facts, weigh evidence and draw conclusions which serve as a basis for its decisions. All persons wishing to appear before the Council should be prepared to give sworn testimony on relevant facts.

- 9.01** [22-2796](#) Public Hearing & Consideration of Economic Development Incentives for Project Dogwood

Attachments: [06.13.22 Public Hearing draft](#)
 [Chapter 158](#)

- 9.02** [22-2773](#) Public Hearing on the Proposed Fiscal Year 2022-2023 Annual Operating Budget

Attachments: [FY23 Budget Public Hearing](#)

10.0 OTHER ITEMS OF BUSINESS

- 10.01** [22-2774](#) Adoption of the Fiscal Year 2022-2023 Budget Ordinance and Fee Schedule, the Fiscal Year 2022-2023 Strategic Plan, the Fiscal Years 2023-2027 Capital and Technology Improvement Plans, Capital Project Ordinances 2023-1 through 2023-7 and Capital Project Ordinance Amendments 2023-1 through 2023-10

11.0 ADMINISTRATIVE REPORTS

Administrative Reports on a Regular Meeting agenda are for City Council review/information only. Should it be the consensus of the collective City Council, Administrative Reports will be moved forward to be placed on the next Work Session agenda for further review and discussion.

- 11.01** [22-2724](#) Revenue and Expenditure Reports for the Annual Funds for the Nine-Month Period Ended March 31, 2022 with Comparative Information for the Nine-Month Period ended March 31, 2022, and Revenue and Expenditure Reports for the Multi-Year Funds from Inception and for the Nine-Month Period ended March 31, 2022

Attachments: [Revenue and Expenditure Reports for the Annual and Multi-Year Funds for the !](#)

11.0 ADJOURNMENT

POLICY REGARDING PUBLIC HEARING AGENDA ITEMS

Citizens wishing to provide testimony in response to a notice of public hearing or to participate in the public forum can obtain instructions to submit a statement by emailing cityclerk@ci.fay.nc.us or by calling 910-433-1312 for assistance. Individuals desiring to testify on a quasi-judicial public hearing must contact the City Clerk by 5:00 p.m. the day of the meeting to sign up to testify; instructions will be provided on how to appear before Council to provide testimony.

CLOSING REMARKS

POLICY REGARDING CITY COUNCIL MEETING PROCEDURES **SPEAKING ON A PUBLIC AND NON-PUBLIC HEARING ITEM**

Individuals who have not made a written request to speak on a nonpublic hearing item may submit written materials to the City Council on the subject matter by providing thirteen (13) copies of the written materials to the Office of the City Manager before 5:00 p.m. on the day of the Council meeting at which the item is scheduled to be discussed.

COUNCIL MEETING WILL BE AIRED

June 13, 2022 - 7:00 p.m.

Cable Channel 7 and streamed "LIVE" at FayTV.net

Notice Under the Americans with Disabilities Act (ADA):

The City of Fayetteville will not discriminate against qualified individuals with disabilities on the basis of disability in the City's services, programs, or activities. The City will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City's programs, services, and activities. The City will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all City programs, services, and activities. Any person who requires an auxiliary aid or service for effective communications, or a modification of policies or procedures to participate in any City program, service, or activity, should contact the office of Human Relations at yamilenazar@fayettevillenc.gov, 910-433-1696, or the Office of the City Clerk at cityclerk@ci.fay.nc.us, 910-433-1989, as soon as possible but no later than 72 hours before the scheduled event.



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-2786

Agenda Date: 6/13/2022

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 7.01

TO: Mayor and Members of City Council

THRU: Jay Toland, Assistant City Manager

FROM: Pamela J. Megill, MMC, City Clerk

DATE: June 13, 2022

RE:

Approval of Meeting Minutes:

April 25, 2022 - Regular

April 28, 2022 - Special

May 2, 2022 - Work Session

May 9, 2022 - Discussion of Agenda Items

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COUNCIL DISTRICT(S):

ALL

Relationship To Strategic Plan:

Develop and maintain strong community connections.

Executive Summary:

The Fayetteville City Council conducted meetings on the referenced date during which they considered items of business as presented in the draft.

Background:

The draft minutes are from the meeting held on the above mentioned date.

Issues/Analysis:

N/A

Budget Impact:

N/A

Options:

1. Approve draft minutes
2. Amend draft minutes and approve draft minutes as amended
3. Do not approve the draft minutes and provide direction to staff.

Recommended Action:

Approve the draft minutes.

Attachments:

Draft minutes

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**FAYETTEVILLE CITY COUNCIL
REGULAR MEETING MINUTES
COUNCIL CHAMBER, CITY HALL, 433 HAY STREET
APRIL 25, 2022
7:00 P.M.**

Present: Council Members Katherine K. Jensen (District 1); Antonio Jones (District 3); D. J. Haire (District 4); Johnny Dawkins (District 5); Chris Davis (District 6); Larry O. Wright, Sr. (District 7); Courtney Banks-McLaughlin (District 8) (via telephone); Yvonne Kinston (District 9)

Absent: Mayor Mitch Colvin; Council Member Shakeyla Ingram (District 2)

Others Present: Douglas Hewett, City Manager
Karen McDonald, City Attorney
Telly Whitfield, Assistant City Manager
Adam Lindsay, Assistant City Manager
Jay Toland, Assistant City Manager
Rebecca Jackson, Chief of Staff
Gina Hawkins, Police Chief
Jodi Phelps, Corporate Communications Director
Lisa Harper, Assistant City Attorney
Jennifer Baptiste, Planning and Zoning Manager
Craig Harmon, Senior Planner
Pamela Megill, City Clerk
Members of the Press

1.0 CALL TO ORDER

Mayor Pro Tem Jensen called the meeting to order.

2.0 INVOCATION

The invocation was offered by Council Member Davis.

3.0 PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was led by Mayor Pro Tem and City Council.

4.0 ANNOUNCEMENTS AND RECOGNITIONS

Mr. LaVar Wright, Committee Promotions Chair, E.E. Smith High School Alumni Sports Hall of Fame, presented information on the Alumni Reunion taking place on May 29, 2022, at the Ramada Hotel at 6:00 p.m.

5.0 CITY MANAGER REPORT

Mr. Hewett congratulated Dr. Toney Coleman, Airport Director, for receiving the "2022 Willard G. Plentl Aviation Professional of the Year Award".

6.0 APPROVAL OF AGENDA

MOTION: Council Member Wright moved to approve the agenda.

SECOND: Council Member Dawkins

VOTE: UNANIMOUS (8-0)

7.0 CONSENT AGENDA

MOTION: Council Member Davis moved to approve the consent agenda.

SECOND: Council Member Wright

VOTE: UNANIMOUS (8-0)

7.01 Approval of Meeting Minutes:

April 11, 2022 - Discussion of Agenda Items

April 11, 2022 - Regular

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- 7.02 P22-06. Conditional rezoning from Single-Family 6 (SF-6) to Mixed-Residential 5 Conditional (MR-5/CZ), to build a 159 lot residential development, located at 8506 Olted Road (REID #s 9487339006000, 9487337848000, and 9487343260000), containing 42.35 acres ± and being the property of K & G Developers, LLC.
- 7.03 P22-07. Rezoning from Office and Institutional (OI) and Single-Family 10 (SF-10) to Community Commercial (CC), located at 4938 Lake Valley Drive (REID #s 0418383783000, 0418050934000, and 0408956428000), containing 7.88 acres ± and being the property of Arthur C. Jenkins, III.
- 7.04 Adoption of Capital Project Ordinance 2022-21 to Appropriate State Direct Grant Funds for Various Pedestrian Safety Improvements and the Planning and Design of the Blanton Road Extension

Capital Project Ordinance 2022-21 to appropriate \$4,319,350.00 of State Direct Grant funding from the North Carolina Office of State Budget and Management for various pedestrian safety improvements and for the planning and design of the Blanton Road extension.

- 7.05 Adoption of a Resolution to Accept American Rescue Plan Funding from the North Carolina Department of Environmental Quality, Division of Water Infrastructure and Capital Project Ordinance 2022-20 to Appropriate the State Direct Grant Funds.

RESOLUTION OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA TO ACCEPT AMERICAN RESCUE PLAN (ARP) FUNDING FROM THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY. RESOLUTION NO. R2022-013

- 7.06 Resolution Authorizing the Acquisition and Acceptance of a Permanent Easement for Construction and Maintenance of a Concrete Dumpster Pad and Enclosure

A RESOLUTION AUTHORIZING THE ACQUISITION AND ACCEPTANCE OF A PERMANENT EASEMENT TO THE CITY OF FAYETTEVILLE FOR CONSTRUCTION AND MAINTENANCE OF A CONCRETE DUMPSTER PAD AND ENCLOSURE. RESOLUTION NO. R2022-014

- 7.07 Uninhabitable Structures Demolition Recommendations
318 Pinecrest Drive - District 5
407 Durant Drive - District 5
947 Louise Circle - District 7

AN ORDINANCE OF THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA REQUIRING THE CITY BUILDING INSPECTOR TO CORRECT CONDITIONS WITH RESPECT TO OR TO DEMOLISH AND REMOVE A STRUCTURE PURSUANT TO THE DWELLINGS AND BUILDINGS MINIMUM STANDARDS CODE OF THE CITY COUNCIL. 318 Pinecrest Drive, PIN 0427-44-7807. ORDINANCE NO. NS2022-011

AN ORDINANCE OF THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA REQUIRING THE CITY BUILDING INSPECTOR TO CORRECT CONDITIONS WITH RESPECT TO OR TO DEMOLISH AND REMOVE A STRUCTURE PURSUANT TO THE DWELLINGS AND BUILDINGS MINIMUM STANDARDS CODE OF THE CITY COUNCIL. 407 Durant Drive, PIN 0406-88-9676. ORDINANCE NO. NS2022-012

AN ORDINANCE OF THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA REQUIRING THE CITY BUILDING INSPECTOR TO CORRECT CONDITIONS WITH RESPECT TO OR TO DEMOLISH AND REMOVE A STRUCTURE PURSUANT TO THE DWELLINGS AND BUILDINGS MINIMUM STANDARDS CODE OF THE CITY COUNCIL. 947 Louise Circle, PIN 0407-52-8934. ORDINANCE NO. NS2022-013

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7.08 Rescind Demolition Ordinance 633 Robeson Street - District 2

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE
RESCINDING DEMOLITION ORDINANCE NO. NS2022-002. RESOLUTION NO.
R2022-015

7.09 Adopt Resolution Accepting High Bid for Property Located at 1431 Marlborough Road

A RESOLUTION ACCEPTING HIGH BID FOR PROPERTY LOCATED AT 1431
MARLBOROUGH ROAD. RESOLUTION NO. R2022-016

7.010 Bid Recommendation - Annual Materials Contract for Construction Operations to McDonald Materials, Inc., Fayetteville, NC, the lowest responsive, responsible bidder, in the total amount of \$435,738.00

Patriot Hauling, LLC, Hope Mills, NC\$401,508.00
McDonald Materials, Inc., Fayetteville, NC\$435,738.00
Filler Er Up Truckn, LLC, Tar Heel, NC\$463,469.00
Fayetteville Landscaping & Lawn Care, Inc., NC\$667,166.75
L & E Management Services, LLC, Pembroke, NC\$815,175.10

7.011 Bid Recommendation - Wood Pole Contract Wood Pole Contract to Koppers Utility and Industrial Products, Eutawville, SC, the lowest responsive, responsible bidder, in the total amount of \$484,140.00

Koppers Utility, Eutawville, SC\$484,140.00
Stella-Jones, Whitmire, SC\$516,835.75

8.0 EVIDENTIARY HEARINGS

8.01 SUP22-03. Special Use Permit for the expansion of a veterinary clinic to allow dog kennels in a Limited Commercial (LC) zoning district, to be located at 2921 Ramsey Street (REID # 0439604923000), totaling 0.84 acres ± and being the property of Dale Brown, JBDB Investments LLC.

Mr. Craig Harmon, Planner II, presented this item and stated the existing building on the site is a Veterinary Clinic capable of boarding approximately 100 dogs and cats overnight. As an accessory use, the clinic also offers grooming and boarding. The owner is building a separate new veterinary clinic on an adjacent property, 2965 Ramsey Street. The new building will be set up for medical services only with twelve (12) kennels for dogs that need overnight medical attention. The owner wishes to demolish the current clinic located at 2921 Ramsey Street and replace it with this proposed pet resort that will offer grooming, doggy day care and overnight boarding as an indoor kennel. The building is proposed to accommodate 70 dogs overnight. In the City's Unified Development Ordinance (UDO), Kennel, Indoor is defined as "a facility where dogs, cats, or other domestic animals over six months of age are kept, raised, sold, boarded, bred, shown, treated, or groomed." The facility shall be entirely indoors.

The Special Use Permit must meet the following findings of facts:

- (1) The special use complies with all applicable standards in Section 30-4.C, Use-Specific Standards;
- (2) The special use is compatible with the character of surrounding lands and the uses permitted in the zoning districts(s) of surrounding lands;
- (3) The special use avoids significant adverse impact on surrounding lands regarding service delivery, parking, loading, odors, noise, glare, and vibration;

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- (4) The special use is configured to minimize adverse effects, including visual impacts of the proposed use on adjacent lands;
- (5) The special use avoids significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources;
- (6) The special use maintains safe ingress and egress onto the site and safe road conditions around the site;
- (7) The special use allows for the protection of property values and the ability of neighboring lands to develop the uses permitted in the zoning district; and
- (8) The Special use complies with all other relevant City, State, and Federal laws and regulations.

This is the advertised public hearing set forth for this date and time. The public hearing was opened.

Ms. Julieanne Carolson, 109 Gillespie Street, Fayetteville, NC, appeared in favor and stated she is representing the applicant/property owner. Ms. Carolson provided testimony to support the Special Use Permit does meet all eight findings of fact.

There being no one further to speak, the public hearing was closed.

Discussion ensued.

MOTION: Council Member Jones moved to approve the Special Use Permit (SUP) to allow the construction of a kennel, indoor, subject to the conditions identified and the submitted site plans and conforming to the current Unified Development Ordinance standards as depicted on the site plan, as presented by staff, based on the standards of the City's development code and the evidence presented during this hearing. And that the application is consistent with applicable plans because (1) the development is located in a Limited Commercial (LC) zoning district, (2) the City Council grants a reduction in the required setback as shown on the submitted site plan and this use complies with all of the other findings listed, and (3) the proposed permit is in the public interest because the proposed SUP does fit with the character of the area. If approved, this Special Use Permit shall become effective with the approval of the Order of Findings by the City Council. The SUP shall expire one year from its effective date if a building permit is not issued within that time.

SECOND: Council Member Kinston

VOTE: UNANIMOUS (8-0)

9.0 ADMINISTRATIVE REPORTS

9.01 Airport - Update on Peer-City Comparisons of Key Performance Indicators

MOTION: Council Member Davis moved to direct staff to move this item to the May 2, 2022, City Council work session.

SECOND: Council Member Wright

VOTE: UNANIMOUS (8-0)

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10.0 ADJOURNMENT

There being no further business, the meeting adjourned at 7:33 p.m.

Respectfully submitted,

PAMELA J. MEGILL
City Clerk
042022

MITCH COLVIN
Mayor

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**FAYETTEVILLE CITY COUNCIL
BUDGET WORK SESSION MINUTES
COUNCIL CHAMBER
JUNE 2, 2021
5:00 P.M.**

Present: Mayor Mitch Colvin

Council Members Shakeyla Ingram (District 2); Antonio Jones (District 3); (D. J. Haire (District 4); Johnny Dawkins (District 5); Chris Davis (District 6) (via zoom); Larry O. Wright, Sr. (District 7); Courtney Banks-McLaughlin (District 8); Yvonne Kinston (District 9)

Absent: Council Member Katherine K. Jensen (District 1)

Others Present: Douglas Hewett, City Manager
Karen McDonald, City Attorney
Adam Lindsay, Assistant City Manager
Jay Toland, Assistant City Manager
Gina Hawkins, Police Chief
Mike Hill, Fire Chief
Kelly Olivera, Budget and Evaluation Director
Rebecca Jackson, Chief of Staff
Gerald Newton, Development Services Director
Michael Gibson, Parks, Recreation and Maintenance Director
Sheila Thomas-Ambat, Public Services Director
Dwayne Campbell, Chief Information Officer
Rob Stone, Construction Management Director
Jodi Phelps, Corporate Communications Director
Randy Hume, Transit Director
Chris Cauley, Economic and Community Development Director
Jerry Clipp, Human Resources Development Director
Pamela Megill, City Clerk
Members of the Press

1.0 CALL TO ORDER

Mayor Colvin called the meeting to order at 5:00 p.m.

2.0 INVOCATION

The invocation was offered by Council Member Haire.

3.0 PLEDGE OF ALLEGIANCE

Mayor Colvin led the Pledge of Allegiance.

4.0 APPROVAL OF AGENDA

MOTION: Council Member Wright moved to approve the agenda with the exception of Item 5.1, table to August work session.

SECOND: Council Member Haire

VOTE: UNANIMOUS (9-0)

5.0 ITEMS OF BUSINESS

5.1 Dogwood Festival Funding Request

This item was tabled to the August work session agenda.

5.2 Parking Lot

Ms. Kelly Olivera, Budget & Evaluation Director, stated all parking lot items will be listed on the board, and at the end of the budget meetings, Council will vote on each item to decide if that item(s) will be funded. To increase all seasonal and part-time

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employees to a minimum \$15.00 per hour wage, there will be an increase of approximately \$484,000.00.

5.3 Fund Balance

Ms. Kelly Olivera, Budget & Evaluation Director, stated an appropriation of fund balance may be necessary to balance projected revenues and expenditures. The level of appropriation is determined by the difference between the projected expenditure appropriations and estimated revenues for the upcoming fiscal year.

The fiscal year 2023 fund balance appropriation for the General Fund totals \$3,295,404.00 and includes appropriations of \$1,916,007.00 for the regular capital funding plan for expenditures in excess of current year dedicated revenues, \$1,063,105.00 for the Parks and Recreation Bond Fund Plan, \$191,292.00 for use of accumulated County Parks and Recreation District resources, and \$125,000.00 for anticipated final expenditures for the Mirror Lake Dam Project.

5.4 CIP/TIP Review

Ms. Kelly Olivera, Budget & Evaluation Director, stated the City's Capital Improvement Plan (CIP) incorporates projects which meet the following criteria:

- Specific facility or infrastructure improvement projects with a total cost of \$50,000.00 or greater.
- Significant maintenance projects, meeting the \$50,000.00 threshold.
- The City's Technology Improvement Plan (TIP) incorporates projects which meet the following criteria:
 - Replacement, upgrade or new technology purchases with a combined implementation cost of \$25,000.00 or greater.
 - Expansion, renovation, or replacement of existing systems with a combined implementation cost of \$10,000.00 or greater.
 - Technology projects which cross multiple fiscal years.
 - Technology projects with enterprise-wide impacts.

Discussion ensued.

6.0 Other Items of Business

Mr. Douglas Hewett, City Manager, requested all budget related questions be e-mailed to himself and Ms. Olivera to be posted on the Budget Chronicles.

The next budget work session is scheduled for June 9, 2022, at 5:00 p.m. in the Council Chamber.

7.0 ADJOURNMENT

There being no further business, the meeting adjourned at 6:20 p.m.

Respectfully submitted,

PAMELA J. MEGILL
City Clerk

MITCH COLVIN
Mayor

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**FAYETTEVILLE CITY COUNCIL
SPECIAL MEETING MINUTES
COUNCIL CHAMBER, CITY HALL
APRIL 28, 2022
5:00 P.M.**

Present: Mayor Mitch Colvin

Council Members Kathy Jensen (District 1); Antonio Jones (District 3) (via zoom); D. J. Haire (District 4); Johnny Dawkins (District 5); Chris Davis (District 6); Larry O. Wright, Sr. (District 7); Courtney Banks-McLaughlin (District 8); Yvonne Kinston (District 9)

Absent: Council Member Shakeyla Ingram (District 2)

Others Present: Douglas Hewett, City Manager
Karen McDonald, City Attorney
Telly Whitfield, Assistant City Manager
Adam Lindsay, Assistant City Manager
Jay Toland, Assistant City Manager
Gina Hawkins, Police Chief
Mike Hill, Fire Chief
Sheila Thomas-Ambat, Public Services Director
Chris Cauley, Economic and Community Development
Jodi Phelps, Corporate Communications Director
Lee Jernigan, Assistant Public Services Director
Byron Reeves, Stormwater Manager
Dwayne Campbell, Information Technology Director
Pamela Megill, City Clerk
Members of the Press

1.0 CALL TO ORDER

Mayor Colvin called the meeting to order at 5:00 p.m.

2.0 INVOCATION

The invocation was offered by Council Member Haire.

3.0 APPROVAL OF AGENDA

MOTION: Council Member Dawkins moved to approve the agenda.
SECOND: Council Member Wright
VOTE: UNANIMOUS (9-0)

4.0 OTHER ITEMS OF BUSINESS

4.01 Discussion on the Issuance of General Obligation Bonds

Mr. Douglas Hewett, City Manager, introduced this item.

Mr. Jay Toland, Assistant City Manager, presented this item with the aid of a PowerPoint presentation. Mr. Toland provided an overview of the information needed for the proposed Referendum for November 8, 2022. We will need to know the number and type of questions, and the amount not to exceed. The first step is to adopt a Preliminary Resolution and Authorization of Filing with the Local Government Commission.

Discussion ensued.

Mr. Douglas Hewett, City Manager, stated Council will need to provide direction to staff if they wish to proceed.

MOTION: Council Member Dawkins moved to continue to address and act on offering a General Obligation Bond Referendum to the voters.
SECOND: Council Member Wright

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VOTE: UNANIMOUS (9-0)

Mr. Toland provided an itemized list of projects to be considered. Mr. Toland also provided a referendum calendar of events.

Discussion ensued.

Consensus of Council was to direct staff to focus on the following three (3) items: Housing, Public Safety, and Infrastructure for the General Obligation Bond Referendum ballot.

Discussion ensued.

5.0 ADJOURNMENT

There being no further business, the meeting adjourned at 6:05 p.m.

Respectfully submitted,

PAMELEA J. MEGILL
City Clerk

MITCH COLVIN
Mayor

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**FAYETTEVILLE CITY COUNCIL
WORK SESSION MINUTES
COUNCIL CHAMBER, CITY HALL
MAY 2, 2022
5:00 P.M.**

Present: Mayor Mitch Colvin

Council Members Kathy Jensen (District 1); Shakeyla Ingram (District 2); Antonio Jones (District 3); D. J. Haire (District 4); Johnny Dawkins (District 5); Chris Davis (District 6); Larry O. Wright, Sr. (District 7) (arrived at 5:14 p.m.); Courtney Banks-McLaughlin (District 8) (arrived at 5:09 p.m.); Yvonne Kinston (District 9)

Others Present: Douglas Hewett, City Manager
Karen McDonald, City Attorney
Telly Whitfield, Assistant City Manager
Adam Lindsay, Assistant City Manager
Jay Toland, Assistant City Manager
Rebecca Jackson, Chief of Staff
Toney Coleman, Airport Director
Gina Hawkins, Police Chief
Mike Hill, Fire Chief
Gerald Newton, Development Services Director
Rob Stone, Construction Management Director
Lisa Harper, Senior Assistant City Attorney
Chris Cauley, Economic and Community Development
Jodi Phelps, Corporate Communications Director
Pamela Megill, City Clerk
Members of the Press

1.0 CALL TO ORDER

Mayor Colvin called the meeting to order at 5:00 p.m.

2.0 INVOCATION

The invocation was offered by Council Member Jones.

3.0 APPROVAL OF AGENDA

MOTION: Council Member Haire moved to approve the agenda with the removal of Item 4.06, Special Use Permit Process, and replacing with Item 4.06, G.O. Bond Discussion.

SECOND: Council Member Ingram

VOTE: UNANIMOUS (8-0)

4.0 OTHER ITEMS OF BUSINESS

4.01 FSU Innovation and Entrepreneurship Hub Funding Proposal

Mr. Darrell T. Allison, FSU Chancellor, introduced this item and stated the purpose of this proposal is to seek the assistance of the City of Fayetteville and the assistance of Cumberland County to fully implement the recently announced Innovation and Entrepreneurship Hub at Fayetteville State University (FSU). FSU is committed to supporting the economic transformation and growth of Cumberland County and the surrounding region. As an HBCU, FSU is particularly interested in assisting businesses owned by under-represented demographic segments to improve their access to opportunity through improved awareness of opportunities and improved capacity to meet market needs. Toward this end, in October 2021 FSU announced that affiliated entities of FSU had acquired 100 percent ownership of the Bronco Square Commercial Development (previously 50 percent owned by private developer Gary Ciccone). Further, FSU announced that the 6,500 square foot stand-alone anchor Bookstore in this development will be repurposed to serve as the Fayetteville State University Innovation and Entrepreneurship Hub. This new Hub will provide innovative workspaces, meeting

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facilities, business counseling expertise, workshops, and technology to support the needs of regional small businesses and associated organizations.

To date, FSU has already invested approximately \$600,000.00 of the \$1.7 million total investment required to bring this responsive, inspiring, and impactful Hub space to life. To help enable expedited completion, FSU seeks \$500,000.00 collectively from the City of Fayetteville and from Cumberland County to go toward additional renovation expense requirements. This investment from the City and County will go far toward accelerating the achievements of FSU's vision to be an even greater catalyst for regional economic development.

Discussion ensued.

Consensus of Council was to direct staff to allocate \$250,000.00 and meet with the FSU staff to discuss the Memorandum of Understanding (MOU).

4.02 African American Museum Proposal

Mr. Robert Van Geons, FCEDC President/CEO, introduced this item and stated this item is a concept in development. Mr. Van Geons introduced Mr. Bill Kersell, ProjectCoordinator.

Mr. Kersell presented this item with the aid of a PowerPoint presentation and stated we have a unique opportunity to tell Black American History with Fayetteville at the center. The process is to engage the community, create a plan, collect compelling stories, and produce conceptual designs.

Council Member Ingram asked how much are you asking for the first phase. Mr. Kersell responded that Cumberland County had set aside \$450,000.00, and they are asking the same from the City.

Council Member Kinston asked what is the total project cost. Mr. Kersell did not have an answer to the question. Mr. Van Geons stated it will be an expensive project; it will not be easy; it is a transformational project.

Discussion ensued.

Consensus of Council was to allocate \$450,000.00 for this project. Council Member Kinston was in opposition to the consensus vote.

4.03 Fayetteville Regional Airport Peer City Comparisons

Dr. Toney Coleman, Airport Director, presented this item with the aid of a PowerPoint presentation and stated Airport Management has collected additional data for Peer-city comparisons. Four industry standard key performance indicators (KPIs) are provided: total enplanements, parking revenue, rental car revenue, and customer facility charge revenues.

The previous work session item focused on similar military communities. This brief includes North Carolina comparisons in Charlotte, Asheville, Greensboro, Raleigh, and Wilmington airports. Additional Non-NC airports are also compared.

Dr. Coleman provided an overview of enplanements, parking revenue, rental car revenue, and customer facility charge.

Dr. Coleman stated the City of Fayetteville's Regional Airport continues to make sound financial decisions regarding operational and capital improvement needs based on key performance indicators and the availability of alternative funding methods. Ridership may lag behind other municipalities of similar or greater size, but FAY's key

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performance indicators show it remains comparable to others when normalized. Continued City growth will inevitably lead to increased ridership and a stronger airport financial portfolio to market to prospective airlines and continue infrastructure improvements.

Discussion ensued.

Consensus of Council was to receive the report and direct staff to begin entertaining partnering for growth (cargo handling) and pursue land acquisition in the vicinity.

4.04 2022-2023 Housing and Urban Development Annual Action Plan for Community Development Block Grant, HOME Investment Partnerships, and Housing Opportunities for People with HIV/AIDS Programs

Mr. Chris Cauley, Economic and Community Development Director, presented this item and stated Council is asked to review and consider the proposed Housing and Urban Development (HUD) Annual Action Plan (AAP) to implement the Community Development Block Grant (CDBG), the Home Investment Partnership (HOME), and the Housing Opportunities for People with HIV/Aids (HOPWA) Programs. The AAP provides a concise summary of the actions, activities, and the specific federal resources that will be used each year to address the priority needs and specific goals identified by the Five-Year Consolidated Plan. The AAP is developed by staff and recommended by the Fayetteville Redevelopment Commission (FRC). The City was also notified of additional HOME funds in the amount of \$3,397,564.00 through the American Rescue Plan. Council will be asked to adopt this AAP and amend the current year AAP at the May 23, 2022, regular Council meeting.

The current Five-Year Consolidated Plan was adopted by City Council for the program year period from 2020 to 2024. The Consolidated Plan is designed to help states and local jurisdictions to assess their affordable housing and community development needs and market conditions, and to make data-driven, place-based investment decisions. The consolidated planning process serves as the framework for a community-wide dialogue to identify housing and community development priorities that align and focus funding from CDBG and HOME. This Plan requires amendment to include new annual resources for HOPWA.

The Annual Action Plan describes projects and activities that implement the Consolidated Plan. It sets forth a description of activities for the use of funds that are expected to become available in the upcoming fiscal year. The 2022-2023 AAP is based on priorities, goals, and objectives of the 2020-2024 Consolidated Plan. The plan contains goals, objectives, and implementation strategies for each of the activities to be funded or implemented.

To provide an opportunity for community feedback, four in-person meetings were held throughout the month of March. A press release, social media campaign, and YouTube were used to promote awareness. The City translated the public notices into Spanish and published them in a local Spanish newspaper, continuing a trend towards greater inclusivity. A draft copy of the plan was made available online and in various locations throughout the City for review and comments for 30 days from March 1, 2022, through March 31, 2022.

Additionally, the amendment to the current year AAP will include consultation with various nonprofit agencies on May 5, 2022, and receive public comment from May 8, 2022, through May 22, 2022.

The City's CDBG allocation for next year is \$1,622,224.00 compared to \$1,622,224.00 for the current year. The HOME allocation for next year is \$937,431.00 compared to \$937,431.00 for the current year. The HOPWA allocation for next year is \$723,590.00 compared to \$0 for the current year. This results in an increase of \$723,590.00 for all programs. Program Income is anticipated in the amount of \$1,284,024.00 and the City is required to match HOME in the amount of

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\$234,358.00. HOME funds are also available in the amount of \$3,397,564.00 through the American Rescue Plan. Due to significant delays at HUD, the numbers presented are based on the prior year allocation. Staff estimates that final amounts will be available prior to appropriation in June.

Discussion ensued.

Consensus of Council was to accept the report.

4.05 Homeless Encampment Task Force Update

Mr. Brook Redding, Special Projects Manager; Ms. Lisa Harper, Senior Assistant City Attorney; and Mr. Chris Cauley, Economic and Community Development Director, presented this item. Mr. Redding stated the City of Fayetteville has experienced increased encampments in and around the City. These encampments often jeopardize the public health and safety of the community. In 2021, the City Manager established a homeless encampment task force comprised of staff from various departments that was charged with conducting research and presenting recommended solutions to address encampments while protecting individual rights and the public's health and safety. The Task Force recommendations include public and private property camping prohibitions, City policy, intergovernmental agreements, and a program designed to reduce the impacts of encampments.

In April 2021, the City Manager created a Homeless Encampment Task Force (TF). The TF comprised members from several City departments and included personnel ranging from analysts to department and City staff leaders. The TF was charged with conducting research and analysis to create policy and protocol recommendations for addressing homeless encampments in the City. For over ten months, the TF conducted research, held small group discussions, and established sub-working groups to focus on feasible solutions. The TF met with several city government programs from across the United States to glean policy and protocol options.

The TF established a six-phased approach to generate feasible and suitable solutions when addressing homeless encampments. The first two phases have been completed, with phase three currently underway. Pending Council's actions, phase four will begin once the milestones of phase three are complete. The phases are as follows:

- Phase One - Conduct Research and Generate Findings
- Phase Two - Identify best practices, Conduct small group research of methods, and create recommendations based on best practices
- Phase Three - Present Findings for Ordinance and Ordinance Adoptions
- Phase Four - Pilot program
- Phase Five - After Action Review of Pilot, Implement Changes, Report to Council
- Phase Six - Implement the final program protocol, Adopt the policy

The TF spent several months investigating and conducting research on the various services within the City of Fayetteville, North Carolina, other cities within the United States, and other homeless service stakeholders. The TF also looked at historical engagements and processes conducted by City staff. The TF was able to look holistically at the issue of homelessness but remained scoped to address encampments.

Discussion ensued.

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Consensus of Council was to receive the report, and direct staff to move this item forward and to report back no sooner than August 2022.

Mayor Colvin recessed the meeting at 8:10 p.m., and reconvened the meeting at 8:20 p.m.

4.06 Discussion on the Proposed G.O. Bond

Mr. Jay Toland, Assistant City Manager, presented this item and stated Council has identified that there is a need in the following areas: Public Safety, Infrastructure, and Affordable Housing. To address these needs in a timely manner and to gain voter feedback, the Council has decided that a referendum is appropriate.

There is no budget impact at this time. If voters authorize the Council to issue up to \$97,000,000.00 in General Obligation Bonds in November, then the Council would have seven years to use that debt capacity. The Council is not required to issue the authorized bonds or to use all of the authorized debt capacity. Any debt issued would have to be repaid.

Discussion ensued regarding the dollar amounts for Public Safety, Infrastructure, and Housing.

Consensus of Council was to direct staff to initiate the process of placing a question before the voters during the November 8, 2022, election regarding whether the City should be authorized to issue up to \$97,000,000.00 in General Obligation Bonds ("GO Bonds") to support projects in public safety (\$60M), infrastructure (\$25M), and housing (\$12M).

4.07 City Council Policy No. 120.11 - Meeting Procedures

Mr. Douglas Hewett, City Manager, presented this item and stated during the November 8, 2021, City Council discussion of agenda items meeting, Council Member Ingram initiated discussion on City Council in-person meetings. Ms. Karen McDonald, City Attorney, confirmed the only Council policy the City has pertaining to attendance is in reference to closed session meetings only.

Mayor Colvin asked for a show of hands for all those in favor of having Council members attend meetings in person. Council Members Colvin, Jensen, Haire, Dawkins, Davis and Wright were all in favor. Council Members Ingram, Waddell, Banks-McLaughlin and Kinston were all in opposition. Mayor Colvin stated he will bring this item back to Council for an official vote.

Staff requested sample policies from other North Carolina municipalities pertaining to Council attendance at Council meetings and from those samples have written a draft policy for Council review and discussion.

This item was presented to Council at the February 28, 2022, meeting, as an Administrative Report. Council took no action on this item at that meeting. At the April 11, 2022, regular meeting, Council unanimously approved bringing this item back for further discussion at the May 2, 2022, work session.

Mr. Hewett stated the proposed policy reads "It shall be the policy of the City Council that when a Regular, Special or Work Session is scheduled, the participants; Mayor, Council Members, Staff and invited guests are to attend the meeting in person".

The purpose of this policy is to establish guidelines which will allow City Council members who are unable to physically attend a Council meeting to participate remotely via electronic, simultaneous methods. This policy is not intended to allow or encourage physical absence from a Council meeting simply as a means of convenience.

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Remote participation should only be utilized in the case of a bona fide emergency or other such circumstance as described below. For the purpose of this policy, a Council member is defined as a City Councilman/woman or the Mayor and hereafter referred to as member. For the purpose of this policy, the presiding officer is defined as the Mayor or the person serving as presiding officer in the Mayor's absence.

Discussion ensued.

Consensus of Council was to direct staff to move this item forward, as presented, for formal action and vote.

4.08 Home Occupations Standards - Proposed City Code 30-4.D.3.

Council Member Dawkins stated due to the late hour and length of this meeting, he moves to table this item to the August work session agenda.

Consensus of Council was to table this item to the August work session agenda.

4.09 Feather Signs Report - Code of Ordinances 30-5.L.4.4.01

Dr. Gerald Newton, Development Services Director, presented this item and stated the City Council requested information about the City's regulations related to the use of feather signs. The report (included in the agenda packet) shares prior City Council policies, two Supreme Court cases, current practices, potential policy options for adjustments, and a caution to balance interests. The report notes any adjustments represent policy actions and the balance of meeting the two above goals' objectives to create a favorable development climate and a beautiful community.

Discussion ensued.

Consensus of Council was to direct staff to move this item forward to the Planning Commission.

5.0 ADJOURNMENT

There being no further business, the meeting adjourned at 9:22 p.m.

Respectfully submitted,

PAMELEA J. MEGILL
City Clerk

MITCH COLVIN
Mayor

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**FAYETTEVILLE CITY COUNCIL
DISCUSSION OF AGENDA ITEMS MEETING MINUTES
ST. AVOLD CONFERENCE ROOM, CITY HALL, 433 HAY STREET
MAY 9, 2022
6:00 P.M.**

Present: Mayor Mitch Colvin

Council Members Katherine K. Jensen (District 1); Shakeyla Ingram (District 2) (arrived at 6:26 p.m.); Antonio Jones (District 3); D. J. Haire (District 4); Johnny Dawkins (District 5); Larry O. Wright, Sr. (District 7); Courtney Banks-McLaughlin (District 8); Yvonne Kinston (District 9)

Absent: Council Member Chris Davis (District 6)

Others Present: Telly Whitfield, Assistant City Manager
Karen McDonald, City Attorney
Adam Lindsay, Assistant City Manager
Jay Toland, Assistant City Manager
Gina Hawkins, Police Chief
Chris Cauley, Economic and Community Development
Director
Randy Hume, Transit Director
Jodi Phelps, Corporate Communications Director
Pamela Megill, City Clerk
Members of the Press

Mayor Colvin called the meeting to order at 6:00 p.m.

Mayor Colvin asked Council to review the consent and other items of business items for this evening.

Mayor Colvin stated he would like to table Item 7.013, Consideration of Financial Assistance to the Fayetteville Dogwood Festival due to COVID-19 Impacts, to the June work session.

Council Member Haire stated he wants to table Item 10.01, Small Local Business Enterprise (SLBE) Program Update, to a work session.

Council Member Kinston asked for a review of Item 7.04, Adopt a Resolution of Support for an Application for Federal Transit Administration (FTA) Bus and Bus Facilities and Low or No Emissions Competitive Grant Program. Mr. Randy Hume, Transit Director, provided an overview of the item.

Mr. Chris Cauley and Police Chief Gina Hawkins provided a briefing on Item 9.01, Empowering Community Safety Micro-Grant Program. Discussion ensued.

ADJOURNMENT

There being no further business, the meeting adjourned at 6:46 p.m.

Respectfully submitted,

PAMELA J. MEGILL
City Clerk
050922

MITCH COLVIN
Mayor

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**FAYETTEVILLE CITY COUNCIL
REGULAR MEETING MINUTES
COUNCIL CHAMBER, CITY HALL
MAY 9, 2022
7:00 P.M.**

Present: Mayor Mitch Colvin

Council Members Katherine K. Jensen (District 1); Shakeyla Ingram (District 2); Antonio Jones (District 3); D. J. Haire (District 4); Johnny Dawkins (District 5); Chris Davis (District 6) (arrived at 7:42 p.m.); Larry O. Wright, Sr. (District 7); Courtney Banks-McLaughlin (District 8); Yvonne Kinston (District 9)

Others Present: Telly Whitfield, Assistant City Manager
Karen McDonald, City Attorney
Adam Lindsay, Assistant City Manager
Jay Toland, Assistant City Manager
Gina Hawkins, Police Chief
Mike Hill, Fire Chief
Chris Cauley, Economic and Community Development Director
Randy Hume, Transit Director
Jodi Phelps, Corporate Communications Director
Rob Stone, Construction Management Director
Pamela Megill, City Clerk
Members of the Press

1.0 CALL TO ORDER

Mayor Colvin called the meeting to order.

2.0 INVOCATION

The invocation was offered by Pastor McLaughlin.

3.0 PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was led by Mayor and City Council.

4.0 ANNOUNCEMENTS AND RECOGNITIONS

Ms. Sharon Moyer, Community Engagement Administrator, provided an update on the Family Connects program for the Partnership for Children.

Council Member Wright thanked Chief Gina Hawkins and the Police Department for their recent assistance with a homeless person situation.

Mayor Colvin presented a proclamation to Ms. Rosemary McLean, President, and Mr. Robert Johnson, Secretary, of the Cape Fear Regional Tennis Association proclaiming the month of May 2022 as National Tennis Month.

Mayor Colvin presented a proclamation to Ms. Amanda Christianson proclaiming May 15, 2022, in honor of Friendship Community Gardens. Ms. Christianson announced a Dedication for the Community Gardens would be taking place on May 14, 2022.

Mayor Colvin and Council Member Banks-McLaughlin presented Certificates of Excellence to the New Life Christian Academy and Prep 2022 Basketball Team for winning the Division 4 NACA National Championships, in recognition of their hard work and achievement during the 2021-2022 Basketball Season.

5.0 CITY MANAGER REPORT

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Dr. Telly Whitfield, Assistant City Manager, announced the weekend storm debris collection will be collected over the next few days. Currently, there are no reports of dangerous or impassible areas. Several areas were cut and cleared Friday night. Once the debris is picked up, the street sweepers will come through and sweep the streets. There will be no fee associated for storm related debris to allow residents to clear their yards.

6.0 APPROVAL OF AGENDA

MOTION: Council Member Wright moved to approve the agenda.
SECOND: Council Member Haire
VOTE: UNANIMOUS (9-0)

7.0 CONSENT AGENDA

MOTION: Council Member Dawkins moved to approve the consent agenda with the exception of Item 7.013, pulled for presentation and separate vote.
SECOND: Council Member Ingram
VOTE: UNANIMOUS (9-0)

7.01 Approval of Meeting Minutes:
April 20, 2022 - Agenda Briefing
April 25, 2022 - Discussion of Agenda Items

7.02 City Council Policy No. 120.11 - Meeting Procedures

The purpose of this policy is to establish guidelines which will allow City Council members who are unable to physically attend a Council meeting to participate remotely via electronic, simultaneous methods. This policy is not intended to allow or encourage physical absence from a Council meeting simply as a means of convenience. Remote participation should only be utilized in the case of a bona fide emergency or other such circumstance as described below. For the purpose of this policy, a Council member is defined as a City Councilman/woman or the Mayor and hereafter referred to as member. For the purpose of this policy, the presiding officer is defined as the Mayor or the person serving as presiding officer in the Mayor's absence.

7.03 Adoption of Special Revenue Fund Project Ordinance Amendment 2022-06 and Authorization to Accept Additional Grant Funding for the Conservation Restoration Plan for Cross Creek Cemetery #1

The City has received notification of a \$10,000.00 grant award from Cumberland Community Foundation. Funding from this grant will be used to purchase trees for the Cross Creek Cemetery Project. Staff is seeking authorization to accept the grant award and Council adoption of Special Revenue Fund Project Ordinance Amendment 2022-06 to appropriate the funding.

7.04 Adopt a Resolution of Support for an Application for Federal Transit Administration (FTA) Bus and Bus Facilities and Low or Now Emissions Competitive Grant Program

RESOLUTION SUPPORTING THE CITY OF FAYETTEVILLE'S APPLICATION FOR CAPITAL GRANT FUNDING FROM FEDERAL TRANSIT ADMINISTRATION'S LOW OR NO EMISSIONS GRANT PROGRAM AND BUSES AND BUS FACILITIES GRANT PROGRAM. RESOLUTION NO. R2022-018

7.05 Resolution Authorizing the Lease for Megabus Southeast, LLC d/b/a Megabus at the Fast Transit Center

A RESOLUTION AUTHORIZING THE LEASE FOR MEGABUS SOUTHEAST LLC d/b/a MEGABUS, THEIR SUCCESSORS OR ASSIGNS AT THE FAST TRANSIT CENTER. RESOLUTION NO. R2022-019

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7.06 Bid Recommendation - Miscellaneous Electric Inventory to ESCO Distribution, Inc., Clayton, NC, the recommended lowest responsive, responsible bidder in the total amount of \$322,329.70.

WESCO Distribution, Clayton, NC \$322,329.70
Border States, Greenville, SC \$49,562.15

7.07 Bid Recommendation - Conductor and Conduit Inventory to WESCO Distribution, Inc., Clayton, NC, recommended lowest responsive, responsible bidder is in the total amount of \$247,459.90.

WESCO Distribution, Greenville, SC \$247,459.90
Border States, Greenville, SC \$354,349.30

7.08 Approval for City Manager to Execute a Contract with Cooper Tacia General Contractors for Construction of Senior Center East

Senior Center East is an 18,210 square foot commercial recreation facility proposed to be constructed near the intersection of Washington Drive and Murchison Road, near MLK Jr. Memorial Park and Fayetteville State University. Similar to Bill Crisp Senior Center, this facility will include a pool, men's and women's locker rooms, kitchen, multi-purpose room, card room, racquetball courts, fitness and exercise rooms, billiards, a library, and indoor and outdoor lounge areas. Construction is scheduled to begin in July with an estimated construction duration of 12 months. Senior Center East is one of the several projects funded by the Parks and Recreation Bond, which was passed by voters in March of 2016. The low bidder for the project is Cooper Tacia General Contractors with a base bid amount of \$7,868,000. Alternates that may be added to the project pending available funding result in a total project bid of \$7,930,487.00.

7.09 Approval for City Manager to Execute a Contract with W.B. Brawley Company for Construction of New Fire Station No. 4

Fire Station No. 4 is an 18,442 square foot commercial public safety facility proposed to be constructed at 4210 Bragg Boulevard, approximately 0.5 mile NW of the intersection of Bragg Boulevard and Sycamore Dairy Road. This new fire station will replace existing Fire Station No. 4, located at 406 Stamper Road, and provide enhanced service and response time to a larger area of the City via additional equipment apparatus and its strategic location on Bragg Boulevard. Construction is scheduled to begin in July with an estimated construction duration of 14 months. The low bidder for the project is W.B. Brawley Company with a base bid amount of \$8,848,831.00. Allowances and alternates that may be added to the project pending available funding result in a total project bid of \$9,442,777.00.

7.10 Adoption of Budget Ordinance Amendment 2022-9 and Capital Project Ordinance Amendment 2022-61 to Appropriate Additional Funding for the Senior Center East Project

Budget Ordinance Amendment 2022-9 and Capital Project Ordinance Amendment 2022-61 to appropriate \$3,000,000.00 additional funding for construction costs for the Senior Center East project. The appropriation is to be funded from General Fund fund balance of \$713,000.00.00, investment income of \$226,251.00, and premium on bonds of \$2,060,749.00.

7.011 Adoption of Capital Project Ordinance Amendment 2022-62 to Appropriate Financing Proceeds for Fire Station 4 Relocation Project

Capital Project Ordinance Amendment 2022-62 to appropriate \$2,686,716.00 of financing proceeds for construction of the Fire Station No. 4 Relocation project.

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7.012 Approval of Preliminary Findings Resolution for Submission of Local Government Commission (LGC) Application for the Issuance of Various Projects Bonds

RESOLUTION MAKING CERTAIN FINDINGS AND DETERMINATIONS AND AUTHORIZING THE FILING OF AN APPLICATION WITH THE LOCAL GOVERNMENT COMMISSION IN CONNECTION WITH THE PROPOSED ISSUANCE OF PUBLIC SAFETY IMPROVEMENT BONDS, STREETS, SIDEWALK, AND CONNECTIVITY IMPROVEMENT BONDS, AND HOUSING BONDS BY THE CITY. RESOLUTION NO. R2022-017

7.013 This item was pulled from consent.

7.013 Consideration of Financial Assistance to the Fayetteville Dogwood Festival due to COVID-19 Impacts

MOTION: Council Member Dawkins moved to table this item to the June work session agenda.

SECOND: Council Member Ingram

VOTE: UNANIMOUS (9-0)

9.0 PUBLIC FORUM

Ms. Dawn Adkins-Hurley, 1904 Maneto Street, Fayetteville, NC, expressed concerns regarding the Market House.

Ms. Betty Duke, 111 Camellia Drive, Fayetteville, NC, expressed concerns regarding the Market House.

Ms. Savona Aekins, 604 Duggins Way, Apt C, Fayetteville, NC, expressed concerns regarding personal triumphs and downfalls.

Ms. Myah Warren, 969 Bassman Lane, Apt 306, Fayetteville, NC, expressed concerns regarding listening to residents in the community talking about the Market House and Mr. Jason Walker.

Ms. Angela Tatum-Malloy, 404 Pilot Avenue, Fayetteville, NC, offered alternatives regarding the invocation at the beginning of the Council meetings.

Mr. Nero B. Coleman, 352-5 Old Creek Court, Fayetteville, NC, spoke in favor of the City parks and trails.

Mr. Mario Benavente, 3549 Hastings Drive, Fayetteville, NC, expressed concerns regarding the City not creating an independent citizen review board.

Mr. Chelinko Hurst, 1384 Wayside Drive, Fayetteville, NC, expressed concerns regarding the death of Mr. Jason Walker and the Market House.

Mr. Tyrone Williams, 203 Wall Street, Fayetteville, NC, expressed concerns regarding Dismas Charities.

9.0 OTHER ITEMS OF BUSINESS

9.01 Empowering Community Safety Micro-Grant Program

Ms. Gina Hawkins, Police Chief, stated the City of Fayetteville is providing micro-grants to community-based organizations to fund, inspire, and boost community crime reduction activities (a non-profit status is not required but for-profit enterprises will not be considered). The micro-grant is designed to support community groups' efforts to prevent crime and violence in Fayetteville. Grant awards are limited to the areas of the City that have high or recent spikes in violent crime.

Mr. Chris Cauley, Economic and Community Development Director, stated the program offers local groups and non-profits micro-grant

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opportunities, coupled with capacity-building training, to increase crime reduction activities and build the City's local non-profit capacity. The micro-grant program provides low-barrier grant opportunities ranging from \$1,500.00 to \$5,000.00 while teaching and instructing grantees about the processes and procedures of non-profit and community organization activities. The micro-grant program will operate for 24 months consisting of four grant cycles of 6 months each. This program will hold grantee organizations accountable for their budget, program actions, and measurable outcomes.

Professional staff is recommended to evaluate, score, and make recommendations for funding. This is consistent with other grant programs across the City. A scoring criteria will be used by a cross-departmental team of City staff. Each proposal will be evaluated by the zip codes it anticipates impacting and how well it adheres to one of the following goals:

- Conflict Resolution and Mediation
- Community Crime Prevention
- Opportunities for Youth/Parents/Families
- Family Stability
- Addressing Upward Mobility
- Implicit Bias and Diversity

It will also be evaluated for elements of Inclusivity, Collaboration, Resourcefulness, and Innovation. The scored proposals will then be submitted to a citizen oversight function to review, question, and affirm staff recommendations. This is needed particularly in instances where funding requests are greater than the amount of funding available.

Discussion ensued.

MOTION: Council Member Wright moved to direct staff to solicit one representative from the Fayetteville Redevelopment Commission, Citizen Police Advisory Board, Human Relations Commission, Mental Health Professional, and School Safety Coordinator to review staff recommendations.

SECOND: Mayor Pro Tem Jensen

VOTE: UNANIMOUS (10-0)

9.02 Parks and Recreation Project Report Card

Mr. Michael Gibson, Parks, Recreation and Maintenance Director, presented this item with the aid of a PowerPoint presentation and stated the major bond projects currently in progress include Bill Crisp Senior Center, Senior Center East, McArthur Road Sports Complex, Jordan Soccer Complex, the Tennis Center, D. Gilmore Therapeutic Center, Mable C. Smith Park, Dr. Martin Luther King Jr. Park, and Cape Fear River Park. From time to time, these projects will come before the council for guidance related to project concept approval, contracts, project updates, bid awards, public bid results, and lease agreements with partnering entities. Also included in the report is the proposed trail around Glenville Lake providing access to Mazarick Park from Murchison Road.

Discussion ensued.

MOTION: Council Member Ingram moved to receive the report.

SECOND: Mayor Pro Tem Jensen

VOTE: UNANIMOUS (10-0)

10.0 ADMINISTRATIVE REPORTS

10.01 Small Local Business Enterprise (SLBE) Program Update

This item was for information only, and was not presented.

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MOTION: Council Member Wright moved to direct staff to place this item on an upcoming work session agenda.
SECOND: Council Member Haire
VOTE: UNANIMOUS (10-0)

11.0 ADJOURNMENT

There being no further business, the meeting adjourned at 8:54 p.m.

Respectfully submitted,

PAMELA J. MEGILL
City Clerk
050922

MITCH COLVIN
Mayor

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**FAYETTEVILLE CITY COUNCIL
AGENDA BRIEFING MINUTES
ZOOM
MAY 18, 2022
5:00 P.M.**

Present: Mayor Pro Tem Katherine K. Jensen (District 1)

Council Members Shakeyla Ingram (District 2); Antonio Jones (District 3); D. J. Haire (District 4); Chris Davis (District 6); Courtney Banks-McLaughlin (District 8); Yvonne Kinston (District 9)

Absent: Mayor Mitch Colvin; Council Members Johnny Dawkins (District 5); Larry O. Wright, Sr. (District 7)

Others Present: Douglas Hewett, City Manager
Karen McDonald, City Attorney
Telly Whitfield, Assistant City Manager
Adam Lindsay, Assistant City Manager
Jay Toland, Assistant City Manager
Gerald Newton, Development Services Director
Jennifer Baptiste, Planning and Zoning Manager
Craig Harmon, Planner
Dereke Planter, Code Enforcement Supervisor
Pamela Megill, City Clerk

1.0 CALL TO ORDER

Mayor Pro Tem Jensen called the meeting to order at 5:05 p.m.

2. AGENDA BRIEFING - Review of Items for the May 23, 2022, City Council Meeting

City staff presented the following items scheduled for the Fayetteville City Council's May 23, 2022, agenda:

CONSENT

P22-13. Initial zoning from Cumberland County Planned Neighborhood Development (PND) to Single-Family Residential 15 (SF-15), located near Shawcroft Road at the end of the Kimsey Lane stub-out (REID # 0530484847000), containing 5.3 acres ± and being the property of Tumbleweed Holdings, LLC, represented by Bobby Branch.

SUP22-03. Order of Approval - Findings of Fact: Special Use Permit for the expansion of a veterinary clinic to allow dog kennels in a Limited Commercial (LC) zoning district, to be located at 2921 Ramsey Street (REID # 0439604923000), totaling 0.84 acres ± and being the property of Dale Brown, JBDB Investments LLC.

Uninhabitable Structures Demolition Recommendations

310 Ingram Street - District 2

522 School Street - District 2

4830 Belford Road - District 9

EVIDENTIARY HEARINGS

P22-14. Conditional rezoning from Community Commercial (CC) to Community Commercial/Conditional Zoning (CC/CZ), to expand an area used for mobile classrooms, located at 505 Forsythe Street (REID #s 0426493841000 and 0426499537000), containing 0.9 acres ± and being the property of Shoppes at Village Green, LLC and Dark Branch Properties II, LLC. (Appealed April 29, 2022)

P22-16. Rezoning of several properties located in and around downtown Fayetteville from various zoning districts to newly written districts Downtown 1 and 2 (DT-1 and DT-2), represented by the City of Fayetteville.

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PUBLIC HEARINGS

TA22-01: Text Amendments to Article 30 of the Unified Development Ordinance to implement the Downtown Urban Design Plan, Phase 1

TA22-03: Proposed Text Amendments to the Unified Development Ordinance to allow the adaptive reuse of hotels/motels into multi-family dwellings, requested by David Mitchell of GoodHomesCo.

AX22-003: Annexation area located within Kings Grant subdivision, along the western side of Shawcroft Road between Kimsey and Gregg Court (REID # 0530484847000). Consisting of approximately 5.22 acres and being the property of Tumbleweed Holdings, LLC. Case related to P22-13, Initial Zoning.

Adoption of 2022-2023 Housing and Urban Development Annual Action Plan for Community Development Block Grant, HOME Investment Partnerships Program, and Housing Opportunities for People with HIV/AIDS and Amendment to the Consolidated Plan

Amendment to 21-22 HUD Action Plan to Include HOME Investment Partnership funds authorized through the American Rescue Plan (HOME-ARP)

Public Hearing on a Proposed Installment Financing Agreement for a New Fire Station for the City, Resolution Making Certain Findings, and Request the Local Government Commission to Approve the Financing

3.0 ADJOURNMENT

There being no further business, the meeting adjourned at 6:00 p.m.

Respectfully submitted,

PAMELA J. MEGILL
City Clerk

MITCH COLVIN
Mayor

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**FAYETTEVILLE CITY COUNCIL
DISCUSSION OF AGENDA ITEMS MEETING MINUTES
SAINT AVOLD CONFERENCE ROOM, CITY HALL
MAY 23, 2022
6:00 P.M.**

Present: Mayor Mitch Colvin

Council Members Katherine K. Jensen (District 1); Shakeyla Ingram (District 2); Antonio Jones (District 3); D. J. Haire (District 4); Johnny Dawkins (District 5); Chris Davis (District 6); Larry O. Wright, Sr. (District 7); Yvonne Kinston (District 9)

Absent: Council Member Courtney Banks-McLaughlin (District 8)

Others Present: Douglas Hewett, City Manager
Karen McDonald, City Attorney
Telly Whitfield, Assistant City Manager
Adam Lindsay, Assistant City Manager
Jay Toland, Assistant City Manager
Gina Hawkins, Police Chief
Jodi Phelps, Corporate Communications Director
Pamela Megill, City Clerk
Members of the Press

Mayor Colvin called the meeting to order at 6:00 p.m.

Mayor Colvin asked Council to review the consent and other items of business items for this evening.

Mayor Pro Tem Jensen stated she intends to table Item 7.01, P22-13. Initial zoning from Cumberland County Planned Neighborhood Development (PND) to Single-Family Residential 15 (SF-15), located near Shawcroft Road at the end of the Kimsey Lane stub-out (REID # 0530484847000), containing 5.3 acres ± and being the property of Tumbleweed Holdings, LLC, represented by Bobby Branch. [Applicant now Requests SF-15 zoning. This was amended on April 5, 2022. City Council Action Memo reflects this change. She also stated she intends to table Item 10.03, AX22-003: Annexation area located within Kings Grant subdivision, along the western side of Shawcroft Road between Kimsey and Gregg Court (REID # 0530484847000). Consisting of approximately 5.22 acres and being the property of Tumbleweed Holdings, LLC. Case related to P22-13, Initial Zoning, to the June 27, 2022, City Council regular meeting agenda.

Council Member Wright stated he intends to pull Item 7.04, Approval of Grant Sub-recipient Agreements with Mid-Carolina Council of Governments and Hoke County for Federal Transit Administration (FTA) Section 5310 Funding, for presentation and separate vote.

Council Member Haire requested an overview of Item 7.05, Glenville Lake Walking Trail/Murchison Addition. Mr. Michael Gibson, Parks, Recreation and Maintenance Director, provided an overview of the item.

CLOSED SESSION

MOTION: Council Member Haire moved to go into a closed session for attorney-client privileged and confidential matters.
SECOND: Council Member Jones
VOTE: UNANIMOUS (9-0)

The regular session recessed at 6:19 p.m. The regular session reconvened at 6:59 p.m.

MOTION: Council Member Dawkins moved to go into open session.
SECOND: Council Member Wright
VOTE: UNANIMOUS (9-0)

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MOTION: Council Member Ingram moved to authorize the City Manager to amend the agreement with PCH; to allow Residential Uses.
SECOND: Council Member Davis
VOTE: UNANIMOUS (9-0)

ADJOURNMENT

There being no further business, the meeting adjourned at 7:00 p.m.

Respectfully submitted,

PAMELA J. MEGILL
City Clerk
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MITCH COLVIN
Mayor

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**FAYETTEVILLE CITY COUNCIL
REGULAR MEETING MINUTES
COUNCIL CHAMBER, CITY HALL, 433 HAY STREET
MAY 23, 2022
7:00 P.M.**

Present: Mayor Mitch Colvin

Council Members Katherine K. Jensen (District 1); Shakeyla Ingram (District 2); Antonio Jones (District 3); D. J. Haire (District 4); Johnny Dawkins (District 5); Chris Davis (District 6); Larry O. Wright, Sr. (District 7); Courtney Banks-McLaughlin (District 8) (arrived at 8:10 p.m.); Yvonne Kinston (District 9)

Others Present: Douglas Hewett, City Manager
Karen McDonald, City Attorney
Telly Whitfield, Assistant City Manager
Adam Lindsay, Assistant City Manager
Jay Toland, Assistant City Manager
Gina Hawkins, Police Chief
Mike Hill, Fire Chief
Gerald Newton, Development Services Director
Robert Stone, Construction Management Director
Kelly Olivera, Budget and Evaluation Director
Chris Cauley, Economic and Community Development
Jodi Phelps, Corporate Communications Director
Jennifer Baptiste, Planning and Zoning Manager
Craig Harmon, Senior Planner
Robert Van Geons, FCEDC President/CEO
Pamela Megill, City Clerk
Members of the Press

1.0 CALL TO ORDER

Mayor Colvin called the meeting to order.

2.0 INVOCATION

The invocation was offered by Rabbi Dov Goldberg, Beth Israel Congregation.

3.0 PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was led by Mayor and City Council.

4.0 ANNOUNCEMENTS AND RECOGNITIONS

Council Member Ingram announced "Momma's Village" has a milk-bank, please call (910) 764-8314, and there is no cost or time limit for how long it is available for those in need.

Mayor Colvin presented Colonel Scott Pence with the Key to the City in appreciation for his service, dedication, and contributions to the City of Fayetteville, North Carolina, while serving as the Fort Bragg Garrison Commander.

Mayor Colvin presented Ms. Cheyanne and Ms. Cali Rai Campos individual Keys to the City for their dedication and contributions to the community.

5.0 CITY MANAGER REPORT

Mr. Douglas Hewett, City Manager, stated he does not have a report for this meeting.

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6.0 APPROVAL OF AGENDA

MOTION: Mayor Pro Tem Jensen moved to approve the agenda, with the exception of Items 7.01 and 10.03; tabled to the June 27, 2022, City Council meeting agenda.
SECOND: Council Member Wright
VOTE: UNANIMOUS (9-0)

7.0 CONSENT AGENDA

MOTION: Council Member Wright moved to approve the consent agenda, with the exception of Item 7.04 for presentation and separate vote.
SECOND: Council Member Haire
VOTE: UNANIMOUS (9-0)

7.0 CONSENT AGENDA

7.01 This item was tabled to June 27, 2022.

7.02 SUP22-03. Order of Approval - Findings of Fact: Special Use Permit for the expansion of a veterinary clinic to allow dog kennels in a Limited Commercial (LC) zoning district, to be located at 2921 Ramsey Street (REID # 0439604923000), totaling 0.84 acres ± and being the property of Dale Brown, JBDB Investments LLC.

7.03 Uninhabitable Structures Demolition Recommendations

AN ORDINANCE OF THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA REQUIRING THE CITY BUILDING INSPECTOR TO CORRECT CONDITIONS WITH RESPECT TO OR TO DEMOLISH AND REMOVE A STRUCTURE PURSUANT TO THE DWELLINGS AND BUILDINGS MINIMUM STANDARDS CODE OF THE CITY COUNCIL. 310 Ingram Street. PIN 0438-71-6779. ORDINANCE NO. NS2022-014

AN ORDINANCE OF THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA REQUIRING THE CITY BUILDING INSPECTOR TO CORRECT CONDITIONS WITH RESPECT TO OR TO DEMOLISH AND REMOVE A STRUCTURE PURSUANT TO THE DWELLINGS AND BUILDINGS MINIMUM STANDARDS CODE OF THE CITY COUNCIL. 522 School Street. PIN 0437-93-7343. ORDINANCE NO. NS2022-015

AN ORDINANCE OF THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA REQUIRING THE CITY BUILDING INSPECTOR TO CORRECT CONDITIONS WITH RESPECT TO OR TO DEMOLISH AND REMOVE A STRUCTURE PURSUANT TO THE DWELLINGS AND BUILDINGS MINIMUM STANDARDS CODE OF THE CITY COUNCIL. 4830 Belford Road. PIN 0407-91-0869. ORDINANCE NO. NS2022-016

7.04 This item was pulled for presentation and separate vote.

7.05 Glenville Lake Walking Trail/Murchison Addition

Stewart Engineering made the revision to the Center City Parks & Trail Master Plan to include a trail that will provide access to Mazarick Park/Glenville Lake and Murchison Corridor. Recommendation is to approve the updates to the Center City Parks & Trail Master Plan.

7.06 Request for Legal Representation of City Employees

Authorization from the City Council to provide legal representation for City employees Gina V. Hawkins and Nicholas Wrench in the matter of *Regine Monigold and Normalita Andres v. Nicholas Scott Wrench, Gina V. Hawkins and City of Fayetteville*. The employees were acting within the scope and course of their employment with the City when the alleged incident(s) occurred.

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7.04 Approval of Grant Subrecipient Agreements with Mid-Carolina Council of Governments and Hoke County for Federal Transit Administration (FTA) Section 5310 Funding

Mr. Randy Hume, Transit Director, presented this item and stated on October 11, 2021, City Council adopted Special Revenue Fund Project Ordinance 2022-7 to appropriate FTA Grant NC-2021-054-00 for Enhanced Mobility for Seniors and Individuals with Disabilities Programs. That grant provided funding to be passed through to Mid-Carolina Council of Governments (MCCOG) for Cumberland County's Community Transportation Program (\$200,000.00), and to Hoke County for the construction of bus stops and installation of bus shelters (\$81,400.00) as grant sub-recipients to the City.

The City as the primary grant recipient is required to ensure sub-recipients also comply with applicable FTA grant requirements for Section 5310 funding. The City receives \$15,000.00 of the FTA funds for administration and oversight of the grant. The sub-recipient agreements establish the relationship between the City and these two entities as well as set forth the requirements that must be met for reimbursement from these grants.

Council is requested to approve the agreements and authorize the City Manager to execute the contract documents.

MOTION: Council Member Wright moved to approve the agreements and authorize the City Manager to execute the contract documents.

SECOND: Council Member Ingram

VOTE: UNANIMOUS (9-0)

8.0 STAFF REPORTS

8.01 2022 Fayetteville Fire Department - 1st Quarter Report

Mr. Mike Hill, Fire Chief, presented the Fire Department 2022 1st Quarter Report. Chief Hill presented information on personnel highlights, diversity, call volume, response times, fire responses, EMS/Rescue, hazardous materials, fire prevention, community engagement, new fire trucks, Fire Station No. 4, and recruitment announcements.

Discussion ensued.

MOTION: Council Member Ingram moved to accept the Fire Department 2022 1st Quarter Report.

SECOND: Council Member Kinston

VOTE: UNANIMOUS (9-0)

8.02 Fayetteville Police Department 2022 1st Quarter Report

Ms. Gina Hawkins, Police Chief, presented the Police Department 2021 4th Quarter Report. Chief Hawkins presented information on crime statistics, crime trend analysis, community engagement, electronic monitoring, offender charts, Federal partnerships, violent crime case study, firearm seizures, narcotic unit investigations, traffic fatalities, response times, internal affairs, staffing, and commitment to our Core Values, Vision Statement and Mission Statement.

Discussion ensued.

MOTION: Council Member Wright moved to accept the Police Department 2022 1st Quarter Report.

SECOND: Council Member Kinston

VOTE: UNANIMOUS (10-0)

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9.0 LEGISLATIVE HEARINGS

9.01 P22-14. Conditional rezoning from Community Commercial (CC) to Community Commercial/Conditional Zoning (CC/CZ), to expand an area used for mobile classrooms, located at 505 Forsythe Street (REID #s 0426493841000 and 0426499537000), containing 0.9 acres ± and being the property of Shoppes at Village Green, LLC and Dark Branch Properties II, LLC. (Appealed April 29, 2022)

Mr. Craig Harmon, Senior Planner, presented this item and stated in November of 2017, City Council conditionally rezoned 0.66 acres of property adjacent to this property to allow tractor-trailer parking. The tractor-trailers are used in conjunction with the existing OVGII office building along Village Drive. These trucks are used for research and development related to Army training, which coincides with the lease of the building. The trucks will only park at this proposed site. All training, research and development will take place at remote locations all over the country.

According to the owner, the truck parking area will be used by CACI, a defense contractor, which has a lease in the building at 1990 Fordham Drive. As part of the lease to CACI, the owner is providing a site that can store the mobile classrooms. The trucks are used for research and development training at various locations throughout the United States. When the mobile classrooms are needed, they will leave the proposed parking area between the hours of 8:00 a.m. and 5:00 p.m. and would typically return anywhere from one to three weeks later. The movement of these vehicles will not be an everyday occurrence. The use of these mobile classrooms will occur off site. While parked in this proposed parking lot, the trucks will not be running.

On April 12, 2022, the Zoning Commission held a Legislative Hearing regarding this case. There was one speaker in favor and none in opposition. The Commission voted 4 to 0 to recommend approval.

This is the advertised public hearing set for this date and time. The public hearing was opened.

Mr. Jared Fryer, 505 Forsythe Street, Fayetteville, NC, appeared in favor.

Mr. Franklin Clark, 505 Forsythe Street, Fayetteville, NC, appeared in favor.

Mr. Robert Van Geons, 201 Hay Street, Suite 401-A, Fayetteville, NC, appeared in favor.

Mr. Jonathon Charleston, 201 Hay Street, Fayetteville, NC, appeared in favor.

Ms. Karese Whaley, 504 Forsythe Street, Fayetteville, NC, appeared in opposition.

There being no one further to speak, the public hearing was closed.

Discussion ensued.

MOTION: Council Member Dawkins moved to approve the conditional zoning to include limiting the movement from 8:00 a.m. to 5:00 p.m. and additional screening.
SECOND: Council Member Ingram
VOTE: UNANIMOUS (10-0)

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9.02 P22-16. Rezoning of several properties located in and around downtown Fayetteville from various zoning districts to newly written districts Downtown 1 and 2 (DT-1 and DT-2), represented by the City of Fayetteville.

Mr. Craig Harmon, Senior Planner, presented this item and stated that created through the Revitalization and Economic Development Grant and officially adopted February 24, 2020, the Downtown Urban Design Plan is designed to guide development and investment in Downtown Fayetteville for the coming years.

Staff has studied the Downtown Plan's recommendations and will utilize a phased approach to implementation. This first phase focuses on two of the articulated Urban Design Initiatives: (1) Create a Downtown District and (2) Foster Downtown Living. To achieve these Initiatives, the Plan outlines several action items, including update development and zoning standards. These updates are guided by specific recommendations contained in the Plan.

At the work session held on December 6, 2021, City Council directed Planning staff to draft proposed changes to the Unified Development Ordinance (UDO), as the first phase of implementation of the Downtown Urban Design Plan. On January 20, 2022, Planning staff held a virtual public meeting (via Zoom) to engage stakeholders and solicit feedback on the Plan implementation.

The proposed changes under the Downtown Urban Design Plan include both text amendments and map amendments (rezonings). The text amendments went before the Planning Commission on March 15, 2022. After their review, the Commission voted to recommend that the text amendments proceed to Council as written.

On April 12, 2022, the Zoning Commission held a Legislative Hearing regarding this case. The Commission had questions regarding how these new districts would affect existing businesses and specially what would happen to areas zoned Heavy Industrial (HI). Staff responded that the HI zoning is very limited in the proposed DT-2 district (none in DT-1). Of the two areas currently zoned HI, there appears to only be one business affected due to its use and as long as that business does not close for more than one year they would be able to continue to operate as they currently are. The Commission voted 3 to 0 (with one member recusing himself from the case) to recommend approval.

In preparation of presenting the proposed Text Amendments and the Rezoning of the Downtown area, staff has posted first class mailing to affected property owners and property owners within a 500 foot radius. Staff has also posted signage in the affected area. Lastly, staff submitted a quarter page legal advertisement for both cases which ran in The Fayetteville Observer on May 11 and 18, 2022.

This is the advertised public hearing set for this date and time. There being no one present to speak, the public hearing was opened and closed.

Discussion ensued.

MOTION: Council Member Ingram moved to approve.
SECOND: Council Member Kinston
VOTE: UNANIMOUS (10-0)

10.0 PUBLIC HEARINGS

10.01 TA22-01: Text Amendments to Article 30 of the Unified Development Ordinance to implement the Downtown Urban Design Plan, Phase 1

Mr. Craig Harmon, Senior Planner, presented this item and stated that created through the Revitalization and Economic Development Grant

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and officially adopted February 24, 2020, the Downtown Urban Design Plan is designed to guide development and investment in Downtown Fayetteville for the coming years.

Staff has studied the Downtown Plan's recommendations and will utilize a phased approach to implementation. This first phase focuses on two of the articulated Urban Design Initiatives: (1) Create a Downtown District and (2) Foster Downtown Living. To achieve these Initiatives, the Plan outlines several action items, including update development and zoning standards. These updates are guided by specific recommendations contained in the Plan.

At the work session held on December 6, 2021, the City Council directed Planning staff to draft proposed changes to the Unified Development Ordinance (UDO), as the first phase of implementation of the Downtown Urban Design Plan. On January 20, 2022, Planning staff held a virtual public meeting (via Zoom) to engage stakeholders and solicit feedback on the Plan implementation.

On March 15, 2022, the Planning Commission, by a 5 to 0 vote, moved to recommend that the City Council approve the text amendments as written.

This is the advertised public hearing set for this date and time. The public hearing was opened.

Mr. Tyrone Williams, 203 Wall Street, Fayetteville, NC, appeared in favor.

There being no one further to speak, the public hearing was closed.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING ARTICLE 30-3, ZONING DISTRICTS, UNDER CHAPTER 30, THE UNIFIED DEVELOPMENT ORDINANCE, OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA. ORDINANCE NO. S2022-007

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING VARIOUS SECTIONS OF SECTION 30-4.C., USE SPECIFIC STANDARDS, OF ARTICLE 30-4, USE STANDARDS, UNDER CHAPTER 30, THE UNIFIED DEVELOPMENT ORDINANCE, OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA. ORDINANCE NO. S2022-008

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING VARIOUS SECTIONS OF ARTICLE 30-5, DEVELOPMENT STANDARDS, UNDER CHAPTER 30, THE UNIFIED DEVELOPMENT ORDINANCE, OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA. ORDINANCE NO. S2022-009

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING VARIOUS SECTIONS OF ARTICLE 30-6, SUBDIVISIONS, UNDER CHAPTER 30, THE UNIFIED DEVELOPMENT ORDINANCE, OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA. ORDINANCE NO. S2022-010

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING SECTION 30-9.C., TABLE OF ABBREVIATIONS, OF ARTICLE 30-9, DEFINITIONS, UNDER CHAPTER 30, THE UNIFIED DEVELOPMENT ORDINANCE, OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA. ORDINANCE NO. S2022-011

MOTION: Council Member Ingram moved to adopt the proposed text amendments as presented.

SECOND: Council Member Jones

VOTE: UNANIMOUS (10-0)

10.02 TA22-03: Proposed Text Amendments to the Unified Development Ordinance to allow the adaptive reuse of hotels/motels into

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multi-family dwellings, requested by David Mitchell of GoodHomesCo.

Ms. Jennifer Baptiste, Planning and Zoning Manager, presented this item with the aid of a PowerPoint presentation and stated according to the applicant, the national demand for housing is on the rise. This Text Amendment Application has been submitted by the GoodHomesCo, LLC. The applicant is requesting a change to the City's Unified Development Ordinance (UDO) to allow the conversion of existing hotels/motels into multi-family residential developments.

According to the applicant, the proposed text amendments will allow for the adaptive reuse of older, dilapidated hotels by transforming them into vibrant multi-family housing, which is critically needed in Fayetteville for the work force and military residents. This is the second request of this type to be made to the City. The first request was completed as a Conditional Rezoning request, P21-42, on Owen Drive. Currently, the UDO only allows the conversion of hotels to multi-family residential uses if the site complies with all the development standards of a multi-family residential use or by Conditional Use.

The applicant is requesting a change to the City's Unified Development Ordinance (UDO) to allow the conversion of existing hotels/motels into multi-family residential developments without having to obtain a Conditional Use zoning.

The City of Fayetteville's UDO defines a "hotel or motel" as a building or a group of buildings in which sleeping accommodations are offered to the public and intended primarily for rental for temporary occupancy by persons on an overnight basis, not including bed and breakfast establishments or a rooming house. Such uses may include microwaves and refrigerators for each guest unit. The City of Fayetteville's UDO defines a "dwelling, multi-family" as a building containing five or more individual dwelling units, with the units often stacked one above the other in a vertical configuration, sharing common vertical walls and/or horizontal floors and ceilings. In the UDO, the proposed changes include the following sections:

- Section 30-4.B.e. Adaptive Reuse
- Section 30-5-H.4. Multi-family Design Standards

This is the advertised public hearing set for this date and time. There being no one present to speak, the public hearing was opened and closed.

Discussion ensued.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING ARTICLE 30-4, USE STANDARDS, UNDER CHAPTER 30, THE UNIFIED DEVELOPMENT ORDINANCE, OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA. ORDINANCE NO. S2022-012

MOTION: Council Member Ingram moved to adopt the proposed text amendments as presented.

SECOND: Council Member Jones

VOTE: UNANIMOUS (10-0)

Mayor Colvin recessed the meeting at 9:41 p.m., and reconvened the meeting at 9:51 p.m.

10.03 AX22-003: Annexation area located within Kings Grant subdivision, along the western side of Shawcroft Road between Kimsey and Gregg Court (REID # 0530484847000). Consisting of approximately 5.22 acres and being the property of Tumbleweed Holdings, LLC. Case related to P22-13, Initial Zoning.

This item was tabled to the June 27, 2022, City Council regular meeting agenda.

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10.04 Adoption of 2022-2023 Housing and Urban Development Annual Action Plan for Community Development Block Grant, HOME Investment Partnerships Program, and Housing Opportunities for People with HIV/AIDS and Amendment to the Consolidated Plan

Mr. Chris Cauley, Economic and Community Development Director, presented this item with the aid of a PowerPoint presentation and stated Council is asked to conduct a public hearing and approve the proposed Housing and Urban Development (HUD) Annual Action Plan (AAP) to implement the Community Development Block Grant (CDBG), the Home Investment Partnership Program (HOME), and Housing Opportunities for People with HIV/AIDS (HOPWA). The AAP provides a concise summary of the actions, activities, and the specific federal resources that will be used each year to address the priority needs and specific goals identified by the Five-Year Consolidated Plan. The AAP is developed by staff and recommended by the Fayetteville Redevelopment Commission (FRC). Council was presented this plan at the May 2, 2022, Council work session.

The current Five-Year Consolidated Plan was adopted by City Council for the program year period from 2020 to 2024. The Consolidated Plan is designed to help states and local jurisdictions to assess their affordable housing and community development needs and market conditions, and to make data-driven, place-based investment decisions. The consolidated planning process serves as the framework for a community-wide dialogue to identify housing and community development priorities that align and focus funding from CDBG and HOME. This Plan requires amendment to include new annual resources for HOPWA.

The Annual Action Plan describes projects and activities that implement the Consolidated Plan. It sets forth a description of activities for the use of funds that are expected to become available in the upcoming fiscal year. The 2022-2023 AAP is based on priorities, goals, and objectives of the 2020-2024 Consolidated Plan. The plan contains goals, objectives, and implementation strategies for each of the activities to be funded or implemented.

To provide an opportunity for community feedback, four in-person meetings were held throughout the month of March. A press release, social media campaign, and YouTube were used to promote awareness. The City translated the public notices into Spanish and published them in a local Spanish newspaper, continuing a trend towards greater inclusivity. A draft copy of the plan was made available online and in various locations throughout the City for review and comments for 30 days from March 1 through 31, 2022.

The City's CDBG allocation for next year is \$1,607,129.00 compared to \$1,622,224.00 for the current year. The HOME allocation for next year is \$1,081,233.00 compared to \$937,431.00 for the current year. This results in an increase of \$128,707.00 for both programs. Program Income is anticipated in the amount of \$1,387,431.00. The inclusion of HOPWA adds \$757,245.00 to the total budget and is a new grant for the City.

This is the advertised public hearing set for this date and time. There being no one present to speak, the public hearing was opened and closed.

MOTION: Council Member Wright moved to adopt the 2022-2023 Housing and Urban Development Annual Action Plan for Community Development Block Grant, HOME Investment Partnerships Program, and Housing Opportunities for People with HIV/AIDS and Amendment to the Consolidated Plan.

SECOND: Council Member Haire

VOTE: UNANIMOUS (10-0)

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10.05 Amendment to 21-22 HUD Action Plan to Include HOME Investment Partnership funds authorized through the American Rescue Plan (HOME-ARP)

Mr. Chris Cauley, Economic and Community Development Director, presented this item and stated Council is asked to conduct a public hearing and approve the proposed Amendment to the Housing and Urban Development (HUD) 2021 - 2022 Annual Action Plan (AAP) to include HOME Investment Partnership funds authorized through the American Rescue Plan (HOME-ARP) in the amount of \$3,397,564.00. Council was presented this amendment at the May 2, 2022, Council work session.

The American Rescue Plan appropriated \$5 billion to help communities provide housing, shelter, and services for people experiencing homelessness and other qualifying populations. These HOME-ARP funds are in addition to the city's regular HOME formula allocation. This one-time funding creates a significant opportunity for the City to meet the housing and service needs of our community's most vulnerable populations. HOME-ARP funding gives jurisdictions significant new resources to address their homeless assistance needs by creating affordable housing or non-congregate shelter units and providing tenant-based rental assistance or supportive services.

To provide an opportunity for community feedback, the City consulted with area agencies and service providers to identify unmet needs and gaps and housing or service delivery systems. The required public notice was posted in The Fayetteville Observer and on the City's website for 15 days from May 8 through 22, 2022.

At least 70 percent of the total allocation is required to benefit qualifying populations such as persons experiencing homelessness. Eligible activities as defined under the HOME-ARP legislation are as follows: Production or preservation of affordable housing; Tenant Based Rental Assistance; Supportive Services; and purchase and development of non-congregate shelters. The City will post a Request for Projects in July to solicit both nonprofit and for profit developers to create affordable housing projects under these requirements.

This is the advertised public hearing set for this date and time. There being no one present to speak, the public hearing was opened and closed.

MOTION: Council Member Ingram moved to approve the proposed Amendment to the 2021 - 2022 Housing and Urban Development Annual Action Plan.

SECOND: Council Member Jones

VOTE: UNANIMOUS (10-0)

10.06 Public Hearing on a Proposed Installment Financing Agreement for a New Fire Station for the City, Resolution Making Certain Findings, and Request the Local Government Commission to Approve the Financing

Mr. Jay Toland, Assistant City Manager, presented this item and stated City Council will conduct the public hearing on an installment financing agreement in an amount not to exceed \$10,500,000.00. The purpose of the financing will be to pay the costs of constructing and equipping a new fire station (Fire Station No. 4) for the City.

In addition to holding the public hearing, City Council is requested to consider adoption of the resolutions as follows:

1. Resolution Accepting the Proposal of Truist Bank in Connection with an Installment Financing Agreement for the City of Fayetteville, North Carolina
2. Resolution Making Certain Findings and Determinations Regarding the Proposed Financing by the City of

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Fayetteville, North Carolina for the Construction and Equipping of a New Fire Station for the City of Fayetteville, North Carolina, and Requesting the Local Government Commission to Approve the Financing Arrangement

3. Resolution Authorizing the Execution and Delivery of an Installment Financing Agreement, a Deed of Trust, a Project Fund Agreement, a Wire Transfer Agreement and Related Documents in Connection with the Financing of a New Fire Station for the City of Fayetteville, North Carolina.

This is the advertised public hearing set for this date and time. There being no one present to speak, the public hearing was opened and closed.

RESOLUTION ACCEPTING THE PROPOSAL OF TRUIST BANK IN CONNECTION WITH AN INSTALLMENT FINANCING FOR THE CITY OF FAYETTEVILLE, NORTH CAROLINA. RESOLUTION NO. R2022-020

MOTION: Council Member Davis moved to adopt the resolution accepting the proposal of Truist bank in connection with an installment financing for the City of Fayetteville, North Carolina.

SECOND: Council Member Wright

VOTE: UNANIMOUS (10-0)

RESOLUTION MAKING CERTAIN FINDINGS AND DETERMINATIONS REGARDING THE PROPOSED FINANCING BY THE CITY OF FAYETTEVILLE, NORTH CAROLINA FOR THE CONSTRUCTION AND EQUIPPING OF A NEW FIRE STATION FOR THE CITY OF FAYETTEVILLE, NORTH CAROLINA, AND REQUESTING THE LOCAL GOVERNMENT COMMISSION TO APPROVE THE FINANCING ARRANGEMENT. RESOLUTION NO. R2022-021

MOTION: Council Member Haire moved to adopt the resolution making certain findings and determinations regarding the proposed financing by the City of Fayetteville, North Carolina for the construction and equipping of a new fire station for the city of Fayetteville, North Carolina, and requesting the local government commission to approve the financing arrangement.

SECOND: Council Member Wright

VOTE: UNANIMOUS (10-0)

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT FINANCING AGREEMENT, A DEED OF TRUST, A PROJECT FUND AGREEMENT, A WIRE TRANSFER AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH THE FINANCING OF A NEW FIRE STATION FOR THE CITY OF FAYETTEVILLE, NORTH CAROLINA. RESOLUTION NO. R2022-022

MOTION: Council Member Wright moved to adopt the resolution authorizing the execution and delivery of an installment financing agreement, a deed of trust, a project fund agreement, a wire transfer agreement and related documents in connection with the financing of a new fire station for the city of Fayetteville, North Carolina.

SECOND: Council Member Haire

VOTE: UNANIMOUS (10-0)

11.0 OTHER ITEMS OF BUSINESS

11.01 Presentation of the Recommended Fiscal Year 2022-2023 Annual Operating Budget and Setting of the Budget Public Hearing

Mr. Douglas Hewett, City Manager, presented this item and provided an overview of the recommended annual operating budget for fiscal year 2022-2023. Mr. Hewett stated budget issues will be discussed and deliberated during scheduled workshops on three consecutive Thursdays--May 26, June 2, and June 9, 2022.

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MOTION: Council Member Davis moved to set the public hearing on the budget for June 13, 2022.
SECOND: Council Member Wright
VOTE: UNANIMOUS (10-0)

10.0 ADJOURNMENT

There being no further business, the meeting adjourned at 10:33 p.m.

Respectfully submitted,

PAMELA J. MEGILL
City Clerk
052322

MITCH COLVIN
Mayor

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**FAYETTEVILLE CITY COUNCIL
BUDGET WORK SESSION MINUTES
COUNCIL CHAMBER
MAY 26, 2021
5:00 P.M.**

Present: Mayor Mitch Colvin

Council Members Katherine K. Jensen (District 1) (via zoom); Shakeyla Ingram (District 2) (departed at 7:57 p.m.); Antonio Jones (District 3); (D. J. Haire (District 4); Johnny Dawkins (District 5); Chris Davis (District 6); Larry O. Wright, Sr. (District 7); Courtney Banks-McLaughlin (District 8) (via zoom); Yvonne Kinston (District 9)

Others Present: Douglas Hewett, City Manager
Karen McDonald, City Attorney
Telly Whitfield, Assistant City Manager
Jay Toland, Assistant City Manager
Gina Hawkins, Police Chief
Mike Hill, Fire Chief
Kelly Olivera, Budget and Evaluation Director
Rebecca Jackson, Chief of Staff
Gerald Newton, Development Services Director
Michael Gibson, Parks, Recreation and Maintenance Director
Sheila Thomas-Ambat, Public Services Director
Dwayne Campbell, Chief Information Officer
Rob Stone, Construction Management Director
Jodi Phelps, Corporate Communications Director
Randy Hume, Transit Director
Chris Cauley, Economic and Community Development Director
Pamela Megill, City Clerk
Members of the Press

1.0 CALL TO ORDER

Mayor Colvin called the meeting to order at 5:00 p.m.

2.0 INVOCATION

The invocation was offered by Council Member Wright.

3.0 PLEDGE OF ALLEGIANCE

Mayor Colvin led the Pledge of Allegiance.

4.0 APPROVAL OF AGENDA

MOTION: Council Member Haire moved to approve the agenda, with the addition of a closed session for attorney-client privilege matter.

SECOND: Council Member Ingram

VOTE: UNANIMOUS (10-0)

CLOSED SESSION

MOTION: Council Member Wright moved to go into a closed session for attorney-client privileged and confidential matters.

SECOND: Council Member Haire

VOTE: UNANIMOUS (10-0)

The regular session recessed at 5:04 p.m. The regular session reconvened at 5:11 p.m.

MOTION: Council Member Davis moved to go into open session.

SECOND: Council Member Dawkins

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VOTE: UNANIMOUS (10-0)

5.0 ITEMS OF BUSINESS

5.1 Establish the Parking Lot

Presented by Kelly Olivera, Budget & Evaluation Director

Ms. Kelly Olivera, Budget & Evaluation Director, presented this item and stated the Parking Lot is a running list of items that Council members are contemplating adding to the budget. At the end of the final budget work session, Council will take consensus votes on each requested item to determine which (if any) items will be included in the FY 2022-23 budget.

5.2 Compensation Study Presentation

Presented by Jerry Clipp, Human Resources Development Director and Mark Holcombe, Evergreen Solutions

Mr. Jerry Clipp, Human Resources Development Director, provided an overview of the "Employer of Choice" presentation and the vision statement. Mr. Clipp introduced Mr. Mark Holcombe, Evergreen Solutions.

Mr. Mark Holcombe presented the Compensation Study results and stated the last comprehensive salary survey was in 2012 with minimal implementation of the recommendations in 2013. City staff continued to review at least 25 percent of the total positions for market competitiveness each year, and also tried to keep up with the market by moving some positions to higher pay grades and moving employees to minimum only. All City employees with the exception of part-time/seasonal workers were moved to a minimum of \$15.00 per hour. There were also increased salaries for Police Officers and other various positions.

COVID has had a significant impact on the work force. The turnover rate in July 2020 was 12.7 percent, and the turnover for March 2022 was 14.9 percent. Mr. Holcombe provided an overview of the decreasing number of applications received for vacant advertised positions.

The recommendations as a result of the survey are for general employees to receive a 4 percent (of mid-point pay) salary increase, effective July 18, 2022. In August 2022, new step plans will be implemented along with associated increases. New pay grades will be implemented, and an implement of 50 percent of the "class parity" solution to affected employees.

Discussion ensued pertaining to seasonal employees.

Mayor Colvin asked how much the compensation study cost. Ms. Olivera responded the cost was \$80,000.00.

Mayor Colvin thanked Mr. Holcombe for the presentation.

5.3 Peer Cities and Sales Tax Information

Presented by Kelly Olivera, Budget & Evaluation Director

Ms. Kelly Olivera, Budget & Evaluation Director, provided an overview of the Peer Cities and Sales Tax Information: Charlotte, Raleigh, Greensboro, Durham, Winston-Salem, Fayetteville, Cary, Wilmington, High Point, and Ashville. Fayetteville has a tax rate of 0.4995.

5.4 ARPA and Legislative Update

Presented by Brook Redding, Special Project Manager

Mr. Brook Redding, Special Project Manager, presented this item and stated in September 2021, Mayor Colvin established three Council Committees to produce policy framework. In November of 2021 the Mayor

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and Council prioritized the outcomes and allocated funding levels. In April of 2022, the Mayor and Council gave consensus to accept the ARPA strategies as presented and request staff to bring formal funding approvals forward.

- Business and Economic Vitality - \$5,000,000.00
- Infrastructure and Community Reinvestment - \$5,000,000.00
- Housing and Community Livability - \$5,000,000.00
- Administration - \$5,000,000.00

Discussion ensued.

6.0 Other Items of Business

Mr. Hewett, City Manager, asked all budget related questions be e-mailed to himself and Ms. Olivera to be posted on the Budget Chronicles.

The next budget work session is scheduled for June 2, 2022, at 5:00 p.m. in the Council Chamber.

7.0 ADJOURNMENT

There being no further business, the meeting adjourned at 6:44 p.m.

Respectfully submitted,

PAMELA J. MEGILL
City Clerk

MITCH COLVIN
Mayor

052622



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-2750

Agenda Date: 6/13/2022

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 7.02

TO: Mayor and Members of City Council

THRU: Karen M. McDonald, City Attorney
Telly Whitfield, Assistant City Manager

FROM: Kecia N. Parker, NCCP
Alvester T. (Toney) Coleman, PhD, A.A.E.

DATE: June 13, 2022

RE:

Approval of Proposed Leases for Avis Rent A Car System, LLC, Budget Rent A Car System, LLC, Enterprise Leasing Company Southeast, LLC, Enterprise Leasing Company, Southeast d/b/a National/Alamo, ILM Transportation, Inc. and The Hertz Corporation, and Sierra Nevada Corporation, Their Successors or Assigns at the Fayetteville Regional Airport

COUNCIL DISTRICT(S):

All

Relationship To Strategic Plan:

Goal II - Responsive City Government Supporting a Diverse and Viable Economy-Have a strong, diverse, and local viable economy

Objective 2.1 - To ensure a diverse tax base

Goal IV - Desirable Place to Live, Work and Recreate

Objective 4.1 - To maintain public transportation investments with high quality transit and airport services

Executive Summary:

I: Avis Rent A Car System, LLC, Budget Rent A Car System, LLC, Enterprise Leasing Company Southeast, LLC, Enterprise Leasing Company, Southeast dba National/Alamo, The Hertz Corporation, and ILM Transportation, Inc. have leased parking spaces and indoor office/counter space from the Fayetteville Regional Airport. The current leases

were established in 2016 and are currently being updated. The term of the leases coincides with the new fiscal year (July 1st) and will be for an initial five-year term with an option to extend for one additional five-year term.

II: Sierra Nevada Corporation currently leases all of the former Air Cargo building at 3139 Doc Bennett Road and has leased said premises since June 1, 2005. The new lease term begins July 1, 2022 and will be for an initial two-year term with an option to extend for two additional two year terms.

Background:

The mission and goal of the Fayetteville Regional Airport (FAY) is to provide safe and efficient airport operation to meet the aviation needs of the community. The Airport serves an eleven county service area with a catchment population of over 430,000 residents. The Airport generates 960,000 Origination & Destination passengers per year with its two current legacy carriers to three major hubs in Atlanta, Charlotte and Ft. Worth. It has an estimated regional economic impact of over \$790 million. The Airport has been self-sustaining since 1994; meaning there has been no use of City General Funds for operational or capital expenditures for nearly thirty years. Rental cars and parking lot revenues are the primary sources of Airport revenue generation.

I: The Terminal Renovations Phase II impacted the number of ready car spaces and configuration of all rental car offices. Given the number of changes it was mutually agreed by Airport Management and Real Estate that short-term agreements should be used until construction in those area was complete. Rental Car ready spaces and office areas are now complete and the leases presented reflect those changes as well as are long term agreement with our partners.

II: Sierra Nevada Corporation (SNC) is a government contractor who has had a long-standing lease with the City. They are desirous of continuing their tenure at the Fayetteville Regional Airport and have been excellent tenants since being recommended to Airport Management by Economic Development in 2005.

The Airport Commission is recommending all of the above to be entered into by the City to continue the longstanding relationships with each company.

Issues/Analysis:

None

Budget Impact:

All revenues will remain with the Airport Operating Fund for each of the proposed leases and there will be no impact to the City of Fayetteville General Fund.

Options:

- Approve the proposed Lease Agreements and allow the City Manager to execute

the documents on behalf of the City.

- Disapprove the proposed Lease Agreements and not allow the City Manager to execute the documents on behalf of the City.

Recommended Action:

Staff recommends City Council approve the proposed Lease Agreements and allow the City Manager to execute the documents on behalf of the City

Attachments:

Proposed Leases
Resolutions

NORTH CAROLINA

**AVIS RENT A CAR SYSTEM,
LLC RENTAL CAR LEASE
AND CONCESSION
AGREEMENT**

CUMBERLAND COUNTY

THIS LEASE AND CONCESSION AGREEMENT made and entered into as of this **1st day of July, 2022**, by and between the **CITY OF FAYETTEVILLE**, hereinafter called "**LESSOR**" and **AVIS RENT A CAR SYSTEM, LLC**, a limited liability company having an office in Cumberland County, North Carolina, hereinafter called "**LESSEE**";

WITNESSETH:

WHEREAS, the City of Fayetteville through its City Council is duly empowered as the owner and operator of the Fayetteville Regional Airport and all facilities located thereon, under the authority of N.C.G.S. § 63-53(3) and Chapter 3 of the Code of Ordinances of the City of Fayetteville, North Carolina;

AND WHEREAS, automobile rental services are necessary and desirable for the proper accommodation of passengers arriving at and departing from the Fayetteville Regional Airport;

AND WHEREAS, LESSEE is engaged in the operation of an automobile rental business and is ready, willing and able to provide a sufficient number of late model automobiles to meet the needs of passengers using the Fayetteville Regional Airport at rates comparable to those generally prevailing in the area;

NOW, THEREFORE, the parties for and in consideration for the rents, covenants and agreements contained herein do hereby contract and agree as follows:

ARTICLE I—SPACE AND FACILITIES

LESSOR does hereby rent and let unto the LESSEE and the LESSEE does hereby hire and take from the LESSOR, subject to the terms and conditions herein stated, the following:

- (a) Space and facilities in the Fayetteville Regional Airport Terminal Building for the exclusive use by the LESSEE as office and ticket counter space, to wit:

Approximately 200.77 square feet located in the Baggage Claim Area of the Fayetteville Regional Airport Terminal Building, and designated as a portion of C111A on a mechanical drawing attached hereto and labeled Exhibit "A" which is incorporated herein by reference and is further designated on said mechanical drawing as Avis.

- (b) The use, together with others holding car rental leases at the Fayetteville Regional Airport, a portion of the 250 available spaces now and hereafter designated by LESSOR as "Ready Car Space."
- (c) LESSOR reserves the right to relocate the office and ticket counter space and ready car spaces rented to LESSEE hereunder should relocation become necessary for the efficient and orderly operation of the Fayetteville Regional Airport; provided, however, that should relocation become necessary, the space provided LESSEE shall be as near as possible, equal to or better than, the space described herein. In the event that the replacement space is unsuitable for LESSEE's business, LESSEE, at its sole discretion, may cancel this Agreement upon thirty (30) days advance written notice.

ARTICLE II—TERM

The term of this Concession Agreement shall be for FIVE (5) years beginning JULY 1, 2022 and ending on the JUNE 30, 2027. The term may be renewed for an additional FIVE (5) years, subject to an increase in fees to defray any additional expenses incurred by the LESSOR, and any adjustment to the terms hereof as may be appropriate at the time, which shall involve at a minimum increase in rent to reflect any increase in the Consumer Price Index (CPI) after the first THREE (3) years. Said adjustment shall be based on the average of the percent of change in Consumer Price Index (All Urban Consumers, all items, South Group, 50,000-450,000 population) for the previous three years. At the end of the three (3) year period which is June 30, 2025, and through any extension period(s), CPI adjustments shall continue to be made triennially. Lessee may exercise its right to renew the term of this Concession Agreement for the additional five (5) year term on not less than ninety (90) days prior written notice to the Lessor.

ARTICLE III—USE OF SPACE AND FACILITES

- (a) LESSOR hereby grants to the LESSEE the following non-exclusive privileges, uses and rights, all of which shall be subject to the terms, conditions and covenants hereinafter set forth, and the rules and regulations as may now or hereafter be promulgated by the City of Fayetteville or the Fayetteville Airport Commission:
 - (1) The right, license and privilege to operate an automobile rental service at the Fayetteville Regional Airport for the purpose of renting automobiles to passengers and such other persons who request such services at said airport;
 - (2) The right of ingress and egress to and from the Fayetteville Regional Airport by its agents, employees, patrons, customers and invitees; and

(3) The right to install and display appropriate signs in the Terminal Building to advertise said auto rental concession, provided that such design, installation and display shall be subject to the prior approval of the Airport Commission.

(b) LESSOR reserves the right to contract with other individuals, firms, or corporations to engage in like activities at the Fayetteville Regional Airport.

ARTICLE IV—RENT

(a) Concession Fee. LESSEE shall pay to LESSOR for the rights and privileges herein granted as a concession fee a minimum annual guarantee (MAG) payment of TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$25,000.00), or ten percent (10%) of annual gross revenue as hereinafter defined, whichever sum is greater, payable monthly. On or before occupancy by LESSEE and on the same day monthly each and every month thereafter until the termination of this lease, LESSEE shall pay LESSOR a minimum of TWO THOUSAND EIGHTY-THREE DOLLARS AND THIRTY-THREE CENTS (\$2083.33). On or before the first day of occupancy by LESSEE and on the same day monthly each and every month thereafter until the termination of this lease, LESSEE shall pay LESSOR, in addition to the minimum monthly payment of TWO THOUSAND EIGHTY THREE DOLLARS AND THIRTY-THREE CENTS (\$2083.33), an additional sum equal to ten percent (10%) of the monthly gross revenue for said previous month if ten percent (10%) of the monthly gross revenue for said previous month exceeds TWO THOUSAND EIGHTY-THREE DOLLARS AND THIRTY-THREE CENTS (\$2083.33). The ten percent (10%) of gross (less \$2,083.33 if concession receipts exceed said amount) shall be remitted to the Lessor on or before the twentieth (20th) day of the calendar month immediately following the end of the calendar month during which the revenues were collected. Reconciliation of minimum annual guarantee (MAG) shall occur at the end of the LESSOR's fiscal year which is June 30th and additional payment/reimbursement shall be made to LESSOR or LESSEE, as applicable.

(b) Gross Revenue. For all purposes hereof, the term "gross revenue" shall mean all revenue received from LESSEE's customers (after all discounts applied thereto) made by the LESSEE to its customers for those cars which the LESSEE shall have rented to them at or through any of the leased premises, less bad debts which become owing for the first time as of the close of the period for which the determination of gross receipts is made, plus payments received during said period on account of bad debts deducted in determining gross receipts for the last previous period for which a determination of gross receipts was made. A "bad debt" is any sum that is owed the LESSEE under a car rental agreement applicable to a car rented as aforesaid and which is four (4) months or more overdue at the close of any period for which gross receipts

are determined hereunder. By way of illustration, but not by way of limitation, gross revenue shall include:

- (1) All charges made by LESSEE to its customers for those vehicles rented at or through the leased premises, without regard to where the customer placed the order or the LESSEE received the order for said vehicle and without regard to whether said vehicle is returned to the leased premises or elsewhere;
- (2) All charges made by the LESSEE to its customers for exchanged vehicles regardless of where said exchange was made, when the vehicle originally rented to the customer was rented at or through the leased premises; and
- (3) All charges made by the LESSEE to its customers for accident insurance.

(c) Excluded from "gross revenue" for the purpose of this Agreement, shall be:

- (1) The amount of federal, state or local sales taxes which are separately stated and collected by LESSEE from customers;
- (2) All sums received by LESSEE as damages for the loss, conversion, abandonment, or destruction to vehicles leased by LESSEE under this Agreement;
- (3) All sums received by reason of LESSEE's sale of its capital assets;
- (4) Revenue arising out of or collected on amount of charges made by Lessee to its customers in return for which Lessee agrees to waive its rights to recover from said customers for loss or damage to rental automobiles, otherwise known as loss damage waiver (LDW), and/or collision damage waiver (CDW);
- (5) All sums received from customers for the purchase of fuel; and
- (6) Any amount collected from its customers as Customer Facility Charges (CFCs).

This definition of "gross revenue" shall be subject to renegotiation between the parties prior to any extension of this Concession Agreement becoming effective as provided by Article II of this Agreement.

(d) Office and Counter Space. In addition to the above payments, LESSEE shall pay the LESSOR rent for its space occupied in the Terminal Building at the rate of TWENTY DOLLARS AND SEVENTY-NINE CENTS (\$20.79) per square foot per year for counter space and TEN DOLLARS AND FORTY CENTS (\$10.40) per square foot per year for office space computed below, payable monthly on or before July 1, 2022, or on or before the first day of each and every succeeding month thereafter during the term of this Agreement.

Counter Space:

163 sq. ft. X \$20.79 per sq. ft.= $\$3,388.77/12=$ \$282.40 per month

Office Space:

198 sq. ft. X \$10.40 per sq. ft.= $\$2,059.20/12=$ \$171.60 per month

Total:

\$ 454.00 per month

- (e) Ready Car Space. In addition to the above payments, LESSEE shall pay LESSOR rent of TWENTY DOLLARS AND NO CENTS (\$20.00) per month for each ready space allocated to LESSEE, payable monthly on or before JULY 1, 2022, and on or before the first day of each and every succeeding month thereafter during the term of this Agreement. LESSEE shall have the right to tow away any unauthorized vehicles parked in LESSEE's designated Ready Car space, provided each space is properly signed in accordance with North Carolina State law. Any vehicle towed shall be stored in the Airport parking lot and LESSEE shall notify and submit a storage report to Airport Firefighter personnel.

The location of LESSEE's spaces shall be based on the gross revenue received from the previous three (3) years, with the LESSEE having the highest revenue choosing the location of their ready spaces first, etc. The number of ready spaces LESSEE receives will be based on the gross revenue received from the previous twelve months.

The number of spaces will be increased or decreased on a triannual basis and the preceding year's revenues received from July 1st to June 30th will determine space allocations. The reallocation shall take place August 1st of each year.

The City reserves the right to contract with additional lessees during the term of this agreement, including any extensions. In the event a new lessee commences operation during the Term of this Agreement, that lessee shall receive ten (10) ready car spaces, with two (2) spaces being taken from each of the existing lease holders. On August 1st of the following year, all spaces will be reallocated based on previous year's market share (including any partial year market share of a new lessee), but in no event shall any lessee ever receive less than a minimum of ten (10) ready car spaces.

- (f) Utilities Fee. In addition to the above payments, LESSEE shall pay LESSOR a fee for water, lights, heat, air conditioning and maintenance the sum of FIFTY DOLLARS AND NO CENTS (\$50.00) per month, payable on or before July 1, 2022 or on or before the 1st day of each and every succeeding month thereafter during the initial five (5) year term of this Agreement; thereafter, the LESSOR and LESSEE shall mutually agree in writing upon any increase for utilities to defray the costs of any increase LESSOR may incur.

(g) Abatement of Minimum Guarantee. In no event shall payment of counter space, office space, ready car space and utilities abate. The minimum concession fee provided in Article IV (a) shall be suspended upon the occurrence of any of the following conditions:

- (1) A strike by employees of a commercial airline providing service to the Fayetteville Regional Airport that causes a total cessation of airline service for a period of fifteen (15) days or longer in any one calendar month. The continued service by a non-striking commercial airline so that there is not a total cessation of airline service to the Fayetteville Regional Airport shall not constitute an abatement of the minimum guarantee as defined herein;
- (2) In the event of the declaration of a national emergency by executive decree or legislative action, which causes a material, and substantial curtailment of the supply of fuel, tires, or parts for motor vehicles and airplanes for use by the general public; or
- (3) If, for any reason, the number of passengers deplaning from scheduled airline flights at Fayetteville Regional Airport during any two (2) consecutive calendar months shall be less than seventy percent (70%) of the number of such deplaning passengers for the same period of the preceding calendar year. The percentage of deplaning passengers shall be subject to renegotiation between the parties prior to any extension of this Concession Agreement becoming effective as provided by Article II of this Agreement.

If during this period, any of the foregoing conditions exist, LESSEE shall pay to the LESSOR for the rights, privileges, and facilities, rent based upon 10 percent of annual gross revenue.

(h) Late Fees: Any fee payable by Lessee under this agreement that is not paid when due shall bear a late payment fee at the rate of five percent (5%) per month from the due date until paid."

ARTICLE V—REPORTS AND RECORDS

- (a) LESSEE shall furnish LESSOR on or **before the 20th day of each calendar month a Certified and signed copy of its statement of operations for the previous month** which said statement shall show in detail a breakdown of LESSEE's gross revenue for the previous month to enable LESSOR to verify the accuracy of LESSEE's payment of percentage of gross revenue. LESSEE shall furnish LESSOR, upon demand, such additional detail and breakdown as LESSOR shall deem necessary to verify gross revenue.
- (b) LESSOR shall have the right to inspect LESSEE's books and records for a period of three (3) years, to determine the accuracy of the matters reports in said monthly report required above and LESSEE agrees to maintain all books

and records upon leased premises, or to mail same to LESSOR within ten (10) days of LESSOR's request therefore.

- (c) At the end of the first lease year under this Agreement, which is June 30, 2023, and at the end of each lease year thereafter during the term of this Agreement, or not more than sixty (60) days thereafter, LESSEE shall furnish to LESSOR a certified copy of an audit of LESSEE's operations hereunder by LESSEE's certified public accountant. LESSOR shall have the right to conduct its own audit to verify LESSEE's certified audit and in the event LESSOR's audit to verify LESSEE's payments of rent to LESSOR is as much as two and one-half percent (2 ½%) less than the amount LESSEE is required to pay LESSOR under the terms of this Agreement, then LESSEE shall pay to LESSOR all costs and expenses incurred by LESSOR in conducting said audit, including transportation, food and lodging expenses.
- (d) LESSEE shall submit to LESSOR no later than the 1st of November each year, a Concession Activities Report listing the following:
 - (1) Names and types of Disadvantaged Business Enterprise (DBE) firms that supported operations at the Fayetteville Regional Airport, to include whether a DBE firm arrangement is a sublease or joint venture;
 - (2) Payments to DBE (s) per (1) above;
 - (3) Rental annual gross income for business conducted at Fayetteville Regional Airport; and
 - (4) Percentage of DBE participation for the current October 1st to September 30th timeframe bases on (2) and (3) above.

ARTICLE VI—OBLIGATIONS OF LESSEE

The LESSEE covenants and agrees:

- (a) To promptly pay all charges, rents and fees by delivering same to the City of Fayetteville, PO Drawer D, Fayetteville, NC 28302.
- (b) The LESSEE shall take out or obtain all licenses or permits as required by federal, state or local law. The LESSEE shall pay any and all lawful taxes and assessments (including but not limited to ad valorem and inventory taxes) which, during the term of this Lease Agreement, or any part thereof, may become a lien upon or which may be levied by state, county, city or any other tax levying body, upon any and all of the leased premises of this Agreement. And upon any and all taxable interest of the LESSEE acquired in this Lease Agreement, as well as all taxes on taxable property, real or personal, owned by the LESSEE in or about said leased premises, but deferment of payment of any tax by the LESSEE shall not constitute a default or breach of this Lease Agreement during the time the LESSEE is contesting in good faith the payment of said tax before any duly constituted authority, and pending the final determination of such contest.

- (c) To furnish, install, operate and maintain the space and facilities provided herein and keep the same, as well as other premises made available to the LESSEE, and the furniture, fixtures and equipment installed therein in good working condition and repair, and upon termination or the expiration of this Agreement, to deliver the premises to LESSOR in good order, condition and repair, reasonable wear and tear excepted.
- (d) To provide and have available at all times for use by patrons at the Fayetteville Regional Airport, a sufficient number of rental automobiles to meet the normal demands and needs of the public for automobile rental services. Service shall be available for all scheduled commercial flights. Rental automobiles shall be in good working condition and free from known mechanical defects and in a clean, neat and attractive condition both inside and out and shall be no more than two years older than current year models.
- (e) Solicitation of business shall be restricted to the space allotted LESSEE in the Airport Terminal Building.
- (f) LESSEE shall not maintain in a position of public interaction any person reasonably objectionable to Airport Management on account of said person's reputation, appearance, dress or conduct; provided that termination of any such employee shall be subject to such due process rights, if any, as may be extended to said employee by LESSEE.
- (g) LESSEE covenants and agrees to at all times observe, obey and comply fully with all laws, assurances, ordinances, rules, regulations, and requirements now in effect and hereafter promulgated by the LESSOR, City, State, Federal, or other governmental entity having jurisdiction over the leased premises or activities of LESSEE.
- (h) Maintenance of vehicles, including cleaning and washing, shall not be performed on Airport property without prior written permission of Airport Management.

ARTICLE VII—INDEMNIFICATION & INSURANCE

- (a) Indemnification. It is agreed that LESSEE is, and shall be deemed to be an independent contractor, and that LESSOR shall in no way be responsible to any person, firm or corporation for the LESSEE, its invitees, agents, officers, servants or employees acts or omissions. It is further agreed that in the exercise or enjoyment of the privileges herein granted, the LESSEE shall indemnify, defend, and save and hold harmless the LESSOR and all of its elected officials, employees, officers agents, successors and assigns from any and all claims, demands, suits, judgments, costs, expenses (including attorney fees) and liability to persons and/or property that may result from or grow out of any act, omission, or negligence on the part of the LESSEE or the LESSEE's invitees, agents, servants, employees, or officers. Indemnification of the LESSOR by LESSEE does not constitute a waiver of the City's governmental immunity in any respects under North Carolina law.

- (b) Commercial General Liability. LESSEE shall procure and maintain in full force and effect at all times and at its sole expense, Commercial General Liability insurance covering premises operations, independent contractors and contractual liability, with single limits coverage of one million dollars (\$1,000,000) per occurrence.
- (c) Automobile Liability. The LESSEE shall, prior to commencing its operations pursuant to the terms of this Lease Agreement, take out and maintain continuously in effect at all times during the term of this Agreement, in addition to insurance required by law, automobile liability insurance in the sum of ONE HUNDRED THOUSAND & NO/100 DOLLARS (\$100,000.00) for each person injured and THREE HUNDRED THOUSAND & NO/100 DOLLARS (\$300,000.00) for each accident, and FIFTY THOUSAND & NO/100 DOLLARS (\$50,000.00) for property damage. The LESSEE shall maintain such insurance with insurance underwriters authorized to do business in the State of North Carolina satisfactory to the LESSOR. The LESSEE shall, prior to commencing its operations pursuant to the terms of this Lease Agreement, furnish the LESSOR with a certificate of insurance from the LESSEE's carrier indicating there is such insurance coverage as herein before provided. Said Certificate of Insurance shall provide that the policy cannot be canceled or materially changed except after giving notice by registered mail to LESSOR at least thirty (30) days before the effective date of such cancellation or change.
- (d) The insurance coverage's and limits required of the LESSEE under this agreement are designed to meet the minimum requirements for the LESSOR. They are not designed as a recommended insurance program. LESSEE alone is responsible for the sufficiency of its own insurance program(s). If LESSEE has any questions concerning exposures and/or coverage issues, professional insurance assistance should be obtained by LESSEE.
- (e) All insurances shall be placed with an insurance company licensed to do business in the State of North Carolina.

ARTICLE VIII-ASSIGNMENT OF LEASE

LESSEE shall not assign this Agreement or any part thereof nor sublet the leased premises or any part thereof, without prior written consent of LESSOR, except to an affiliate of the LESSEE. For all purposes hereof, an "affiliate" is any person, firm or corporation controlled by, under common control with, or controlling the LESSEE. "Control" is the power to direct the management and policies of another, whether arising by virtue of stock ownership, contract, or otherwise.

ARTICLE IX—CANCELLATION OR TERMINATION

- (a) Termination by Airport. This agreement and all rights and privileges and interests created hereunder may be terminated by LESSOR upon written notice to LESSEE upon LESSEE's default in the payment of any sums when due hereunder and failure to cure said default within 10 days after said written notice. The acceptance of any monies by LESSOR, after default shall not be deemed to be a waiver of the right of termination by LESSOR, nor shall LESSOR be stopped from evicting LESSEE from its premises and re-letting said premises to other parties.
- (b) Except as provided in (a) above, this agreement and all rights and privileges and interests created hereunder may be terminated by LESSOR upon ten (10) days written notice to LESSEE upon the occurrence of any of the following events:
- (1) The LESSEE defaults in the performance of any term, covenant, or condition hereunder and such default shall continue for thirty (30) days after written notice of such default from LESSOR to LESSEE; provided, however, that no such default shall continue for more than twenty-four (24) hours after written notice of such default if it presents a hazard to the safety of Airport personnel or the general public. The acceptance of any monies by LESSOR after default shall not be deemed to be a waiver of the right of termination by LESSOR, nor shall LESSOR be stopped from evicting LESSEE from its premises and re-letting said premises to other parties.
 - (2) The LESSEE shall become insolvent or take the benefit of any present or future insolvency statute or make any assignment for the benefit of creditors or file a voluntary petition in bankruptcy or consent to the appointment of a receiver of its property.
 - (3) By order or decree of a court that LESSEE is adjudged bankrupt.
 - (4) A petition under any part of the Federal Bankruptcy Law is filed by any person, firm, or corporation against LESSEE and such petition is not vacated or discharged within ninety (90) days thereafter.
 - (5) LESSEE shall voluntarily abandon and discontinue its rental service at the Fayetteville Regional Airport for a period of ten (10) consecutive days. LESSOR shall be deemed to have not waived any of its rights or privileges due to its failure to notify LESSEE of any default or violation of any of the terms of this Agreement. Within thirty (30) days of the termination or cancellation of this Agreement, LESSEE shall remove all of its property from LESSOR's premises and leave the same in substantially the same condition as prior to LESSEE's entry thereon, ordinary wear and tear excepted. Any item or property not removed by LESSEE within thirty (30) days following the cancellation or termination of this Agreement shall be deemed to have been abandoned by LESSEE and shall become the property of the LESSOR without compensation and LESSOR shall be entitled to remove and dispose of same in any manner it deems fit.

(c) Termination by LESSEE. LESSEE shall have the right to terminate this Agreement by giving 30 days' written notice, unless another notice period is identified, to LESSOR upon the occurrence of any of the following events, provided said event or events shall then be continuing:

- (1) The issuance by any court of competent jurisdiction of any injunction, order or decree preventing or restraining the use by LESSEE of any part of the Fayetteville Regional Airport which is necessary for LESSEE's operations hereunder, which Order remain in force for a period of at least one hundred twenty (120) days.
- (2) The LESSOR's default in fulfilling any of the terms, covenants, and conditions required under this Agreement and fails to cure said default within forty-five (45) days following receipt of written notice thereof from LESSEE.
- (3) The destruction by fire, explosion, earthquake, the public enemy or other acts of God of a substantial or material part of the Fayetteville Regional Airport which substantially interferes with or disrupts LESSEE's use of said premises.
- (4) The United States Government or any of its agencies shall occupy the Fayetteville Regional Airport or any substantial part thereof to such an extent as to materially interfere with LESSEE's operations for a period of sixty (60) consecutive days, or more.

ARTICLE X—COVENANT NOT TO GRANT MORE FAVORABLE TERMS

LESSOR covenants and agrees not to enter into any concession agreement or contract with any other rental car agency that contains more favorable terms or conditions than contained herein.

ARTICLE XI—AFFIRMATIVE ACTION

LESSEE agrees that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment activities covered in 14 CFR, Part 152, Subpart E. LESSEE agrees that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. LESSEE agrees that it will require that its covered sub-organizations provide assurances to the LESSOR that they similarly will undertake affirmative action programs and that they will require assurances from said sub organizations, as required by 14 CFR, Part 152, Subpart E, to the same effect.

ARTICLE XII – CUSTOMER FACILITY CHARGE (CFC)

LESSOR approved the imposition of a Customer Facility Charge (CFC) on April 29, 2014 to be collected by LESSEE from rental car customers at the Airport effective July 15, 2014. The CFC remains in effect and continues at the current rate of Four Dollars (\$4.00) for the full Agreement period.

- (a) LESSEE agrees to continue imposition of the CFC fee as specified by the LESSOR in Section (b) below for each customer entering into a rental contract with LESSEE at the Fayetteville Regional Airport for the purpose of securing or recovering LESSOR's costs associated with certain Airport rental car facility related improvements that may be made at the Airport by the LESSOR at its sole discretion, including but not limited to, a parking deck and new service area facilities as contemplated by LESSOR.
- (b) The proceeds of all CFCs shall be used solely for payment of costs relating to rental car facilities and parking areas at the Airport and which are deemed necessary by the LESSOR from time to time. The CFC shall be charged to LESSEE's customers for each day, or portion thereof for which a late fee or rental is charged to the customer, and a rental contract is in effect between LESSEE and its customers, up to a maximum of ten (10) CFCs per single rental contract. The amount of the CFC shall be FOUR DOLLARS (\$4.00) per contract day, or portion thereof and shall apply to, and be collected by LESSEE on, all rental contracts reserved, issued or written on or after July 1, 2021. Notwithstanding any of the other terms in the Agreement, the LESSOR reserves the right to adjust the amount of the CFC from time to time as the LESSOR deems necessary in its sole discretion. LESSOR shall provide LESSEE at least sixty (60) days prior notice of an adjustment in the CFC.
- (c) LESSEE shall collect the CFC from each customer with which LESSEE enters into an automobile rental contract at the Airport. The CFC shall be identified on a separate line on all rental car customer contracts, after taxes, and shall be described as the "Airport Customer Facility Charge". All Customer Facility Charges collected and/or held by LESSEE shall: (i) be collected from all customers, including without limitation all customers receiving complimentary or discounted car rentals under the LESSEE's bona fide marketing plans; and (ii) be held in trust by LESSEE for the LESSOR's benefit. All CFCs so collected shall be remitted to the LESSOR on or before the twentieth (20th) day of the calendar month immediately following the end of the calendar month during which such CFCs were collected. Failure by the LESSEE to collect and remit the CFCs to the LESSOR as provided for in this Concession Agreement shall result in termination of the AGREEMENT between LESSOR and LESSEE.
- (d) The method of calculating the CFC and the amount of such Customer Facility Charge shall be determined by the LESSOR at its sole discretion.

LESSEE shall maintain records and controls, as prescribed by the LESSOR, which are sufficient to demonstrate the correctness of any such Customer Facility Charges collected by LESSEE and the amount of Customer Facility Charges remitted to the LESSOR. Said records shall be made available for inspection and examination by the LESSOR or its duly authorized representatives. The LESSOR reserves the right to audit LESSEE's records which are required to be maintained by LESSEE as provided for in *Article V – Reports and Records* of the AGREEMENT, for the purpose of verifying the Gross Revenue and Customer Facility Charges reported by LESSEE. Gross revenue shall specifically exclude any amounts collected from its customers as Customer Facility Charges.

ARTICLE XIII – N.C. IRAN DIVESTMENT ACT

As mandated by N.C.G.S. 143C-6A-5(a), LESSEE certifies that it is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 143C-6A-4. LESSEE further certifies that in accordance with N.C.G.S. 143C-6A-5(b) that it shall not utilize any subcontractor found on the State Treasurer's Final Divestment List. LESSEE certifies that the signatory to this Agreement is authorized by the LESSEE to make the foregoing statement.

ARTICLE XIV - E-VERIFY

LESSEE hereby acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. LESSEE further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). LESSEE hereby pledges, attests and warrants through execution of this contract that LESSEE complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by LESSEE shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Amendment.

ARTICLE XV - SEVERABILITY

The parties agree that if any provision of this contract shall be held invalid for any reason, the remaining provisions shall not be affected if they may continue to conform with the purposes of this contract and the requirements of applicable law.

ARTICLE XVI – COMPLIANCE WITH LAWS, GOVERNING LAW, & VENUE AND FORUM

LESSEE agrees to comply with all applicable statutes, ordinances, and regulations of the United States, the State of North Carolina, the City and units of local government. Except to the extent a federal law, rule or order may apply, this Agreement shall be governed by the laws of the State of North Carolina (without resort to the choice of law rules thereof). If any action or proceeding is brought by either party to enforce the provisions hereof, the prevailing party shall be entitled to recover all reasonable costs and attorneys' fees incurred in such action or proceeding, including those on appeal, in such amounts as the court may determine without a jury. The Parties expressly agree that if litigation is brought in connection with this contract and (1) the litigation proceeds in the Courts of the State of North Carolina, the parties agree that the appropriate venue shall be in Cumberland County (Twelfth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina.

ARTICLE XVII- MORALITY CLAUSE

If, in the sole opinion of the City of Fayetteville, at any time LESSEE or any of its owner(s) or employee(s) or agent(s) (collectively referenced as an "Actor") engages in any one or more actions that bring disrepute, contempt, scandal, or public ridicule to the Actor or subject the Actor to prosecution or offend the community or public morals or decency or denigrate individuals or groups in the community served by the City of Fayetteville or are scandalous or inconsistent with community standards or good citizenship or may adversely affect the City of Fayetteville's finances, public standing, image, or reputation or are embarrassing or offensive to the City of Fayetteville or may reflect unfavorably on the City of Fayetteville or are derogatory or offensive to one or more employee(s) or customer(s) of the City of Fayetteville, the City of Fayetteville may immediately upon written notice to LESSOR terminate this Contract, in addition to any other rights and remedies that the City of Fayetteville may have hereunder or at law or in equity.

ARTICLE XVIII—NOTICES

All notices required or permitted to be given hereunder to LESSOR shall be sufficient if sent by registered mail, postage prepaid, and addressed to: **City of Fayetteville, 433 Hay Street, Fayetteville, NC 28301**. All notices required or permitted to be given hereunder to LESSEE shall be sufficient if sent by registered mail, postage prepaid, and addressed to: **Avis Rent A Car System, LLC**_

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized officers, as of the day and year first above written.

CITY OF FAYETTEVILLE

BY: _____
Douglas J. Hewett, ICMA-CM, City Manager

ATTEST:

Pamela Megill, City Clerk
(Corporate Seal)

Avis Rent A Car System, LLC

BY: _____

Vice President
Properties and Concession

ATTEST:

Secretary

**STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND**

I, _____, a Notary Public for _____ County, North Carolina, certify that **Pamela Megill** personally came before me this day and acknowledged that she is the **City Clerk** of **City of Fayetteville**, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its City Manager, sealed with its corporate seal and attested by herself as its **City Clerk**.

Witness my hand and notarial seal, this the _____ day of _____, 2022.

Notary Public

My commission expires: _____

STATE OF _____
COUNTY OF _____

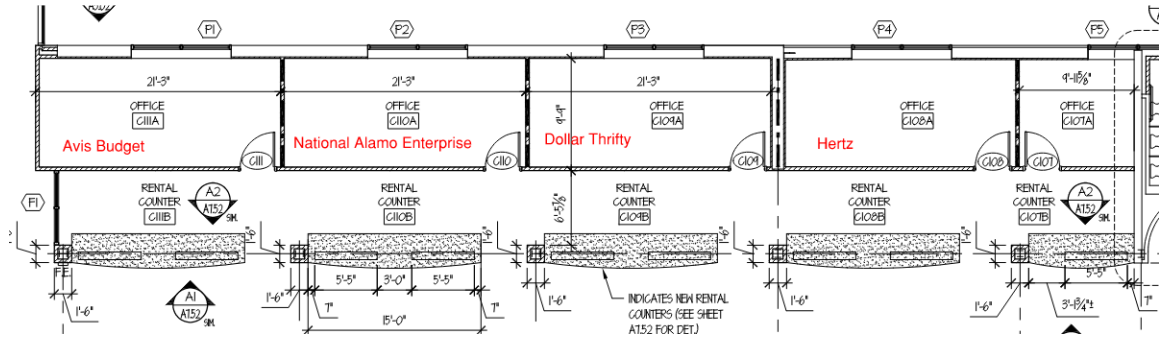
I, _____, a notary public of said County and State hereby certify that _____ personally came before me this day and acknowledged that he is _____ of Avis Rent A Car System, LLC, a limited liability company, and that by authority duly given and as the act of Avis Rent A Car System, LLC, and in such representative capacity voluntarily signed and acknowledged the due execution of the foregoing instrument.

Witness my hand and notaries seal, this the _____ day of _____, 2022.

Notary Public

My commission expires: _____

EXHIBIT A



NORTH CAROLINA

**BUDGET RENT A CAR
SYSTEM, INC. RENTAL CAR
LEASE AND CONCESSION
AGREEMENT**

CUMBERLAND COUNTY

THIS LEASE AND CONCESSION AGREEMENT made and entered into as of this **1st day of July, 2022**, by and between the **CITY OF FAYETTEVILLE**, hereinafter called "**LESSOR**" and **BUDGET RENT A CAR SYSTEM, INC.**, a corporation having an office in Cumberland County, North Carolina, hereinafter called "**LESSEE**";

WITNESSETH:

WHEREAS, the City of Fayetteville through its City Council is duly empowered as the owner and operator of the Fayetteville Regional Airport and all facilities located thereon, under the authority of N.C.G.S. § 63-53(3) and Chapter 3 of the Code of Ordinances of the City of Fayetteville, North Carolina;

AND WHEREAS, automobile rental services are necessary and desirable for the proper accommodation of passengers arriving at and departing from the Fayetteville Regional Airport;

AND WHEREAS, LESSEE is engaged in the operation of an automobile rental business and is ready, willing and able to provide a sufficient number of late model automobiles to meet the needs of passengers using the Fayetteville Regional Airport at rates comparable to those generally prevailing in the area;

NOW, THEREFORE, the parties for and in consideration for the rents, covenants and agreements contained herein do hereby contract and agree as follows:

ARTICLE I—SPACE AND FACILITIES

LESSOR does hereby rent and let unto the LESSEE and the LESSEE does hereby hire and take from the LESSOR, subject to the terms and conditions herein stated, the following:

- (a) Space and facilities in the Fayetteville Regional Airport Terminal Building for the exclusive use by the LESSEE as office and ticket counter space, to wit:
Approximately 200.77 square feet located in the Baggage Claim Area of the Fayetteville Regional Airport Terminal Building, and designated as a portion of Office C111A on a mechanical drawing attached hereto and labeled Exhibit "A" which is incorporated herein by reference and is further designated on said mechanical drawing as Budget.

- (b) The use, together with others holding car rental leases at the Fayetteville Regional Airport, a portion of the 250 available spaces now and hereafter designated by LESSOR as "Ready Car Space."
- (c) LESSOR reserves the right to relocate the office and ticket counter space and ready car spaces rented to LESSEE hereunder should relocation become necessary for the efficient and orderly operation of the Fayetteville Regional Airport; provided, however, that should relocation become necessary, the space provided LESSEE shall be as near as possible, equal to or better than, the space described herein. In the event that the replacement space is unsuitable for LESSEE's business, LESSEE, at its sole discretion, may cancel this Agreement upon thirty (30) days advance written notice.

ARTICLE II—TERM

The term of this Concession Agreement shall be for FIVE (5) years beginning JULY 1, 2022 and ending on the JUNE 30, 2027. The term may be renewed for an additional FIVE (5) years, subject to an increase in fees to defray any additional expenses incurred by the LESSOR, and any adjustment to the terms hereof as may be appropriate at the time, which shall involve at a minimum increase in rent to reflect any increase in the Consumer Price Index (CPI) after the first THREE (3) years. Said adjustment shall be based on the average of the percent of change in Consumer Price Index (All Urban Consumers, all items, South Group, 50,000-450,000 population) for the previous three years. At the end of the three (3) year period which is June 30, 2025, and through any extension period(s), CPI adjustments shall continue to be made triennially. Lessee may exercise its right to renew the term of this Concession Agreement for the additional five (5) year term on not less than ninety (90) days prior written notice to the Lessor.

ARTICLE III—USE OF SPACE AND FACILITES

- (a) LESSOR hereby grants to the LESSEE the following non-exclusive privileges, uses and rights, all of which shall be subject to the terms, conditions and covenants hereinafter set forth, and the rules and regulations as may now or hereafter be promulgated by the City of Fayetteville or the Fayetteville Airport Commission:
 - (1) The right, license and privilege to operate an automobile rental service at the Fayetteville Regional Airport for the purpose of renting automobiles to passengers and such other persons who request such services at said airport;
 - (2) The right of ingress and egress to and from the Fayetteville Regional Airport by its agents, employees, patrons, customers and invitees; and

- (3) The right to install and display appropriate signs in the Terminal Building to advertise said auto rental concession, provided that such design, installation and display shall be subject to the prior approval of the Airport Commission.

- (b) LESSOR reserves the right to contract with other individuals, firms, or corporations to engage in like activities at the Fayetteville Regional Airport.

ARTICLE IV—RENT

- (a) Concession Fee. LESSEE shall pay to LESSOR for the rights and privileges herein granted as a concession fee a minimum annual guarantee (MAG) payment of TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$25,000.00), or ten percent (10%) of annual gross revenue as hereinafter defined, whichever sum is greater, payable monthly. On or before occupancy by LESSEE and on the same day monthly each and every month thereafter until the termination of this lease, LESSEE shall pay LESSOR a minimum of TWO THOUSAND EIGHTY-THREE DOLLARS AND THIRTY-THREE CENTS (\$2083.33). On or before the first day of occupancy by LESSEE and on the same day monthly each and every month thereafter until the termination of this lease, LESSEE shall pay LESSOR, in addition to the minimum monthly payment of TWO THOUSAND EIGHTY THREE DOLLARS AND THIRTY-THREE CENTS (\$2083.33), an additional sum equal to ten percent (10%) of the monthly gross revenue for said previous month if ten percent (10%) of the monthly gross revenue for said previous month exceeds TWO THOUSAND EIGHTY-THREE DOLLARS AND THIRTY-THREE CENTS (\$2083.33). The ten percent (10%) of gross (less \$2,083.33 if concession receipts exceed said amount) shall be remitted to the Lessor on or before the twentieth (20th) day of the calendar month immediately following the end of the calendar month during which the revenues were collected. Reconciliation of minimum annual guarantee (MAG) shall occur at the end of the LESSOR's fiscal year which is June 30th and additional payment/reimbursement shall be made to LESSOR or LESSEE, as applicable.
- (b) Gross Revenue. For all purposes hereof, the term "gross revenue" shall mean all revenue received from LESSEE's customers (after all discounts applied thereto) made by the LESSEE to its customers for those cars which the LESSEE shall have rented to them at or through any of the leased premises, less bad debts which become owing for the first time as of the close of the period for which the determination of gross receipts is made, plus payments received during said period on account of bad debts deducted in determining gross receipts for the last previous period for which a determination of gross receipts was made. A "bad debt" is any sum that is owed the LESSEE under a car rental agreement applicable to a car rented as aforesaid and which is four (4) months or more overdue at the close of any period for which gross receipts

are determined hereunder. By way of illustration, but not by way of limitation, gross revenue shall include:

- (1) All charges made by LESSEE to its customers for those vehicles rented at or through the leased premises, without regard to where the customer placed the order or the LESSEE received the order for said vehicle and without regard to whether said vehicle is returned to the leased premises or elsewhere;
- (2) All charges made by the LESSEE to its customers for exchanged vehicles regardless of where said exchange was made, when the vehicle originally rented to the customer was rented at or through the leased premises; and
- (3) All charges made by the LESSEE to its customers for accident insurance.

(c) Excluded from "gross revenue" for the purpose of this Agreement, shall be:

- (1) The amount of federal, state or local sales taxes which are separately stated and collected by LESSEE from customers;
- (2) All sums received by LESSEE as damages for the loss, conversion, abandonment, or destruction to vehicles leased by LESSEE under this Agreement;
- (3) All sums received by reason of LESSEE's sale of its capital assets;
- (4) Revenue arising out of or collected on amount of charges made by Lessee to its customers in return for which Lessee agrees to waive its rights to recover from said customers for loss or damage to rental automobiles, otherwise known as loss damage waiver (LDW), and/or collision damage waiver (CDW);
- (5) All sums received from customers for the purchase of fuel; and
- (6) Any amount collected from its customers as Customer Facility Charges (CFCs).

This definition of "gross revenue" shall be subject to renegotiation between the parties prior to any extension of this Concession Agreement becoming effective as provided by Article II of this Agreement.

- (d) Ready Car Space. In addition to the above payments, LESSEE shall pay LESSOR rent of TWENTY DOLLARS AND NO CENTS (\$20.00) per month for each ready space allocated to LESSEE, payable monthly on or before JULY 1, 2022, and on or before the first day of each and every succeeding month thereafter during the term of this Agreement. LESSEE shall have the right to tow away any unauthorized vehicles parked in LESSEE's designated Ready Car space, provided each space is properly signed in accordance with North Carolina State law. Any vehicle towed shall be stored in the Airport parking lot and LESSEE shall notify and submit a storage report to Airport Firefighter personnel.

The location of LESSEE's spaces shall be based on the gross revenue received from the previous three (3) years, with the LESSEE having the highest revenue choosing the location of their ready spaces first, etc. The number of ready spaces LESSEE receives will be based on the gross revenue received from the previous twelve months.

The number of spaces will be increased or decreased on a triannual basis and the preceding year's revenues received from July 1st to June 30th will determine space allocations. The reallocation shall take place August 1st of each year.

The City reserves the right to contract with additional lessees during the term of this agreement, including any extensions. In the event a new lessee commences operation during the Term of this Agreement, that lessee shall receive ten (10) ready car spaces, with two (2) spaces being taken from each of the existing lease holders. On August 1st of the following year, all spaces will be reallocated based on previous year's market share (including any partial year market share of a new lessee), but in no event shall any lessee ever receive less than a minimum of ten (10) ready car spaces.

(e) Abatement of Minimum Guarantee. In no event shall payment of counter space, office space, ready car space and utilities abate. The minimum concession fee provided in Article IV (a) shall be suspended upon the occurrence of any of the following conditions:

- (1) A strike by employees of a commercial airline providing service to the Fayetteville Regional Airport that causes a total cessation of airline service for a period of fifteen (15) days or longer in any one calendar month. The continued service by a non-striking commercial airline so that there is not a total cessation of airline service to the Fayetteville Regional Airport shall not constitute an abatement of the minimum guarantee as defined herein;
- (2) In the event of the declaration of a national emergency by executive decree or legislative action, which causes a material, and substantial curtailment of the supply of fuel, tires, or parts for motor vehicles and airplanes for use by the general public; or
- (3) If, for any reason, the number of passengers deplaning from scheduled airline flights at Fayetteville Regional Airport during any two (2) consecutive calendar months shall be less than seventy percent (70%) of the number of such deplaning passengers for the same period of the preceding calendar year. The percentage of deplaning passengers shall be subject to renegotiation between the parties prior to any extension of this Concession Agreement becoming effective as provided by Article II of this Agreement.

If during this period, any of the foregoing conditions exist, LESSEE shall pay to the LESSOR for the rights, privileges, and facilities, rent based upon 10 percent of annual gross revenue.

(f) Late Fees: Any fee payable by Lessee under this agreement that is not paid when due shall bear a late payment fee at the rate of five percent (5%) per month from the due date until paid.”

ARTICLE V—REPORTS AND RECORDS

- (a) LESSEE shall furnish LESSOR on or **before the 20th day of each calendar month a Certified and signed copy of its statement of operations for the previous month** which said statement shall show in detail a breakdown of LESSEE’s gross revenue for the previous month to enable LESSOR to verify the accuracy of LESSEE’s payment of percentage of gross revenue. LESSEE shall furnish LESSOR, upon demand, such additional detail and breakdown as LESSOR shall deem necessary to verify gross revenue.
- (b) LESSOR shall have the right to inspect LESSEE’s books and records for a period of three (3) years, to determine the accuracy of the matters reports in said monthly report required above and LESSEE agrees to maintain all books and records upon leased premises, or to mail same to LESSOR within ten (10) days of LESSOR’s request therefore.
- (c) At the end of the first lease year under this Agreement, which is June 30, 2023, and at the end of each lease year thereafter during the term of this Agreement, or not more than sixty (60) days thereafter, LESSEE shall furnish to LESSOR a certified copy of an audit of LESSEE’s operations hereunder by LESSEE’s certified public accountant. LESSOR shall have the right to conduct its own audit to verify LESSEE’s certified audit and in the event LESSOR’s audit to verify LESSEE’s payments of rent to LESSOR is as much as two and one-half percent (2 ½%) less than the amount LESSEE is required to pay LESSOR under the terms of this Agreement, then LESSEE shall pay to LESSOR all costs and expenses incurred by LESSOR in conducting said audit, including transportation, food and lodging expenses.
- (d) LESSEE shall submit to LESSOR no later than the 1st of November each year, a Concession Activities Report listing the following:
 - (1) Names and types of Disadvantaged Business Enterprise (DBE) firms that supported operations at the Fayetteville Regional Airport, to include whether a DBE firm arrangement is a sublease or joint venture;
 - (2) Payments to DBE (s) per (1) above;
 - (3) Rental annual gross income for business conducted at Fayetteville Regional Airport; and
 - (4) Percentage of DBE participation for the current October 1st to September 30th timeframe bases on (2) and (3) above.

ARTICLE VI—OBLIGATIONS OF LESSEE

The LESSEE covenants and agrees:

- (a) To promptly pay all charges, rents and fees by delivering same to the City of Fayetteville, PO Drawer D, Fayetteville, NC 28302.
- (b) The LESSEE shall take out or obtain all licenses or permits as required by federal, state or local law. The LESSEE shall pay any and all lawful taxes and assessments (including but not limited to ad valorem and inventory taxes) which, during the term of this Lease Agreement, or any part thereof, may become a lien upon or which may be levied by state, county, city or any other tax levying body, upon any and all of the leased premises of this Agreement. And upon any and all taxable interest of the LESSEE acquired in this Lease Agreement, as well as all taxes on taxable property, real or personal, owned by the LESSEE in or about said leased premises, but deferment of payment of any tax by the LESSEE shall not constitute a default or breach of this Lease Agreement during the time the LESSEE is contesting in good faith the payment of said tax before any duly constituted authority, and pending the final determination of such contest.
- (c) To furnish, install, operate and maintain the space and facilities provided herein and keep the same, as well as other premises made available to the LESSEE, and the furniture, fixtures and equipment installed therein in good working condition and repair, and upon termination or the expiration of this Agreement, to deliver the premises to LESSOR in good order, condition and repair, reasonable wear and tear excepted.
- (d) To provide and have available at all times for use by patrons at the Fayetteville Regional Airport, a sufficient number of rental automobiles to meet the normal demands and needs of the public for automobile rental services. Service shall be available for all scheduled commercial flights. Rental automobiles shall be in good working condition and free from known mechanical defects and in a clean, neat and attractive condition both inside and out and shall be no more than two years older than current year models.
- (e) Solicitation of business shall be restricted to the space allotted LESSEE in the Airport Terminal Building.
- (f) LESSEE shall not maintain in a position of public interaction any person reasonably objectionable to Airport Management on account of said person's reputation, appearance, dress or conduct; provided that termination of any such employee shall be subject to such due process rights, if any, as may be extended to said employee by LESSEE.
- (g) LESSEE covenants and agrees to at all times observe, obey and comply fully with all laws, assurances, ordinances, rules, regulations, and requirements now in effect and hereafter promulgated by the LESSOR, City, State, Federal, or other governmental entity having jurisdiction over the leased premises or activities of LESSEE.
- (h) Maintenance of vehicles, including cleaning and washing, shall not be performed on Airport property without prior written permission of Airport Management.

ARTICLE VII—INDEMNIFICATION & INSURANCE

- (a) Indemnification. It is agreed that LESSEE is, and shall be deemed to be an independent contractor, and that LESSOR shall in no way be responsible to any person, firm or corporation for the LESSEE, its invitees, agents, officers, servants or employees acts or omissions. It is further agreed that in the exercise or enjoyment of the privileges herein granted, the LESSEE shall indemnify, defend, and save and hold harmless the LESSOR and all of its elected officials, employees, officers agents, successors and assigns from any and all claims, demands, suits, judgments, costs, expenses (including attorney fees) and liability to persons and/or property that may result from or grow out of any act, omission, or negligence on the part of the LESSEE or the LESSEE's invitees, agents, servants, employees, or officers. Indemnification of the LESSOR by LESSEE does not constitute a waiver of the City's governmental immunity in any respects under North Carolina law.
- (b) Commercial General Liability. LESSEE shall procure and maintain in full force and effect at all times and at its sole expense, Commercial General Liability insurance covering premises operations, independent contractors and contractual liability, with single limits coverage of one million dollars (\$1,000,000) per occurrence.
- (c) Automobile Liability. The LESSEE shall, prior to commencing its operations pursuant to the terms of this Lease Agreement, take out and maintain continuously in effect at all times during the term of this Agreement, in addition to insurance required by law, automobile liability insurance in the sum of ONE HUNDRED THOUSAND & NO/100 DOLLARS (\$100,000.00) for each person injured and THREE HUNDRED THOUSAND & NO/100 DOLLARS (\$300,000.00) for each accident, and FIFTY THOUSAND & NO/100 DOLLARS (\$50,000.00) for property damage. The LESSEE shall maintain such insurance with insurance underwriters authorized to do business in the State of North Carolina satisfactory to the LESSOR. The LESSEE shall, prior to commencing its operations pursuant to the terms of this Lease Agreement, furnish the LESSOR with a certificate of insurance from the LESSEE's carrier indicating there is such insurance coverage as herein before provided. Said Certificate of Insurance shall provide that the policy cannot be canceled or materially changed except after giving notice by registered mail to LESSOR at least thirty (30) days before the effective date of such cancellation or change.
- (d) The insurance coverage's and limits required of the LESSEE under this agreement are designed to meet the minimum requirements for the LESSOR. They are not designed as a recommended insurance program. LESSEE alone is responsible for the sufficiency of its own insurance program(s). If LESSEE has any questions concerning exposures and/or coverage issues, professional insurance assistance should be obtained by LESSEE.

- (e) All insurances shall be placed with an insurance company licensed to do business in the State of North Carolina.

ARTICLE VIII-ASSIGNMENT OF LEASE

LESSEE shall not assign this Agreement or any part thereof nor sublet the leased premises or any part thereof, without prior written consent of LESSOR, except to an affiliate of the LESSEE. For all purposes hereof, an “affiliate” is any person, firm or corporation controlled by, under common control with, or controlling the LESSEE. “Control” is the power to direct the management and policies of another, whether arising by virtue of stock ownership, contract, or otherwise.

ARTICLE IX—CANCELLATION OR TERMINATION

- (a) Termination by Airport. This agreement and all rights and privileges and interests created hereunder may be terminated by LESSOR upon written notice to LESSEE upon LESSEE’s default in the payment of any sums when due hereunder and failure to cure said default within 10 days after said written notice. The acceptance of any monies by LESSOR, after default shall not be deemed to be a waiver of the right of termination by LESSOR, nor shall LESSOR be stopped from evicting LESSEE from its premises and re-letting said premises to other parties.
- (b) Except as provided in (a) above, this agreement and all rights and privileges and interests created hereunder may be terminated by LESSOR upon ten (10) days written notice to LESSEE upon the occurrence of any of the following events:
 - (1) The LESSEE defaults in the performance of any term, covenant, or condition hereunder and such default shall continue for thirty (30) days after written notice of such default from LESSOR to LESSEE; provided, however, that no such default shall continue for more than twenty-four (24) hours after written notice of such default if it presents a hazard to the safety of Airport personnel or the general public. The acceptance of any monies by LESSOR after default shall not be deemed to be a waiver of the right of termination by LESSOR, nor shall LESSOR be stopped from evicting LESSEE from its premises and re-letting said premises to other parties.
 - (2) The LESSEE shall become insolvent or take the benefit of any present or future insolvency statute or make any assignment for the benefit of creditors or file a voluntary petition in bankruptcy or consent to the appointment of a receiver of its property.
 - (3) By order or decree of a court that LESSEE is adjudged bankrupt.

- (4) A petition under any part of the Federal Bankruptcy Law is filed by any person, firm, or corporation against LESSEE and such petition is not vacated or discharged within ninety (90) days thereafter.
 - (5) LESSEE shall voluntarily abandon and discontinue its rental service at the Fayetteville Regional Airport for a period of ten (10) consecutive days. LESSOR shall be deemed to have not waived any of its rights or privileges due to its failure to notify LESSEE of any default or violation of any of the terms of this Agreement. Within thirty (30) days of the termination or cancellation of this Agreement, LESSEE shall remove all of its property from LESSOR's premises and leave the same in substantially the same condition as prior to LESSEE's entry thereon, ordinary wear and tear excepted. Any item or property not removed by LESSEE within thirty (30) days following the cancellation or termination of this Agreement shall be deemed to have been abandoned by LESSEE and shall become the property of the LESSOR without compensation and LESSOR shall be entitled to remove and dispose of same in any manner it deems fit.
- (c) Termination by LESSEE. LESSEE shall have the right to terminate this Agreement by giving 30 days' written notice, unless another notice period is identified, to LESSOR upon the occurrence of any of the following events, provided said event or events shall then be continuing:
- (1) The issuance by any court of competent jurisdiction of any injunction, order or decree preventing or restraining the use by LESSEE of any part of the Fayetteville Regional Airport which is necessary for LESSEE's operations hereunder, which Order remain in force for a period of at least one hundred twenty (120) days.
 - (2) The LESSOR's default in fulfilling any of the terms, covenants, and conditions required under this Agreement and fails to cure said default within forty-five (45) days following receipt of written notice thereof from LESSEE.
 - (3) The destruction by fire, explosion, earthquake, the public enemy or other acts of God of a substantial or material part of the Fayetteville Regional Airport which substantially interferes with or disrupts LESSEE's use of said premises.
 - (4) The United States Government or any of its agencies shall occupy the Fayetteville Regional Airport or any substantial part thereof to such an extent as to materially interfere with LESSEE's operations for a period of sixty (60) consecutive days, or more.

ARTICLE X—COVENANT NOT TO GRANT MORE FAVORABLE TERMS

LESSOR covenants and agrees not to enter into any concession agreement or contract with any other rental car agency that contains more favorable terms or conditions than contained herein.

ARTICLE XI—AFFIRMATIVE ACTION

LESSEE agrees that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment activities covered in 14 CFR, Part 152, Subpart E. LESSEE agrees that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. LESSEE agrees that it will require that its covered sub-organizations provide assurances to the LESSOR that they similarly will undertake affirmative action programs and that they will require assurances from said sub organizations, as required by 14 CFR, Part 152, Subpart E, to the same effect.

ARTICLE XII – CUSTOMER FACILITY CHARGE (CFC)

LESSOR approved the imposition of a Customer Facility Charge (CFC) on April 29, 2014 to be collected by LESSEE from rental car customers at the Airport effective July 15, 2014. The CFC remains in effect and continues at the current rate of Four Dollars (\$4.00) for the full Agreement period.

- (a) LESSEE agrees to continue imposition of the CFC fee as specified by the LESSOR in Section (b) below for each customer entering into a rental contract with LESSEE at the Fayetteville Regional Airport for the purpose of securing or recovering LESSOR's costs associated with certain Airport rental car facility related improvements that may be made at the Airport by the LESSOR at its sole discretion, including but not limited to, a parking deck and new service area facilities as contemplated by LESSOR.
- (b) The proceeds of all CFCs shall be used solely for payment of costs relating to rental car facilities and parking areas at the Airport and which are deemed necessary by the LESSOR from time to time. The CFC shall be charged to LESSEE's customers for each day, or portion thereof for which a late fee or rental is charged to the customer, and a rental contract is in effect between LESSEE and its customers, up to a maximum of ten (10) CFCs per single rental contract. The amount of the CFC shall be FOUR DOLLARS (\$4.00) per contract day, or portion thereof and shall apply to, and be collected by LESSEE on, all rental contracts reserved, issued or written on or after July 1, 2021. Notwithstanding any of the other terms in the Agreement, the LESSOR reserves the right to adjust the amount of the CFC from time to time as the LESSOR deems necessary in its sole discretion. LESSOR shall provide LESSEE at least sixty (60) days prior notice of an adjustment in the CFC.

- (c) LESSEE shall collect the CFC from each customer with which LESSEE enters into an automobile rental contract at the Airport. The CFC shall be identified on a separate line on all rental car customer contracts, after taxes, and shall be described as the "Airport Customer Facility Charge". All Customer Facility Charges collected and/or held by LESSEE shall: (i) be collected from all customers, including without limitation all customers receiving complimentary or discounted car rentals under the LESSEE's bona fide marketing plans; and (ii) be held in trust by LESSEE for the LESSOR's benefit. All CFCs so collected shall be remitted to the LESSOR on or before the twentieth (20th) day of the calendar month immediately following the end of the calendar month during which such CFCs were collected. Failure by the LESSEE to collect and remit the CFCs to the LESSOR as provided for in this Concession Agreement shall result in termination of the AGREEMENT between LESSOR and LESSEE.
- (d) The method of calculating the CFC and the amount of such Customer Facility Charge shall be determined by the LESSOR at its sole discretion. LESSEE shall maintain records and controls, as prescribed by the LESSOR, which are sufficient to demonstrate the correctness of any such Customer Facility Charges collected by LESSEE and the amount of Customer Facility Charges remitted to the LESSOR. Said records shall be made available for inspection and examination by the LESSOR or its duly authorized representatives. The LESSOR reserves the right to audit LESSEE's records which are required to be maintained by LESSEE as provided for in *Article V – Reports and Records* of the AGREEMENT, for the purpose of verifying the Gross Revenue and Customer Facility Charges reported by LESSEE. Gross revenue shall specifically exclude any amounts collected from its customers as Customer Facility Charges.

ARTICLE XIII – N.C. IRAN DIVESTMENT ACT

As mandated by N.C.G.S. 143C-6A-5(a), LESSEE certifies that it is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 143C-6A-4. LESSEE further certifies that in accordance with N.C.G.S. 143C-6A-5(b) that it shall not utilize any subcontractor found on the State Treasurer's Final Divestment List. LESSEE certifies that the signatory to this Agreement is authorized by the LESSEE to make the foregoing statement.

ARTICLE XIV - E-VERIFY

LESSEE hereby acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. LESSEE further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify

and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). LESSEE hereby pledges, attests and warrants through execution of this contract that LESSEE complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by LESSEE shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Amendment.

ARTICLE XV - SEVERABILITY

The parties agree that if any provision of this contract shall be held invalid for any reason, the remaining provisions shall not be affected if they may continue to conform with the purposes of this contract and the requirements of applicable law.

ARTICLE XVI – COMPLIANCE WITH LAWS, GOVERNING LAW, & VENUE AND FORUM

LESSEE agrees to comply with all applicable statutes, ordinances, and regulations of the United States, the State of North Carolina, the City and units of local government. Except to the extent a federal law, rule or order may apply, this Agreement shall be governed by the laws of the State of North Carolina (without resort to the choice of law rules thereof). If any action or proceeding is brought by either party to enforce the provisions hereof, the prevailing party shall be entitled to recover all reasonable costs and attorneys' fees incurred in such action or proceeding, including those on appeal, in such amounts as the court may determine without a jury. The Parties expressly agree that if litigation is brought in connection with this contract and (1) the litigation proceeds in the Courts of the State of North Carolina, the parties agree that the appropriate venue shall be in Cumberland County (Twelfth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina.

ARTICLE XVII- MORALITY CLAUSE

If, in the sole opinion of the City of Fayetteville, at any time LESSEE or any of its owner(s) or employee(s) or agent(s) (collectively referenced as an "Actor") engages in any one or more actions that bring disrepute, contempt, scandal, or public ridicule to the Actor or subject the Actor to prosecution or offend the community or public morals or decency or denigrate individuals or groups in the community served by the City of Fayetteville or are scandalous or inconsistent with community standards or good citizenship or may adversely affect the City of Fayetteville's finances, public standing, image, or reputation or are embarrassing or offensive to the City of Fayetteville or may reflect unfavorably on the City of Fayetteville or are derogatory or offensive to one or more employee(s) or customer(s) of the City of Fayetteville, the City of Fayetteville may immediately

upon written notice to LESSOR terminate this Contract, in addition to any other rights and remedies that the City of Fayetteville may have hereunder or at law or in equity.

ARTICLE XVIII—NOTICES

All notices required or permitted to be given hereunder to LESSOR shall be sufficient if sent by registered mail, postage prepaid, and addressed to: **City of Fayetteville, 433 Hay Street, Fayetteville, NC 28301**. All notices required or permitted to be given hereunder to LESSEE shall be sufficient if sent by registered mail, postage prepaid, and addressed to: **Budget Rent A Car System, Inc.**

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized officers, as of the day and year first above written.

CITY OF FAYETTEVILLE

BY: _____
Douglas J. Hewett, ICMA-CM, City Manager

ATTEST:

Pamela Megill, City Clerk
(Corporate Seal)

BUDGET RENT A CAR SYSTEM, INC.

BY: _____

Vice President
Properties and Concession

ATTEST:

Secretary

**STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND**

I, _____, a Notary Public for _____ County, North Carolina, certify that **Pamela Megill** personally came before me this day and acknowledged that she is the **City Clerk** of **City of Fayetteville**, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its City Manager, sealed with its corporate seal and attested by herself as its **City Clerk**.

Witness my hand and notarial seal, this the _____ day of _____, 2022.

Notary Public

My commission expires: _____

STATE OF _____
COUNTY OF _____

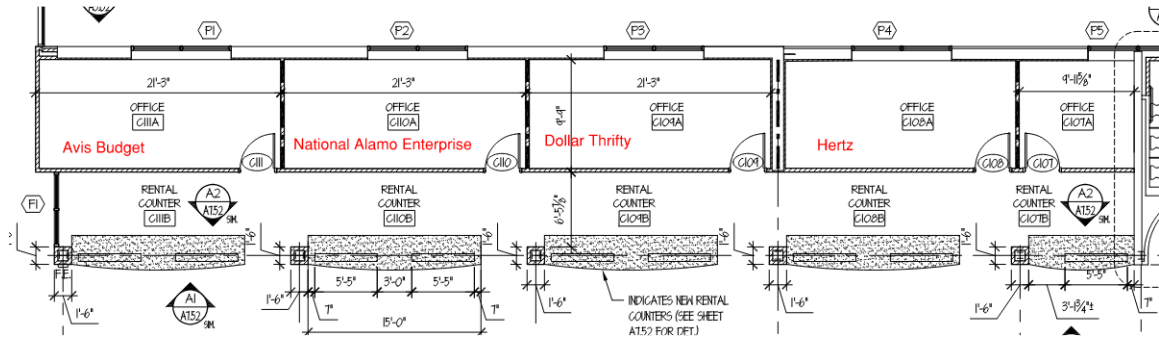
I, _____, a notary public of said County and State hereby certify that _____ personally came before me this day and acknowledged that he/she is _____ of **Budget Rent A Car System, Inc.**, a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its _____, sealed with its corporate seal and attested by _____ self as its _____.

Witness my hand and notaries seal, this the _____ day of _____, 2022.

Notary Public

My commission expires: _____

EXHIBIT A



NORTH CAROLINA

**ENTERPRISE LEASING
COMPANY-SOUTHEAST, LLC
DBA NATIONAL/ALAMO
RENTAL CAR LEASE AND
CONCESSION AGREEMENT**

CUMBERLAND COUNTY

THIS LEASE AND CONCESSION AGREEMENT made and entered into as of this **1st day of July, 2022**, by and between the **CITY OF FAYETTEVILLE**, hereinafter called "**LESSOR**" and **ENTERPRISE LEASING COMPANY-SOUTHEAST, LLC. dba NATIONAL/ALAMO** having an office in Cumberland County, North Carolina, hereinafter called "**LESSEE**";

WITNESSETH:

WHEREAS, the City of Fayetteville through its City Council is duly empowered as the owner and operator of the Fayetteville Regional Airport and all facilities located thereon, under the authority of N.C.G.S. § 63-53(3) and Chapter 3 of the Code of Ordinances of the City of Fayetteville, North Carolina;

AND WHEREAS, automobile rental services are necessary and desirable for the proper accommodation of passengers arriving at and departing from the Fayetteville Regional Airport;

AND WHEREAS, LESSEE is engaged in the operation of an automobile rental business and is ready, willing and able to provide a sufficient number of late model automobiles to meet the needs of passengers using the Fayetteville Regional Airport at rates comparable to those generally prevailing in the area;

NOW, THEREFORE, the parties for and in consideration for the rents, covenants and agreements contained herein do hereby contract and agree as follows:

ARTICLE I—SPACE AND FACILITIES

LESSOR does hereby rent and let unto the LESSEE and the LESSEE does hereby hire and take from the LESSOR, subject to the terms and conditions herein stated, the following:

- (a) Space and facilities in the Fayetteville Regional Airport Terminal Building for the exclusive use by the LESSEE as office and ticket counter space, to wit:
Approximately 200.77 square feet located in the Baggage Claim Area of the Fayetteville Regional Airport Terminal Building, and designated as a portion of Office C110A on a mechanical drawing attached hereto and labeled Exhibit "A" which is incorporated herein by reference and is further designated on said mechanical drawing as National.

- (b) The use, together with others holding car rental leases at the Fayetteville Regional Airport, a portion of the 250 available spaces now and hereafter designated by LESSOR as "Ready Car Space."
- (c) LESSOR reserves the right to relocate the office and ticket counter space and ready car spaces rented to LESSEE hereunder should relocation become necessary for the efficient and orderly operation of the Fayetteville Regional Airport; provided, however, that should relocation become necessary, the space provided LESSEE shall be as near as possible, equal to or better than, the space described herein. In the event that the replacement space is unsuitable for LESSEE's business, LESSEE, at its sole discretion, may cancel this Agreement upon thirty (30) days advance written notice.

ARTICLE II—TERM

The term of this Concession Agreement shall be for FIVE (5) years beginning JULY 1, 2022 and ending on the JUNE 30, 2027. The term may be renewed for an additional FIVE (5) years, subject to an increase in fees to defray any additional expenses incurred by the LESSOR, and any adjustment to the terms hereof as may be appropriate at the time, which shall involve at a minimum increase in rent to reflect any increase in the Consumer Price Index (CPI) after the first THREE (3) years. Said adjustment shall be based on the average of the percent of change in Consumer Price Index (All Urban Consumers, all items, South Group, 50,000-450,000 population) for the previous three years. At the end of the three (3) year period which is June 30, 2024, and through any extension period(s), CPI adjustments shall continue to be made triennially. Lessee may exercise its right to renew the term of this Concession Agreement for the additional five (5) year term on not less than ninety (90) days prior written notice to the Lessor.

ARTICLE III—USE OF SPACE AND FACILITES

- (a) LESSOR hereby grants to the LESSEE the following non-exclusive privileges, uses and rights, all of which shall be subject to the terms, conditions and covenants hereinafter set forth, and the rules and regulations as may now or hereafter be promulgated by the City of Fayetteville or the Fayetteville Airport Commission:
 - (1) The right, license and privilege to operate an automobile rental service at the Fayetteville Regional Airport for the purpose of renting automobiles to passengers and such other persons who request such services at said airport;
 - (2) The right of ingress and egress to and from the Fayetteville Regional Airport by its agents, employees, patrons, customers and invitees; and

- (3) The right to install and display appropriate signs in the Terminal Building to advertise said auto rental concession, provided that such design, installation and display shall be subject to the prior approval of the Airport Commission.

- (b) LESSOR reserves the right to contract with other individuals, firms, or corporations to engage in like activities at the Fayetteville Regional Airport.

ARTICLE IV—RENT

- (a) Concession Fee. LESSEE shall pay to LESSOR for the rights and privileges herein granted as a concession fee a minimum annual guarantee (MAG) payment of TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$25,000.00), or ten percent (10%) of annual gross revenue as hereinafter defined, whichever sum is greater, payable monthly. On or before occupancy by LESSEE and on the same day monthly each and every month thereafter until the termination of this lease, LESSEE shall pay LESSOR a minimum of TWO THOUSAND EIGHTY-THREE DOLLARS AND THIRTY-THREE CENTS (\$2083.33). On or before the first day of occupancy by LESSEE and on the same day monthly each and every month thereafter until the termination of this lease, LESSEE shall pay LESSOR, in addition to the minimum monthly payment of TWO THOUSAND EIGHTY THREE DOLLARS AND THIRTY-THREE CENTS (\$2083.33), an additional sum equal to ten percent (10%) of the monthly gross revenue for said previous month if ten percent (10%) of the monthly gross revenue for said previous month exceeds TWO THOUSAND EIGHTY-THREE DOLLARS AND THIRTY-THREE CENTS (\$2083.33). The ten percent (10%) of gross (less \$2,083.33 if concession receipts exceed said amount) shall be remitted to the Lessor on or before the twentieth (20th) day of the calendar month immediately following the end of the calendar month during which the revenues were collected. Reconciliation of minimum annual guarantee (MAG) shall occur at the end of the LESSOR's fiscal year which is June 30th and additional payment/reimbursement shall be made to LESSOR or LESSEE, as applicable.
- (b) Gross Revenue. For all purposes hereof, the term "gross revenue" shall mean all revenue received from LESSEE's customers (after all discounts applied thereto) made by the LESSEE to its customers for those cars which the LESSEE shall have rented to them at or through any of the leased premises, less bad debts which become owing for the first time as of the close of the period for which the determination of gross receipts is made, plus payments received during said period on account of bad debts deducted in determining gross receipts for the last previous period for which a determination of gross receipts was made. A "bad debt" is any sum that is owed the LESSEE under a car rental agreement applicable to a car rented as aforesaid and which is four (4) months or more overdue at the close of any period for which gross receipts

are determined hereunder. By way of illustration, but not by way of limitation, gross revenue shall include:

- (1) All charges made by LESSEE to its customers for those vehicles rented at or through the leased premises, without regard to where the customer placed the order or the LESSEE received the order for said vehicle and without regard to whether said vehicle is returned to the leased premises or elsewhere;
- (2) All charges made by the LESSEE to its customers for exchanged vehicles regardless of where said exchange was made, when the vehicle originally rented to the customer was rented at or through the leased premises; and
- (3) All charges made by the LESSEE to its customers for accident insurance.

(c) Excluded from "gross revenue" for the purpose of this Agreement, shall be:

- (1) The amount of federal, state or local sales taxes which are separately stated and collected by LESSEE from customers;
- (2) All sums received by LESSEE as damages for the loss, conversion, abandonment, or destruction to vehicles leased by LESSEE under this Agreement;
- (3) All sums received by reason of LESSEE's sale of its capital assets;
- (4) Revenue arising out of or collected on amount of charges made by Lessee to its customers in return for which Lessee agrees to waive its rights to recover from said customers for loss or damage to rental automobiles, otherwise known as loss damage waiver (LDW), and/or collision damage waiver (CDW);
- (5) All sums received from customers for the purchase of fuel; and
- (6) Any amount collected from its customers as Customer Facility Charges (CFCs).

This definition of "gross revenue" shall be subject to renegotiation between the parties prior to any extension of this Concession Agreement becoming effective as provided by Article II of this Agreement.

- (d) Ready Car Space. In addition to the above payments, LESSEE shall pay LESSOR rent of TWENTY DOLLARS AND NO CENTS (\$20.00) per month for each ready space allocated to LESSEE, payable monthly on or before JULY 1, 2022, and on or before the first day of each and every succeeding month thereafter during the term of this Agreement. LESSEE shall have the right to tow away any unauthorized vehicles parked in LESSEE's designated Ready Car space, provided each space is properly signed in accordance with North Carolina State law. Any vehicle towed shall be stored in the Airport parking lot and LESSEE shall notify and submit a storage report to Airport Firefighter personnel.

The location of LESSEE's spaces shall be based on the gross revenue received from the previous three (3) years, with the LESSEE having the highest revenue choosing the location of their ready spaces first, etc. The number of ready spaces LESSEE receives will be based on the gross revenue received from the previous twelve months.

The number of spaces will be increased or decreased on a triannual basis and the preceding year's revenues received from July 1st to June 30th will determine space allocations. The reallocation shall take place August 1st of each year.

The City reserves the right to contract with additional lessees during the term of this agreement, including any extensions. In the event a new lessee commences operation during the Term of this Agreement, that lessee shall receive ten (10) ready car spaces, with two (2) spaces being taken from each of the existing lease holders. On August 1st of the following year, all spaces will be reallocated based on previous year's market share (including any partial year market share of a new lessee), but in no event shall any lessee ever receive less than a minimum of ten (10) ready car spaces.

(e) Abatement of Minimum Guarantee. In no event shall payment of counter space, office space, ready car space and utilities abate. The minimum concession fee provided in Article IV (a) shall be suspended upon the occurrence of any of the following conditions:

- (1) A strike by employees of a commercial airline providing service to the Fayetteville Regional Airport that causes a total cessation of airline service for a period of fifteen (15) days or longer in any one calendar month. The continued service by a non-striking commercial airline so that there is not a total cessation of airline service to the Fayetteville Regional Airport shall not constitute an abatement of the minimum guarantee as defined herein;
- (2) In the event of the declaration of a national emergency by executive decree or legislative action, which causes a material, and substantial curtailment of the supply of fuel, tires, or parts for motor vehicles and airplanes for use by the general public; or
- (3) If, for any reason, the number of passengers deplaning from scheduled airline flights at Fayetteville Regional Airport during any two (2) consecutive calendar months shall be less than seventy percent (70%) of the number of such deplaning passengers for the same period of the preceding calendar year. The percentage of deplaning passengers shall be subject to renegotiation between the parties prior to any extension of this Concession Agreement becoming effective as provided by Article II of this Agreement.

If during this period, any of the foregoing conditions exist, LESSEE shall pay to the LESSOR for the rights, privileges, and facilities, rent based upon 10 percent of annual gross revenue.

(f) Late Fees: Any fee payable by Lessee under this agreement that is not paid when due shall bear a late payment fee at the rate of five percent (5%) per month from the due date until paid.”

(g) LESSEE shall pay to LESSOR for the use of the space at 2885 Hangar Road for the sum of One Thousand Seven Hundred Ninety-Eight Dollars & eleven cents (\$1,798.11) per month plus ten percent of any sublease rent, payable in advance on the first day of each month at the City of Fayetteville Collections Department, 433 Hay Street, Fayetteville, NC 28301.

(h) In addition to rent listed above, LESSEE agrees to remit to LESSOR in consideration of LESSEE’s use of 87,500 square feet of fenced and graveled area within Enterprise Service Annex and located at 3154 Doc Bennett Road, the sum of Two Thousand Dollars and no cents (\$2,000.00) per month payable in advance on the first day of each month at the City of Fayetteville Collections Department, 433 Hay Street, Fayetteville, NC 28301.

ARTICLE V—REPORTS AND RECORDS

(a) LESSEE shall furnish LESSOR on or **before the 20th day of each calendar month a Certified and signed copy of its statement of operations for the previous month** which said statement shall show in detail a breakdown of LESSEE’s gross revenue for the previous month to enable LESSOR to verify the accuracy of LESSEE’s payment of percentage of gross revenue. LESSEE shall furnish LESSOR, upon demand, such additional detail and breakdown as LESSOR shall deem necessary to verify gross revenue.

(b) LESSOR shall have the right to inspect LESSEE’s books and records for a period of three (3) years, to determine the accuracy of the matters reports in said monthly report required above and LESSEE agrees to maintain all books and records upon leased premises, or to mail same to LESSOR within ten (10) days of LESSOR’s request therefore.

(c) At the end of the first lease year under this Agreement, which is June 30, 2023, and at the end of each lease year thereafter during the term of this Agreement, or not more than sixty (60) days thereafter, LESSEE shall furnish to LESSOR a certified copy of an audit of LESSEE’s operations hereunder by LESSEE’s certified public accountant. LESSOR shall have the right to conduct its own audit to verify LESSEE’s certified audit and in the event LESSOR’s audit to verify LESSEE’s payments of rent to LESSOR is as much as two and one-half percent (2 ½%) less than the amount LESSEE is required to pay LESSOR

under the terms of this Agreement, then LESSEE shall pay to LESSOR all costs and expenses incurred by LESSOR in conducting said audit, including transportation, food and lodging expenses.

(d) LESSEE shall submit to LESSOR no later than the 1st of November each year, a Concession Activities Report listing the following:

- (1) Names and types of Disadvantaged Business Enterprise (DBE) firms that supported operations at the Fayetteville Regional Airport, to include whether a DBE firm arrangement is a sublease or joint venture;
- (2) Payments to DBE (s) per (1) above;
- (3) Rental annual gross income for business conducted at Fayetteville Regional Airport; and
- (4) Percentage of DBE participation for the current October 1st to September 30th timeframe bases on (2) and (3) above.

ARTICLE VI—OBLIGATIONS OF LESSEE

The LESSEE covenants and agrees:

- (a) To promptly pay all charges, rents and fees by delivering same to the City of Fayetteville, PO Drawer D, Fayetteville, NC 28302.
- (b) The LESSEE shall take out or obtain all licenses or permits as required by federal, state or local law. The LESSEE shall pay any and all lawful taxes and assessments (including but not limited to ad valorem and inventory taxes) which, during the term of this Lease Agreement, or any part thereof, may become a lien upon or which may be levied by state, county, city or any other tax levying body, upon any and all of the leased premises of this Agreement. And upon any and all taxable interest of the LESSEE acquired in this Lease Agreement, as well as all taxes on taxable property, real or personal, owned by the LESSEE in or about said leased premises, but deferment of payment of any tax by the LESSEE shall not constitute a default or breach of this Lease Agreement during the time the LESSEE is contesting in good faith the payment of said tax before any duly constituted authority, and pending the final determination of such contest.
- (c) To furnish, install, operate and maintain the space and facilities provided herein and keep the same, as well as other premises made available to the LESSEE, and the furniture, fixtures and equipment installed therein in good working condition and repair, and upon termination or the expiration of this Agreement, to deliver the premises to LESSOR in good order, condition and repair, reasonable wear and tear excepted.
- (d) To provide and have available at all times for use by patrons at the Fayetteville Regional Airport, a sufficient number of rental automobiles to meet the normal demands and needs of the public for automobile rental services. Service shall be available for all scheduled commercial flights. Rental automobiles shall be in good working condition and free from known

- mechanical defects and in a clean, neat and attractive condition both inside and out and shall be no more than two years older than current year models.
- (e) Solicitation of business shall be restricted to the space allotted LESSEE in the Airport Terminal Building.
 - (f) LESSEE shall not maintain in a position of public interaction any person reasonably objectionable to Airport Management on account of said person's reputation, appearance, dress or conduct; provided that termination of any such employee shall be subject to such due process rights, if any, as may be extended to said employee by LESSEE.
 - (g) LESSEE covenants and agrees to at all times observe, obey and comply fully with all laws, assurances, ordinances, rules, regulations, and requirements now in effect and hereafter promulgated by the LESSOR, City, State, Federal, or other governmental entity having jurisdiction over the leased premises or activities of LESSEE.
 - (h) Maintenance of vehicles, including cleaning and washing, shall not be performed on Airport property without prior written permission of Airport Management.

ARTICLE VII—INDEMNIFICATION & INSURANCE

- (a) Indemnification. It is agreed that LESSEE is, and shall be deemed to be an independent contractor, and that LESSOR shall in no way be responsible to any person, firm or corporation for the LESSEE, its invitees, agents, officers, servants or employees acts or omissions. It is further agreed that in the exercise or enjoyment of the privileges herein granted, the LESSEE shall indemnify, defend, and save and hold harmless the LESSOR and all of its elected officials, employees, officers agents, successors and assigns from any and all claims, demands, suits, judgments, costs, expenses (including attorney fees) and liability to persons and/or property that may result from or grow out of any act, omission, or negligence on the part of the LESSEE or the LESSEE's invitees, agents, servants, employees, or officers. Indemnification of the LESSOR by LESSEE does not constitute a waiver of the City's governmental immunity in any respects under North Carolina law.
- (b) Commercial General Liability. LESSEE shall procure and maintain in full force and effect at all times and at its sole expense, Commercial General Liability insurance covering premises operations, independent contractors and contractual liability, with single limits coverage of one million dollars (\$1,000,000) per occurrence.
- (c) Automobile Liability. The LESSEE shall, prior to commencing its operations pursuant to the terms of this Lease Agreement, take out and maintain continuously in effect at all times during the term of this Agreement, in addition to insurance required by law, automobile liability insurance in the sum of ONE HUNDRED THOUSAND & NO/100 DOLLARS (\$100,000.00) for each person injured and THREE HUNDRED THOUSAND & NO/100 DOLLARS

(\$300,000.00) for each accident, and FIFTY THOUSAND & NO/100 DOLLARS (\$50,000.00) for property damage. The LESSEE shall maintain such insurance with insurance underwriters authorized to do business in the State of North Carolina satisfactory to the LESSOR. The LESSEE shall, prior to commencing its operations pursuant to the terms of this Lease Agreement, furnish the LESSOR with a certificate of insurance from the LESSEE's carrier indicating there is such insurance coverage as herein before provided. Said Certificate of Insurance shall provide that the policy cannot be canceled or materially changed except after giving notice by registered mail to LESSOR at least thirty (30) days before the effective date of such cancellation or change.

- (d) The insurance coverage's and limits required of the LESSEE under this agreement are designed to meet the minimum requirements for the LESSOR. They are not designed as a recommended insurance program. LESSEE alone is responsible for the sufficiency of its own insurance program(s). If LESSEE has any questions concerning exposures and/or coverage issues, professional insurance assistance should be obtained by LESSEE.
- (e) All insurances shall be placed with an insurance company licensed to do business in the State of North Carolina.

ARTICLE VIII-ASSIGNMENT OF LEASE

LESSEE shall not assign this Agreement or any part thereof nor sublet the leased premises or any part thereof, without prior written consent of LESSOR, except to an affiliate of the LESSEE. For all purposes hereof, an "affiliate" is any person, firm or corporation controlled by, under common control with, or controlling the LESSEE. "Control" is the power to direct the management and policies of another, whether arising by virtue of stock ownership, contract, or otherwise.

ARTICLE IX—CANCELLATION OR TERMINATION

- (a) Termination by Airport. This agreement and all rights and privileges and interests created hereunder may be terminated by LESSOR upon written notice to LESSEE upon LESSEE's default in the payment of any sums when due hereunder and failure to cure said default within 10 days after said written notice. The acceptance of any monies by LESSOR, after default shall not be deemed to be a waiver of the right of termination by LESSOR, nor shall LESSOR be stopped from evicting LESSEE from its premises and re-letting said premises to other parties.
- (b) Except as provided in (a) above, this agreement and all rights and privileges and interests created hereunder may be terminated by LESSOR upon ten (10)

days written notice to LESSEE upon the occurrence of any of the following events:

- (1) The LESSEE defaults in the performance of any term, covenant, or condition hereunder and such default shall continue for thirty (30) days after written notice of such default from LESSOR to LESSEE; provided, however, that no such default shall continue for more than twenty-four (24) hours after written notice of such default if it presents a hazard to the safety of Airport personnel or the general public. The acceptance of any monies by LESSOR after default shall not be deemed to be a waiver of the right of termination by LESSOR, nor shall LESSOR be stopped from evicting LESSEE from its premises and re-letting said premises to other parties.
 - (2) The LESSEE shall become insolvent or take the benefit of any present or future insolvency statute or make any assignment for the benefit of creditors or file a voluntary petition in bankruptcy or consent to the appointment of a receiver of its property.
 - (3) By order or decree of a court that LESSEE is adjudged bankrupt.
 - (4) A petition under any part of the Federal Bankruptcy Law is filed by any person, firm, or corporation against LESSEE and such petition is not vacated or discharged within ninety (90) days thereafter.
 - (5) LESSEE shall voluntarily abandon and discontinue its rental service at the Fayetteville Regional Airport for a period of ten (10) consecutive days. LESSOR shall be deemed to have not waived any of its rights or privileges due to its failure to notify LESSEE of any default or violation of any of the terms of this Agreement. Within thirty (30) days of the termination or cancellation of this Agreement, LESSEE shall remove all of its property from LESSOR's premises and leave the same in substantially the same condition as prior to LESSEE's entry thereon, ordinary wear and tear excepted. Any item or property not removed by LESSEE within thirty (30) days following the cancellation or termination of this Agreement shall be deemed to have been abandoned by LESSEE and shall become the property of the LESSOR without compensation and LESSOR shall be entitled to remove and dispose of same in any manner it deems fit.
- (c) Termination by LESSEE. LESSEE shall have the right to terminate this Agreement by giving 30 days' written notice, unless another notice period is identified, to LESSOR upon the occurrence of any of the following events, provided said event or events shall then be continuing:
- (1) The issuance by any court of competent jurisdiction of any injunction, order or decree preventing or restraining the use by LESSEE of any part of the Fayetteville Regional Airport which is necessary for LESSEE's operations hereunder, which Order remain in force for a period of at least one hundred twenty (120) days.
 - (2) The LESSOR's default in fulfilling any of the terms, covenants, and conditions required under this Agreement and fails to cure said default

within forty-five (45) days following receipt of written notice thereof from LESSEE.

- (3) The destruction by fire, explosion, earthquake, the public enemy or other acts of God of a substantial or material part of the Fayetteville Regional Airport which substantially interferes with or disrupts LESSEE's use of said premises.
- (4) The United States Government or any of its agencies shall occupy the Fayetteville Regional Airport or any substantial part thereof to such an extent as to materially interfere with LESSEE's operations for a period of sixty (60) consecutive days, or more.

ARTICLE X—COVENANT NOT TO GRANT MORE FAVORABLE TERMS

LESSOR covenants and agrees not to enter into any concession agreement or contract with any other rental car agency that contains more favorable terms or conditions than contained herein.

ARTICLE XI—AFFIRMATIVE ACTION

LESSEE agrees that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment activities covered in 14 CFR, Part 152, Subpart E. LESSEE agrees that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. LESSEE agrees that it will require that its covered sub-organizations provide assurances to the LESSOR that they similarly will undertake affirmative action programs and that they will require assurances from said sub organizations, as required by 14 CFR, Part 152, Subpart E, to the same effect.

ARTICLE XII – CUSTOMER FACILITY CHARGE (CFC)

LESSOR approved the imposition of a Customer Facility Charge (CFC) on April 29, 2014 to be collected by LESSEE from rental car customers at the Airport effective July 15, 2014. The CFC remains in effect and continues at the current rate of Four Dollars (\$4.00) for the full Agreement period.

- (a) LESSEE agrees to continue imposition of the CFC fee as specified by the LESSOR in Section (b) below for each customer entering into a rental contract with LESSEE at the Fayetteville Regional Airport for the purpose of securing or recovering LESSOR's costs associated with certain Airport rental car facility related improvements that may be made at the Airport by

the LESSOR at its sole discretion, including but not limited to, a parking deck and new service area facilities as contemplated by LESSOR.

- (b) The proceeds of all CFCs shall be used solely for payment of costs relating to rental car facilities and parking areas at the Airport and which are deemed necessary by the LESSOR from time to time. The CFC shall be charged to LESSEE's customers for each day, or portion thereof for which a late fee or rental is charged to the customer, and a rental contract is in effect between LESSEE and its customers, up to a maximum of ten (10) CFCs per single rental contract. The amount of the CFC shall be FOUR DOLLARS (\$4.00) per contract day, or portion thereof and shall apply to, and be collected by LESSEE on, all rental contracts reserved, issued or written on or after July 1, 2021. Notwithstanding any of the other terms in the Agreement, the LESSOR reserves the right to adjust the amount of the CFC from time to time as the LESSOR deems necessary in its sole discretion. LESSOR shall provide LESSEE at least sixty (60) days prior notice of an adjustment in the CFC.
- (c) LESSEE shall collect the CFC from each customer with which LESSEE enters into an automobile rental contract at the Airport. The CFC shall be identified on a separate line on all rental car customer contracts, after taxes, and shall be described as the "Airport Customer Facility Charge". All Customer Facility Charges collected and/or held by LESSEE shall: (i) be collected from all customers, including without limitation all customers receiving complimentary or discounted car rentals under the LESSEE's bona fide marketing plans; and (ii) be held in trust by LESSEE for the LESSOR's benefit. All CFCs so collected shall be remitted to the LESSOR on or before the twentieth (20th) day of the calendar month immediately following the end of the calendar month during which such CFCs were collected. Failure by the LESSEE to collect and remit the CFCs to the LESSOR as provided for in this Concession Agreement shall result in termination of the AGREEMENT between LESSOR and LESSEE.
- (d) The method of calculating the CFC and the amount of such Customer Facility Charge shall be determined by the LESSOR at its sole discretion. LESSEE shall maintain records and controls, as prescribed by the LESSOR, which are sufficient to demonstrate the correctness of any such Customer Facility Charges collected by LESSEE and the amount of Customer Facility Charges remitted to the LESSOR. Said records shall be made available for inspection and examination by the LESSOR or its duly authorized representatives. The LESSOR reserves the right to audit LESSEE's records which are required to be maintained by LESSEE as provided for in *Article V – Reports and Records* of the AGREEMENT, for the purpose of verifying the Gross Revenue and Customer Facility Charges reported by LESSEE. Gross revenue shall specifically exclude any amounts collected from its customers as Customer Facility Charges.

ARTICLE XIII – N.C. IRAN DIVESTMENT ACT

As mandated by N.C.G.S. 143C-6A-5(a), LESSEE certifies that it is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 143C-6A-4. LESSEE further certifies that in accordance with N.C.G.S. 143C-6A-5(b) that it shall not utilize any subcontractor found on the State Treasurer's Final Divestment List. LESSEE certifies that the signatory to this Agreement is authorized by the LESSEE to make the foregoing statement.

ARTICLE XIV - E-VERIFY

LESSEE hereby acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. LESSEE further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). LESSEE hereby pledges, attests and warrants through execution of this contract that LESSEE complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by LESSEE shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Amendment.

ARTICLE XV - SEVERABILITY

The parties agree that if any provision of this contract shall be held invalid for any reason, the remaining provisions shall not be affected if they may continue to conform with the purposes of this contract and the requirements of applicable law.

ARTICLE XVI – COMPLIANCE WITH LAWS, GOVERNING LAW, & VENUE AND FORUM

LESSEE agrees to comply with all applicable statutes, ordinances, and regulations of the United States, the State of North Carolina, the City and units of local government. Except to the extent a federal law, rule or order may apply, this Agreement shall be governed by the laws of the State of North Carolina (without resort to the choice of law rules thereof). If any action or proceeding is brought by either party to enforce the provisions hereof, the prevailing party shall be entitled to recover all reasonable costs and attorneys' fees incurred in such action or proceeding, including those on appeal, in such amounts as the court may determine without a jury. The Parties expressly agree that if litigation is brought in connection with this contract and (1) the litigation proceeds in the Courts of the

State of North Carolina, the parties agree that the appropriate venue shall be in Cumberland County (Twelfth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina.

ARTICLE XVII- MORALITY CLAUSE

If, in the sole opinion of the City of Fayetteville, at any time LESSEE or any of its owner(s) or employee(s) or agent(s) (collectively referenced as an "Actor") engages in any one or more actions that bring disrepute, contempt, scandal, or public ridicule to the Actor or subject the Actor to prosecution or offend the community or public morals or decency or denigrate individuals or groups in the community served by the City of Fayetteville or are scandalous or inconsistent with community standards or good citizenship or may adversely affect the City of Fayetteville's finances, public standing, image, or reputation or are embarrassing or offensive to the City of Fayetteville or may reflect unfavorably on the City of Fayetteville or are derogatory or offensive to one or more employee(s) or customer(s) of the City of Fayetteville, the City of Fayetteville may immediately upon written notice to LESSOR terminate this Contract, in addition to any other rights and remedies that the City of Fayetteville may have hereunder or at law or in equity.

ARTICLE XVIII—NOTICES

All notices required or permitted to be given hereunder to LESSOR shall be sufficient if sent by registered mail, postage prepaid, and addressed to: **City of Fayetteville, 433 Hay Street, Fayetteville, NC 28301**. All notices required or permitted to be given hereunder to LESSEE shall be sufficient if sent by registered mail, postage prepaid, and addressed to: **Enterprise Leasing Company-Southeast, LLC dba National/Alamo**_____

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized officers, as of the day and year first above written.

CITY OF FAYETTEVILLE

BY: _____
Douglas J. Hewett, ICMA-CM, City Manager

ATTEST:

Pamela Megill, City Clerk
(Corporate Seal)

ENTERPRISE LEASING COMPANY-
SOUTHEAST, LLC dba NATIONAL/ALAMO

BY: _____

Vice President
Properties and Concession

ATTEST:

Secretary

**STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND**

I, _____, a Notary Public for _____ County, North Carolina, certify that **Pamela Megill** personally came before me this day and acknowledged that she is the **City Clerk** of **City of Fayetteville**, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its City Manager, sealed with its corporate seal and attested by herself as its **City Clerk**.

Witness my hand and notarial seal, this the _____ day of _____, 2022.

Notary Public

My commission expires: _____

STATE OF _____
COUNTY OF _____

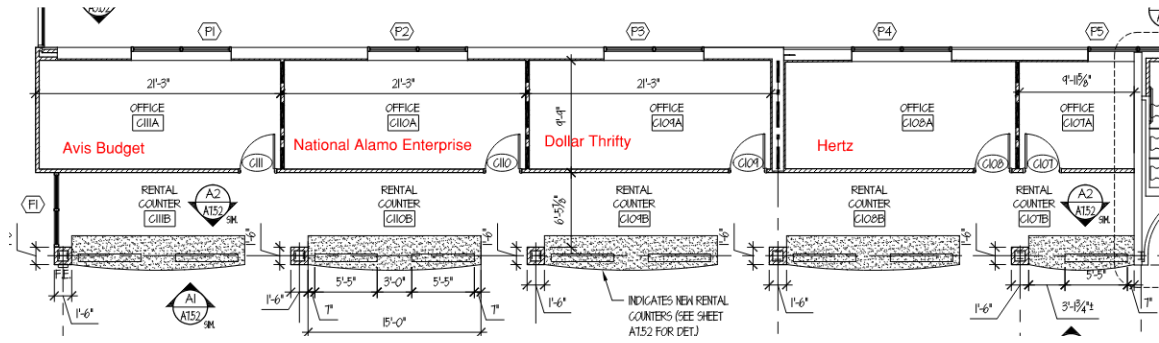
I, _____, a notary public of said County and State hereby certify that _____ personally came before me this day and acknowledged that he/she is _____ of Enterprise Leasing Company-Southeast, LLC dba National/Alamo, a limited liability company, and that by authority duly given and as the act of Enterprise Leasing Company-Southeast, LLC dba National/Alamo, and in such representative capacity voluntarily signed and acknowledged the due execution of the foregoing instrument.

Witness my hand and notaries seal, this the _____ day of _____, 2022.

Notary Public

My commission expires: _____

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NORTH CAROLINA

**ENTERPRISE LEASING
COMPANY-SOUTHEAST, LLC
RENTAL CAR LEASE AND
CONCESSION AGREEMENT**

CUMBERLAND COUNTY

THIS LEASE AND CONCESSION AGREEMENT made and entered into as of this **1st day of July, 2022**, by and between the **CITY OF FAYETTEVILLE**, hereinafter called "**LESSOR**" and **ENTERPRISE LEASING COMPANY-SOUTHEAST, LLC**, a Delaware limited liability company having an office in Cumberland County, North Carolina, hereinafter called "**LESSEE**";

WITNESSETH:

WHEREAS, the City of Fayetteville through its City Council is duly empowered as the owner and operator of the Fayetteville Regional Airport and all facilities located thereon, under the authority of N.C.G.S. § 63-53(3) and Chapter 3 of the Code of Ordinances of the City of Fayetteville, North Carolina;

AND WHEREAS, automobile rental services are necessary and desirable for the proper accommodation of passengers arriving at and departing from the Fayetteville Regional Airport;

AND WHEREAS, LESSEE is engaged in the operation of an automobile rental business and is ready, willing and able to provide a sufficient number of late model automobiles to meet the needs of passengers using the Fayetteville Regional Airport at rates comparable to those generally prevailing in the area;

NOW, THEREFORE, the parties for and in consideration for the rents, covenants and agreements contained herein do hereby contract and agree as follows:

ARTICLE I—SPACE AND FACILITIES

LESSOR does hereby rent and let unto the LESSEE and the LESSEE does hereby hire and take from the LESSOR, subject to the terms and conditions herein stated, the following:

- (a) Space and facilities in the Fayetteville Regional Airport Terminal Building for the exclusive use by the LESSEE as office and ticket counter space, to wit:

Approximately 200.77 square feet located in the Baggage Claim Area of the Fayetteville Regional Airport Terminal Building, and designated as a portion of Office C110A on a mechanical drawing attached hereto and labeled Exhibit "A" which is incorporated herein by reference and is further designated on said mechanical drawing as Enterprise.

- (b) The use, together with others holding car rental leases at the Fayetteville Regional Airport, a portion of the 250 available spaces now and hereafter designated by LESSOR as "Ready Car Space."
- (c) LESSOR reserves the right to relocate the office and ticket counter space and ready car spaces rented to LESSEE hereunder should relocation become necessary for the efficient and orderly operation of the Fayetteville Regional Airport; provided, however, that should relocation become necessary, the space provided LESSEE shall be as near as possible, equal to or better than, the space described herein. In the event that the replacement space is unsuitable for LESSEE's business, LESSEE, at its sole discretion, may cancel this Agreement upon thirty (30) days advance written notice.

ARTICLE II—TERM

The term of this Concession Agreement shall be for FIVE (5) years beginning JULY 1, 2022 and ending on the JUNE 30, 2027. The term may be renewed for an additional FIVE (5) years, subject to an increase in fees to defray any additional expenses incurred by the LESSOR, and any adjustment to the terms hereof as may be appropriate at the time, which shall involve at a minimum increase in rent to reflect any increase in the Consumer Price Index (CPI) after the first THREE (3) years. Said adjustment shall be based on the average of the percent of change in Consumer Price Index (All Urban Consumers, all items, South Group, 50,000-450,000 population) for the previous three years. At the end of the three (3) year period which is June 30, 2025, and through any extension period(s), CPI adjustments shall continue to be made triennially. Lessee may exercise its right to renew the term of this Concession Agreement for the additional five (5) year term on not less than ninety (90) days prior written notice to the Lessor.

ARTICLE III—USE OF SPACE AND FACILITIES

- (a) LESSOR hereby grants to the LESSEE the following non-exclusive privileges, uses and rights, all of which shall be subject to the terms, conditions and covenants hereinafter set forth, and the rules and regulations as may now or hereafter be promulgated by the City of Fayetteville or the Fayetteville Airport Commission:
 - (1) The right, license and privilege to operate an automobile rental service at the Fayetteville Regional Airport for the purpose of renting automobiles to passengers and such other persons who request such services at said airport;
 - (2) The right of ingress and egress to and from the Fayetteville Regional Airport by its agents, employees, patrons, customers and invitees; and

(3) The right to install and display appropriate signs in the Terminal Building to advertise said auto rental concession, provided that such design, installation and display shall be subject to the prior approval of the Airport Commission.

(b) LESSOR reserves the right to contract with other individuals, firms, or corporations to engage in like activities at the Fayetteville Regional Airport.

ARTICLE IV—RENT

(a) Concession Fee. LESSEE shall pay to LESSOR for the rights and privileges herein granted as a concession fee a minimum annual guarantee (MAG) payment of TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$25,000.00), or ten percent (10%) of annual gross revenue as hereinafter defined, whichever sum is greater, payable monthly. On or before occupancy by LESSEE and on the same day monthly each and every month thereafter until the termination of this lease, LESSEE shall pay LESSOR a minimum of TWO THOUSAND EIGHTY-THREE DOLLARS AND THIRTY-THREE CENTS (\$2083.33). On or before the first day of occupancy by LESSEE and on the same day monthly each and every month thereafter until the termination of this lease, LESSEE shall pay LESSOR, in addition to the minimum monthly payment of TWO THOUSAND EIGHTY THREE DOLLARS AND THIRTY-THREE CENTS (\$2083.33), an additional sum equal to ten percent (10%) of the monthly gross revenue for said previous month if ten percent (10%) of the monthly gross revenue for said previous month exceeds TWO THOUSAND EIGHTY-THREE DOLLARS AND THIRTY-THREE CENTS (\$2083.33). The ten percent (10%) of gross (less \$2,083.33 if concession receipts exceed said amount) shall be remitted to the Lessor on or before the twentieth (20th) day of the calendar month immediately following the end of the calendar month during which the revenues were collected. Reconciliation of minimum annual guarantee (MAG) shall occur at the end of the LESSOR's fiscal year which is June 30th and additional payment/reimbursement shall be made to LESSOR or LESSEE, as applicable.

(b) Gross Revenue. For all purposes hereof, the term "gross revenue" shall mean all revenue received from LESSEE's customers (after all discounts applied thereto) made by the LESSEE to its customers for those cars which the LESSEE shall have rented to them at or through any of the leased premises, less bad debts which become owing for the first time as of the close of the period for which the determination of gross receipts is made, plus payments received during said period on account of bad debts deducted in determining gross receipts for the last previous period for which a determination of gross receipts was made. A "bad debt" is any sum that is owed the LESSEE under a car rental agreement applicable to a car rented as aforesaid and which is four (4) months or more overdue at the close of any period for which gross receipts

are determined hereunder. By way of illustration, but not by way of limitation, gross revenue shall include:

- (1) All charges made by LESSEE to its customers for those vehicles rented at or through the leased premises, without regard to where the customer placed the order or the LESSEE received the order for said vehicle and without regard to whether said vehicle is returned to the leased premises or elsewhere;
- (2) All charges made by the LESSEE to its customers for exchanged vehicles regardless of where said exchange was made, when the vehicle originally rented to the customer was rented at or through the leased premises; and
- (3) All charges made by the LESSEE to its customers for accident insurance.

(c) Excluded from "gross revenue" for the purpose of this Agreement, shall be:

- (1) The amount of federal, state or local sales taxes which are separately stated and collected by LESSEE from customers;
- (2) All sums received by LESSEE as damages for the loss, conversion, abandonment, or destruction to vehicles leased by LESSEE under this Agreement;
- (3) All sums received by reason of LESSEE's sale of its capital assets;
- (4) Revenue arising out of or collected on amount of charges made by Lessee to its customers in return for which Lessee agrees to waive its rights to recover from said customers for loss or damage to rental automobiles, otherwise known as loss damage waiver (LDW), and/or collision damage waiver (CDW);
- (5) All sums received from customers for the purchase of fuel; and
- (6) Any amount collected from its customers as Customer Facility Charges (CFCs).

This definition of "gross revenue" shall be subject to renegotiation between the parties prior to any extension of this Concession Agreement becoming effective as provided by Article II of this Agreement.

(d) Office and Counter Space. In addition to the above payments, LESSEE shall pay the LESSOR rent for its space occupied in the Terminal Building at the rate of TWENTY DOLLARS AND SEVENTY-NINE CENTS (\$20.79) per square foot per year for counter space and TEN DOLLARS AND FORTY CENTS (\$10.40) per square foot per year for office space computed below, payable monthly on or before July 1, 2022, or on or before the first day of each and every succeeding month thereafter during the term of this Agreement.

Counter Space:

176 sq. ft. X \$20.79 per sq. ft.=\$3,659.04/12= \$304.92 per month

Office Space:

198 sq. ft. X \$10.40 per sq. ft.=\$2,059.20/12= \$171.60 per month

Total:

\$ 476.52 per month

- (e) Ready Car Space. In addition to the above payments, LESSEE shall pay LESSOR rent of TWENTY DOLLARS AND NO CENTS (\$20.00) per month for each ready space allocated to LESSEE, payable monthly on or before JULY 1, 2022, and on or before the first day of each and every succeeding month thereafter during the term of this Agreement. LESSEE shall have the right to tow away any unauthorized vehicles parked in LESSEE's designated Ready Car space, provided each space is properly signed in accordance with North Carolina State law. Any vehicle towed shall be stored in the Airport parking lot and LESSEE shall notify and submit a storage report to Airport Firefighter personnel.

The location of LESSEE's spaces shall be based on the gross revenue received from the previous three (3) years, with the LESSEE having the highest revenue choosing the location of their ready spaces first, etc. The number of ready spaces LESSEE receives will be based on the gross revenue received from the previous twelve months.

The number of spaces will be increased or decreased on a triannual basis and the preceding year's revenues received from July 1st to June 30th will determine space allocations. The reallocation shall take place August 1st of each year.

The City reserves the right to contract with additional lessees during the term of this agreement, including any extensions. In the event a new lessee commences operation during the Term of this Agreement, that lessee shall receive ten (10) ready car spaces, with two (2) spaces being taken from each of the existing lease holders. On August 1st of the following year, all spaces will be reallocated based on previous year's market share (including any partial year market share of a new lessee), but in no event shall any lessee ever receive less than a minimum of ten (10) ready car spaces.

- (f) Utilities Fee. In addition to the above payments, LESSEE shall pay LESSOR a fee for water, lights, heat, air conditioning and maintenance the sum of FIFTY DOLLARS AND NO CENTS (\$50.00) per month, payable on or before July 1, 2022 or on or before the 1st day of each and every succeeding month thereafter during the initial five (5) year term of this Agreement; thereafter, the LESSOR and LESSEE shall mutually agree in writing upon any increase for utilities to defray the costs of any increase LESSOR may incur.

(g) Abatement of Minimum Guarantee. In no event shall payment of counter space, office space, ready car space and utilities abate. The minimum concession fee provided in Article IV (a) shall be suspended upon the occurrence of any of the following conditions:

- (1) A strike by employees of a commercial airline providing service to the Fayetteville Regional Airport that causes a total cessation of airline service for a period of fifteen (15) days or longer in any one calendar month. The continued service by a non-striking commercial airline so that there is not a total cessation of airline service to the Fayetteville Regional Airport shall not constitute an abatement of the minimum guarantee as defined herein;
- (2) In the event of the declaration of a national emergency by executive decree or legislative action, which causes a material, and substantial curtailment of the supply of fuel, tires, or parts for motor vehicles and airplanes for use by the general public; or
- (3) If, for any reason, the number of passengers deplaning from scheduled airline flights at Fayetteville Regional Airport during any two (2) consecutive calendar months shall be less than seventy percent (70%) of the number of such deplaning passengers for the same period of the preceding calendar year. The percentage of deplaning passengers shall be subject to renegotiation between the parties prior to any extension of this Concession Agreement becoming effective as provided by Article II of this Agreement.

If during this period, any of the foregoing conditions exist, LESSEE shall pay to the LESSOR for the rights, privileges, and facilities, rent based upon 10 percent of annual gross revenue.

(h) Late Fees: Any fee payable by Lessee under this agreement that is not paid when due shall bear a late payment fee at the rate of five percent (5%) per month from the due date until paid."

ARTICLE V—REPORTS AND RECORDS

- (a) LESSEE shall furnish LESSOR on or **before the 20th day of each calendar month a Certified and signed copy of its statement of operations for the previous month** which said statement shall show in detail a breakdown of LESSEE's gross revenue for the previous month to enable LESSOR to verify the accuracy of LESSEE's payment of percentage of gross revenue. LESSEE shall furnish LESSOR, upon demand, such additional detail and breakdown as LESSOR shall deem necessary to verify gross revenue.
- (b) LESSOR shall have the right to inspect LESSEE's books and records for a period of three (3) years, to determine the accuracy of the matters reports in said monthly report required above and LESSEE agrees to maintain all books

and records upon leased premises, or to mail same to LESSOR within ten (10) days of LESSOR's request therefore.

- (c) At the end of the first lease year under this Agreement, which is June 30, 2022, and at the end of each lease year thereafter during the term of this Agreement, or not more than sixty (60) days thereafter, LESSEE shall furnish to LESSOR a certified copy of an audit of LESSEE's operations hereunder by LESSEE's certified public accountant. LESSOR shall have the right to conduct its own audit to verify LESSEE's certified audit and in the event LESSOR's audit to verify LESSEE's payments of rent to LESSOR is as much as two and one-half percent (2 ½%) less than the amount LESSEE is required to pay LESSOR under the terms of this Agreement, then LESSEE shall pay to LESSOR all costs and expenses incurred by LESSOR in conducting said audit, including transportation, food and lodging expenses.
- (d) LESSEE shall submit to LESSOR no later than the 1st of November each year, a Concession Activities Report listing the following:
 - (1) Names and types of Disadvantaged Business Enterprise (DBE) firms that supported operations at the Fayetteville Regional Airport, to include whether a DBE firm arrangement is a sublease or joint venture;
 - (2) Payments to DBE (s) per (1) above;
 - (3) Rental annual gross income for business conducted at Fayetteville Regional Airport; and
 - (4) Percentage of DBE participation for the current October 1st to September 30th timeframe bases on (2) and (3) above.

ARTICLE VI—OBLIGATIONS OF LESSEE

The LESSEE covenants and agrees:

- (a) To promptly pay all charges, rents and fees by delivering same to the City of Fayetteville, PO Drawer D, Fayetteville, NC 28302.
- (b) The LESSEE shall take out or obtain all licenses or permits as required by federal, state or local law. The LESSEE shall pay any and all lawful taxes and assessments (including but not limited to ad valorem and inventory taxes) which, during the term of this Lease Agreement, or any part thereof, may become a lien upon or which may be levied by state, county, city or any other tax levying body, upon any and all of the leased premises of this Agreement. And upon any and all taxable interest of the LESSEE acquired in this Lease Agreement, as well as all taxes on taxable property, real or personal, owned by the LESSEE in or about said leased premises, but deferment of payment of any tax by the LESSEE shall not constitute a default or breach of this Lease Agreement during the time the LESSEE is contesting in good faith the payment of said tax before any duly constituted authority, and pending the final determination of such contest.

- (c) To furnish, install, operate and maintain the space and facilities provided herein and keep the same, as well as other premises made available to the LESSEE, and the furniture, fixtures and equipment installed therein in good working condition and repair, and upon termination or the expiration of this Agreement, to deliver the premises to LESSOR in good order, condition and repair, reasonable wear and tear excepted.
- (d) To provide and have available at all times for use by patrons at the Fayetteville Regional Airport, a sufficient number of rental automobiles to meet the normal demands and needs of the public for automobile rental services. Service shall be available for all scheduled commercial flights. Rental automobiles shall be in good working condition and free from known mechanical defects and in a clean, neat and attractive condition both inside and out and shall be no more than two years older than current year models.
- (e) Solicitation of business shall be restricted to the space allotted LESSEE in the Airport Terminal Building.
- (f) LESSEE shall not maintain in a position of public interaction any person reasonably objectionable to Airport Management on account of said person's reputation, appearance, dress or conduct; provided that termination of any such employee shall be subject to such due process rights, if any, as may be extended to said employee by LESSEE.
- (g) LESSEE covenants and agrees to at all times observe, obey and comply fully with all laws, assurances, ordinances, rules, regulations, and requirements now in effect and hereafter promulgated by the LESSOR, City, State, Federal, or other governmental entity having jurisdiction over the leased premises or activities of LESSEE.
- (h) Maintenance of vehicles, including cleaning and washing, shall not be performed on Airport property without prior written permission of Airport Management.

ARTICLE VII—INDEMNIFICATION & INSURANCE

- (a) Indemnification. It is agreed that LESSEE is, and shall be deemed to be an independent contractor, and that LESSOR shall in no way be responsible to any person, firm or corporation for the LESSEE, its invitees, agents, officers, servants or employees acts or omissions. It is further agreed that in the exercise or enjoyment of the privileges herein granted, the LESSEE shall indemnify, defend, and save and hold harmless the LESSOR and all of its elected officials, employees, officers agents, successors and assigns from any and all claims, demands, suits, judgments, costs, expenses (including attorney fees) and liability to persons and/or property that may result from or grow out of any act, omission, or negligence on the part of the LESSEE or the LESSEE's invitees, agents, servants, employees, or officers. Indemnification of the LESSOR by LESSEE does not constitute a waiver of the City's governmental immunity in any respects under North Carolina law.

- (b) Commercial General Liability. LESSEE shall procure and maintain in full force and effect at all times and at its sole expense, Commercial General Liability insurance covering premises operations, independent contractors and contractual liability, with single limits coverage of one million dollars (\$1,000,000) per occurrence.
- (c) Automobile Liability. The LESSEE shall, prior to commencing its operations pursuant to the terms of this Lease Agreement, take out and maintain continuously in effect at all times during the term of this Agreement, in addition to insurance required by law, automobile liability insurance in the sum of ONE HUNDRED THOUSAND & NO/100 DOLLARS (\$100,000.00) for each person injured and THREE HUNDRED THOUSAND & NO/100 DOLLARS (\$300,000.00) for each accident, and FIFTY THOUSAND & NO/100 DOLLARS (\$50,000.00) for property damage. The LESSEE shall maintain such insurance with insurance underwriters authorized to do business in the State of North Carolina satisfactory to the LESSOR. The LESSEE shall, prior to commencing its operations pursuant to the terms of this Lease Agreement, furnish the LESSOR with a certificate of insurance from the LESSEE's carrier indicating there is such insurance coverage as herein before provided. Said Certificate of Insurance shall provide that the policy cannot be canceled or materially changed except after giving notice by registered mail to LESSOR at least thirty (30) days before the effective date of such cancellation or change.
- (d) The insurance coverage's and limits required of the LESSEE under this agreement are designed to meet the minimum requirements for the LESSOR. They are not designed as a recommended insurance program. LESSEE alone is responsible for the sufficiency of its own insurance program(s). If LESSEE has any questions concerning exposures and/or coverage issues, professional insurance assistance should be obtained by LESSEE.
- (e) All insurances shall be placed with an insurance company licensed to do business in the State of North Carolina.

ARTICLE VIII-ASSIGNMENT OF LEASE

LESSEE shall not assign this Agreement or any part thereof nor sublet the leased premises or any part thereof, without prior written consent of LESSOR, except to an affiliate of the LESSEE. For all purposes hereof, an "affiliate" is any person, firm or corporation controlled by, under common control with, or controlling the LESSEE. "Control" is the power to direct the management and policies of another, whether arising by virtue of stock ownership, contract, or otherwise.

ARTICLE IX—CANCELLATION OR TERMINATION

- (a) Termination by Airport. This agreement and all rights and privileges and interests created hereunder may be terminated by LESSOR upon written notice to LESSEE upon LESSEE's default in the payment of any sums when due hereunder and failure to cure said default within 10 days after said written notice. The acceptance of any monies by LESSOR, after default shall not be deemed to be a waiver of the right of termination by LESSOR, nor shall LESSOR be stopped from evicting LESSEE from its premises and re-letting said premises to other parties.
- (b) Except as provided in (a) above, this agreement and all rights and privileges and interests created hereunder may be terminated by LESSOR upon ten (10) days written notice to LESSEE upon the occurrence of any of the following events:
- (1) The LESSEE defaults in the performance of any term, covenant, or condition hereunder and such default shall continue for thirty (30) days after written notice of such default from LESSOR to LESSEE; provided, however, that no such default shall continue for more than twenty-four (24) hours after written notice of such default if it presents a hazard to the safety of Airport personnel or the general public. The acceptance of any monies by LESSOR after default shall not be deemed to be a waiver of the right of termination by LESSOR, nor shall LESSOR be stopped from evicting LESSEE from its premises and re-letting said premises to other parties.
 - (2) The LESSEE shall become insolvent or take the benefit of any present or future insolvency statute or make any assignment for the benefit of creditors or file a voluntary petition in bankruptcy or consent to the appointment of a receiver of its property.
 - (3) By order or decree of a court that LESSEE is adjudged bankrupt.
 - (4) A petition under any part of the Federal Bankruptcy Law is filed by any person, firm, or corporation against LESSEE and such petition is not vacated or discharged within ninety (90) days thereafter.
 - (5) LESSEE shall voluntarily abandon and discontinue its rental service at the Fayetteville Regional Airport for a period of ten (10) consecutive days. LESSOR shall be deemed to have not waived any of its rights or privileges due to its failure to notify LESSEE of any default or violation of any of the terms of this Agreement. Within thirty (30) days of the termination or cancellation of this Agreement, LESSEE shall remove all of its property from LESSOR's premises and leave the same in substantially the same condition as prior to LESSEE's entry thereon, ordinary wear and tear excepted. Any item or property not removed by LESSEE within thirty (30) days following the cancellation or termination of this Agreement shall be deemed to have been abandoned by LESSEE and shall become the property of the LESSOR without compensation and LESSOR shall be entitled to remove and dispose of same in any manner it deems fit.

(c) Termination by LESSEE. LESSEE shall have the right to terminate this Agreement by giving 30 days' written notice, unless another notice period is identified, to LESSOR upon the occurrence of any of the following events, provided said event or events shall then be continuing:

- (1) The issuance by any court of competent jurisdiction of any injunction, order or decree preventing or restraining the use by LESSEE of any part of the Fayetteville Regional Airport which is necessary for LESSEE's operations hereunder, which Order remain in force for a period of at least one hundred twenty (120) days.
- (2) The LESSOR's default in fulfilling any of the terms, covenants, and conditions required under this Agreement and fails to cure said default within forty-five (45) days following receipt of written notice thereof from LESSEE.
- (3) The destruction by fire, explosion, earthquake, the public enemy or other acts of God of a substantial or material part of the Fayetteville Regional Airport which substantially interferes with or disrupts LESSEE's use of said premises.
- (4) The United States Government or any of its agencies shall occupy the Fayetteville Regional Airport or any substantial part thereof to such an extent as to materially interfere with LESSEE's operations for a period of sixty (60) consecutive days, or more.

ARTICLE X—COVENANT NOT TO GRANT MORE FAVORABLE TERMS

LESSOR covenants and agrees not to enter into any concession agreement or contract with any other rental car agency that contains more favorable terms or conditions than contained herein.

ARTICLE XI—AFFIRMATIVE ACTION

LESSEE agrees that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment activities covered in 14 CFR, Part 152, Subpart E. LESSEE agrees that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. LESSEE agrees that it will require that its covered sub-organizations provide assurances to the LESSOR that they similarly will undertake affirmative action programs and that they will require assurances from said sub organizations, as required by 14 CFR, Part 152, Subpart E, to the same effect.

ARTICLE XII – CUSTOMER FACILITY CHARGE (CFC)

LESSOR approved the imposition of a Customer Facility Charge (CFC) on April 29, 2014 to be collected by LESSEE from rental car customers at the Airport effective July 15, 2014. The CFC remains in effect and continues at the current rate of Four Dollars (\$4.00) for the full Agreement period.

- (a) LESSEE agrees to continue imposition of the CFC fee as specified by the LESSOR in Section (b) below for each customer entering into a rental contract with LESSEE at the Fayetteville Regional Airport for the purpose of securing or recovering LESSOR's costs associated with certain Airport rental car facility related improvements that may be made at the Airport by the LESSOR at its sole discretion, including but not limited to, a parking deck and new service area facilities as contemplated by LESSOR.
- (b) The proceeds of all CFCs shall be used solely for payment of costs relating to rental car facilities and parking areas at the Airport and which are deemed necessary by the LESSOR from time to time. The CFC shall be charged to LESSEE's customers for each day, or portion thereof for which a late fee or rental is charged to the customer, and a rental contract is in effect between LESSEE and its customers, up to a maximum of ten (10) CFCs per single rental contract. The amount of the CFC shall be FOUR DOLLARS (\$4.00) per contract day, or portion thereof and shall apply to, and be collected by LESSEE on, all rental contracts reserved, issued or written on or after July 1, 2021. Notwithstanding any of the other terms in the Agreement, the LESSOR reserves the right to adjust the amount of the CFC from time to time as the LESSOR deems necessary in its sole discretion. LESSOR shall provide LESSEE at least sixty (60) days prior notice of an adjustment in the CFC.
- (c) LESSEE shall collect the CFC from each customer with which LESSEE enters into an automobile rental contract at the Airport. The CFC shall be identified on a separate line on all rental car customer contracts, after taxes, and shall be described as the "Airport Customer Facility Charge". All Customer Facility Charges collected and/or held by LESSEE shall: (i) be collected from all customers, including without limitation all customers receiving complimentary or discounted car rentals under the LESSEE's bona fide marketing plans; and (ii) be held in trust by LESSEE for the LESSOR's benefit. All CFCs so collected shall be remitted to the LESSOR on or before the twentieth (20th) day of the calendar month immediately following the end of the calendar month during which such CFCs were collected. Failure by the LESSEE to collect and remit the CFCs to the LESSOR as provided for in this Concession Agreement shall result in termination of the AGREEMENT between LESSOR and LESSEE.
- (d) The method of calculating the CFC and the amount of such Customer Facility Charge shall be determined by the LESSOR at its sole discretion.

LESSEE shall maintain records and controls, as prescribed by the LESSOR, which are sufficient to demonstrate the correctness of any such Customer Facility Charges collected by LESSEE and the amount of Customer Facility Charges remitted to the LESSOR. Said records shall be made available for inspection and examination by the LESSOR or its duly authorized representatives. The LESSOR reserves the right to audit LESSEE's records which are required to be maintained by LESSEE as provided for in *Article V – Reports and Records* of the AGREEMENT, for the purpose of verifying the Gross Revenue and Customer Facility Charges reported by LESSEE. Gross revenue shall specifically exclude any amounts collected from its customers as Customer Facility Charges.

ARTICLE XIII – N.C. IRAN DIVESTMENT ACT

As mandated by N.C.G.S. 143C-6A-5(a), LESSEE certifies that it is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 143C-6A-4. LESSEE further certifies that in accordance with N.C.G.S. 143C-6A-5(b) that it shall not utilize any subcontractor found on the State Treasurer's Final Divestment List. LESSEE certifies that the signatory to this Agreement is authorized by the LESSEE to make the foregoing statement.

ARTICLE XIV - E-VERIFY

LESSEE hereby acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. LESSEE further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). LESSEE hereby pledges, attests and warrants through execution of this contract that LESSEE complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by LESSEE shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Amendment.

ARTICLE XV - SEVERABILITY

The parties agree that if any provision of this contract shall be held invalid for any reason, the remaining provisions shall not be affected if they may continue to conform with the purposes of this contract and the requirements of applicable law.

ARTICLE XVI – COMPLIANCE WITH LAWS, GOVERNING LAW, & VENUE AND FORUM

LESSEE agrees to comply with all applicable statutes, ordinances, and regulations of the United States, the State of North Carolina, the City and units of local government. Except to the extent a federal law, rule or order may apply, this Agreement shall be governed by the laws of the State of North Carolina (without resort to the choice of law rules thereof). If any action or proceeding is brought by either party to enforce the provisions hereof, the prevailing party shall be entitled to recover all reasonable costs and attorneys' fees incurred in such action or proceeding, including those on appeal, in such amounts as the court may determine without a jury. The Parties expressly agree that if litigation is brought in connection with this contract and (1) the litigation proceeds in the Courts of the State of North Carolina, the parties agree that the appropriate venue shall be in Cumberland County (Twelfth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina.

ARTICLE XVII- MORALITY CLAUSE

If, in the sole opinion of the City of Fayetteville, at any time LESSEE or any of its owner(s) or employee(s) or agent(s) (collectively referenced as an "Actor") engages in any one or more actions that bring disrepute, contempt, scandal, or public ridicule to the Actor or subject the Actor to prosecution or offend the community or public morals or decency or denigrate individuals or groups in the community served by the City of Fayetteville or are scandalous or inconsistent with community standards or good citizenship or may adversely affect the City of Fayetteville's finances, public standing, image, or reputation or are embarrassing or offensive to the City of Fayetteville or may reflect unfavorably on the City of Fayetteville or are derogatory or offensive to one or more employee(s) or customer(s) of the City of Fayetteville, the City of Fayetteville may immediately upon written notice to LESSOR terminate this Contract, in addition to any other rights and remedies that the City of Fayetteville may have hereunder or at law or in equity.

ARTICLE XVIII—NOTICES

All notices required or permitted to be given hereunder to LESSOR shall be sufficient if sent by registered mail, postage prepaid, and addressed to: **City of Fayetteville, 433 Hay Street, Fayetteville, NC 28301**. All notices required or permitted to be given hereunder to LESSEE shall be sufficient if sent by registered mail, postage prepaid, and addressed to: **Enterprise Leasing Company-Southeast, LLC**_____

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized officers, as of the day and year first above written.

CITY OF FAYETTEVILLE

BY: _____
Douglas J. Hewett, ICMA-CM, City Manager

ATTEST:

Pamela Megill, City Clerk
(Corporate Seal)

ENTERPRISE LEASING COMPANY-
SOUTHEAST, LLC

BY: _____

Vice President
Properties and Concession

ATTEST:

Secretary

**STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND**

I, _____, a Notary Public for _____ County, North Carolina, certify that **Pamela Megill** personally came before me this day and acknowledged that she is the **City Clerk** of **City of Fayetteville**, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its City Manager, sealed with its corporate seal and attested by herself as its **City Clerk**.

Witness my hand and notarial seal, this the _____ day of _____, 2022.

Notary Public

My commission expires: _____

STATE OF _____
COUNTY OF _____

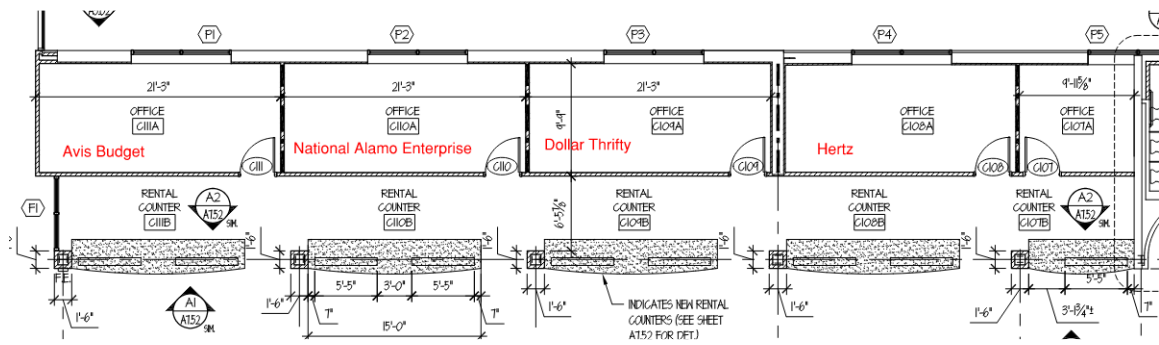
I, _____, a notary public of said County and State hereby certify that _____ personally came before me this day and acknowledged that he/she is _____ of Enterprise Leasing Company-Southeast, LLC., a limited liability company, and that by authority duly given and as the act of Enterprise Leasing Company-Southeast, LLC, and in such representative capacity voluntarily signed and acknowledged the due execution of the foregoing instrument.

Witness my hand and notaries seal, this the _____ day of _____, 2022.

Notary Public

My commission expires: _____

EXHIBIT A



NORTH CAROLINA

THE HERTZ CORPORATION
RENTAL CAR LEASE AND
CONCESSION AGREEMENT

CUMBERLAND COUNTY

THIS LEASE AND CONCESSION AGREEMENT made and entered into as of this **1st day of July, 2022**, by and between the **CITY OF FAYETTEVILLE**, hereinafter called "**LESSOR**" and **THE HERTZ CORPORATION**, a corporation having an office in Cumberland County, North Carolina, hereinafter called "**LESSEE**";

WITNESSETH:

WHEREAS, the City of Fayetteville through its City Council is duly empowered as the owner and operator of the Fayetteville Regional Airport and all facilities located thereon, under the authority of N.C.G.S. § 63-53(3) and Chapter 3 of the Code of Ordinances of the City of Fayetteville, North Carolina;

AND WHEREAS, automobile rental services are necessary and desirable for the proper accommodation of passengers arriving at and departing from the Fayetteville Regional Airport;

AND WHEREAS, LESSEE is engaged in the operation of an automobile rental business and is ready, willing and able to provide a sufficient number of late model automobiles to meet the needs of passengers using the Fayetteville Regional Airport at rates comparable to those generally prevailing in the area;

NOW, THEREFORE, the parties for and in consideration for the rents, covenants and agreements contained herein do hereby contract and agree as follows:

ARTICLE I—SPACE AND FACILITIES

LESSOR does hereby rent and let unto the LESSEE and the LESSEE does hereby hire and take from the LESSOR, subject to the terms and conditions herein stated, the following:

- (a) Space and facilities in the Fayetteville Regional Airport Terminal Building for the exclusive use by the LESSEE as office and ticket counter space, to wit:

Approximately 200.77 square feet located in the Baggage Claim Area of the Fayetteville Regional Airport Terminal Building, and designated as Office C108A on a mechanical drawing attached hereto and labeled Exhibit "A" which is incorporated herein by reference and is further designated on said mechanical drawing as Hertz.

- (b) The use, together with others holding car rental leases at the Fayetteville Regional Airport, a portion of the 250 available spaces now and hereafter designated by LESSOR as "Ready Car Space."
- (c) LESSOR reserves the right to relocate the office and ticket counter space and ready car spaces rented to LESSEE hereunder should relocation become necessary for the efficient and orderly operation of the Fayetteville Regional Airport; provided, however, that should relocation become necessary, the space provided LESSEE shall be as near as possible, equal to or better than, the space described herein. In the event that the replacement space is unsuitable for LESSEE's business, LESSEE, at its sole discretion, may cancel this Agreement upon thirty (30) days advance written notice.

ARTICLE II—TERM

The term of this Concession Agreement shall be for FIVE (5) years beginning JULY 1, 2022 and ending on the JUNE 30, 2027. The term may be renewed for an additional FIVE (5) years, subject to an increase in fees to defray any additional expenses incurred by the LESSOR, and any adjustment to the terms hereof as may be appropriate at the time, which shall involve at a minimum increase in rent to reflect any increase in the Consumer Price Index (CPI) after the first THREE (3) years. Said adjustment shall be based on the average of the percent of change in Consumer Price Index (All Urban Consumers, all items, South Group, 50,000-450,000 population) for the previous three years. At the end of the three (3) year period which is June 30, 2025, and through any extension period(s), CPI adjustments shall continue to be made triennially. Lessee may exercise its right to renew the term of this Concession Agreement for the additional five (5) year term on not less than ninety (90) days prior written notice to the Lessor.

ARTICLE III—USE OF SPACE AND FACILITES

- (a) LESSOR hereby grants to the LESSEE the following non-exclusive privileges, uses and rights, all of which shall be subject to the terms, conditions and covenants hereinafter set forth, and the rules and regulations as may now or hereafter be promulgated by the City of Fayetteville or the Fayetteville Airport Commission:
 - (1) The right, license and privilege to operate an automobile rental service at the Fayetteville Regional Airport for the purpose of renting automobiles to passengers and such other persons who request such services at said airport;
 - (2) The right of ingress and egress to and from the Fayetteville Regional Airport by its agents, employees, patrons, customers and invitees; and

- (3) The right to install and display appropriate signs in the Terminal Building to advertise said auto rental concession, provided that such design, installation and display shall be subject to the prior approval of the Airport Commission.

- (b) LESSOR reserves the right to contract with other individuals, firms, or corporations to engage in like activities at the Fayetteville Regional Airport.

ARTICLE IV—RENT

- (a) Concession Fee. LESSEE shall pay to LESSOR for the rights and privileges herein granted as a concession fee a minimum annual guarantee (MAG) payment of TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$25,000.00), or ten percent (10%) of annual gross revenue as hereinafter defined, whichever sum is greater, payable monthly. On or before occupancy by LESSEE and on the same day monthly each and every month thereafter until the termination of this lease, LESSEE shall pay LESSOR a minimum of TWO THOUSAND EIGHTY-THREE DOLLARS AND THIRTY-THREE CENTS (\$2083.33). On or before the first day of occupancy by LESSEE and on the same day monthly each and every month thereafter until the termination of this lease, LESSEE shall pay LESSOR, in addition to the minimum monthly payment of TWO THOUSAND EIGHTY THREE DOLLARS AND THIRTY-THREE CENTS (\$2083.33), an additional sum equal to ten percent (10%) of the monthly gross revenue for said previous month if ten percent (10%) of the monthly gross revenue for said previous month exceeds TWO THOUSAND EIGHTY-THREE DOLLARS AND THIRTY-THREE CENTS (\$2083.33). The ten percent (10%) of gross (less \$2,083.33 if concession receipts exceed said amount) shall be remitted to the Lessor on or before the twentieth (20th) day of the calendar month immediately following the end of the calendar month during which the revenues were collected. Reconciliation of minimum annual guarantee (MAG) shall occur at the end of the LESSOR's fiscal year which is June 30th and additional payment/reimbursement shall be made to LESSOR or LESSEE, as applicable.
- (b) Gross Revenue. For all purposes hereof, the term "gross revenue" shall mean all revenue received from LESSEE's customers (after all discounts applied thereto) made by the LESSEE to its customers for those cars which the LESSEE shall have rented to them at or through any of the leased premises, less bad debts which become owing for the first time as of the close of the period for which the determination of gross receipts is made, plus payments received during said period on account of bad debts deducted in determining gross receipts for the last previous period for which a determination of gross receipts was made. A "bad debt" is any sum that is owed the LESSEE under a car rental agreement applicable to a car rented as aforesaid and which is four (4) months or more overdue at the close of any period for which gross receipts

are determined hereunder. By way of illustration, but not by way of limitation, gross revenue shall include:

- (1) All charges made by LESSEE to its customers for those vehicles rented at or through the leased premises, without regard to where the customer placed the order or the LESSEE received the order for said vehicle and without regard to whether said vehicle is returned to the leased premises or elsewhere;
- (2) All charges made by the LESSEE to its customers for exchanged vehicles regardless of where said exchange was made, when the vehicle originally rented to the customer was rented at or through the leased premises; and
- (3) All charges made by the LESSEE to its customers for accident insurance.

(c) Excluded from "gross revenue" for the purpose of this Agreement, shall be:

- (1) The amount of federal, state or local sales taxes which are separately stated and collected by LESSEE from customers;
- (2) All sums received by LESSEE as damages for the loss, conversion, abandonment, or destruction to vehicles leased by LESSEE under this Agreement;
- (3) All sums received by reason of LESSEE's sale of its capital assets;
- (4) Revenue arising out of or collected on amount of charges made by Lessee to its customers in return for which Lessee agrees to waive its rights to recover from said customers for loss or damage to rental automobiles, otherwise known as loss damage waiver (LDW), and/or collision damage waiver (CDW);
- (5) All sums received from customers for the purchase of fuel; and
- (6) Any amount collected from its customers as Customer Facility Charges (CFCs).

This definition of "gross revenue" shall be subject to renegotiation between the parties prior to any extension of this Concession Agreement becoming effective as provided by Article II of this Agreement.

(d) Office and Counter Space. In addition to the above payments, LESSEE shall pay the LESSOR rent for its space occupied in the Terminal Building at the rate of TWENTY DOLLARS AND SEVENTY-NINE CENTS (\$20.79) per square foot per year for counter space and TEN DOLLARS AND FORTY CENTS (\$10.40) per square foot per year for office space computed below, payable monthly on or before July 1, 2022, or on or before the first day of each and every succeeding month thereafter during the term of this Agreement.

Counter Space:

170 sq. ft. X \$20.79 per sq. ft.=\$3,534.30/12= \$294.53 per month

Office Space:

187 sq. ft. X \$10.40 per sq. ft.=\$1,944.80/12= \$162.07 per month

Total:

\$ 456.60 per month

- (e) Ready Car Space. In addition to the above payments, LESSEE shall pay LESSOR rent of TWENTY DOLLARS AND NO CENTS (\$20.00) per month for each ready space allocated to LESSEE, payable monthly on or before JULY 1, 2022, and on or before the first day of each and every succeeding month thereafter during the term of this Agreement. LESSEE shall have the right to tow away any unauthorized vehicles parked in LESSEE's designated Ready Car space, provided each space is properly signed in accordance with North Carolina State law. Any vehicle towed shall be stored in the Airport parking lot and LESSEE shall notify and submit a storage report to Airport Firefighter personnel.

The location of LESSEE's spaces shall be based on the gross revenue received from the previous three (3) years, with the LESSEE having the highest revenue choosing the location of their ready spaces first, etc. The number of ready spaces LESSEE receives will be based on the gross revenue received from the previous twelve months.

The number of spaces will be increased or decreased on a triannual basis and the preceding year's revenues received from July 1st to June 30th will determine space allocations. The reallocation shall take place August 1st of each year.

The City reserves the right to contract with additional lessees during the term of this agreement, including any extensions. In the event a new lessee commences operation during the Term of this Agreement, that lessee shall receive ten (10) ready car spaces, with two (2) spaces being taken from each of the existing lease holders. On August 1st of the following year, all spaces will be reallocated based on previous year's market share (including any partial year market share of a new lessee), but in no event shall any lessee ever receive less than a minimum of ten (10) ready car spaces.

- (f) Utilities Fee. In addition to the above payments, LESSEE shall pay LESSOR a fee for water, lights, heat, air conditioning and maintenance the sum of FIFTY DOLLARS AND NO CENTS (\$50.00) per month, payable on or before July 1, 2022 or on or before the 1st day of each and every succeeding month thereafter during the initial five (5) year term of this Agreement; thereafter, the LESSOR and LESSEE shall mutually agree in writing upon any increase for utilities to defray the costs of any increase LESSOR may incur.

(g) Abatement of Minimum Guarantee. In no event shall payment of counter space, office space, ready car space and utilities abate. The minimum concession fee provided in Article IV (a) shall be suspended upon the occurrence of any of the following conditions:

- (1) A strike by employees of a commercial airline providing service to the Fayetteville Regional Airport that causes a total cessation of airline service for a period of fifteen (15) days or longer in any one calendar month. The continued service by a non-striking commercial airline so that there is not a total cessation of airline service to the Fayetteville Regional Airport shall not constitute an abatement of the minimum guarantee as defined herein;
- (2) In the event of the declaration of a national emergency by executive decree or legislative action, which causes a material, and substantial curtailment of the supply of fuel, tires, or parts for motor vehicles and airplanes for use by the general public; or
- (3) If, for any reason, the number of passengers deplaning from scheduled airline flights at Fayetteville Regional Airport during any two (2) consecutive calendar months shall be less than seventy percent (70%) of the number of such deplaning passengers for the same period of the preceding calendar year. The percentage of deplaning passengers shall be subject to renegotiation between the parties prior to any extension of this Concession Agreement becoming effective as provided by Article II of this Agreement.

If during this period, any of the foregoing conditions exist, LESSEE shall pay to the LESSOR for the rights, privileges, and facilities, rent based upon 10 percent of annual gross revenue.

(h) Late Fees: Any fee payable by Lessee under this agreement that is not paid when due shall bear a late payment fee at the rate of five percent (5%) per month from the due date until paid."

ARTICLE V—REPORTS AND RECORDS

- (a) LESSEE shall furnish LESSOR on or **before the 20th day of each calendar month a Certified and signed copy of its statement of operations for the previous month** which said statement shall show in detail a breakdown of LESSEE's gross revenue for the previous month to enable LESSOR to verify the accuracy of LESSEE's payment of percentage of gross revenue. LESSEE shall furnish LESSOR, upon demand, such additional detail and breakdown as LESSOR shall deem necessary to verify gross revenue.
- (b) LESSOR shall have the right to inspect LESSEE's books and records for a period of three (3) years, to determine the accuracy of the matters reports in said monthly report required above and LESSEE agrees to maintain all books

and records upon leased premises, or to mail same to LESSOR within ten (10) days of LESSOR's request therefore.

- (c) At the end of the first lease year under this Agreement, which is June 30, 2023, and at the end of each lease year thereafter during the term of this Agreement, or not more than sixty (60) days thereafter, LESSEE shall furnish to LESSOR a certified copy of an audit of LESSEE's operations hereunder by LESSEE's certified public accountant. LESSOR shall have the right to conduct its own audit to verify LESSEE's certified audit and in the event LESSOR's audit to verify LESSEE's payments of rent to LESSOR is as much as two and one-half percent (2 ½%) less than the amount LESSEE is required to pay LESSOR under the terms of this Agreement, then LESSEE shall pay to LESSOR all costs and expenses incurred by LESSOR in conducting said audit, including transportation, food and lodging expenses.
- (d) LESSEE shall submit to LESSOR no later than the 1st of November each year, a Concession Activities Report listing the following:
 - (1) Names and types of Disadvantaged Business Enterprise (DBE) firms that supported operations at the Fayetteville Regional Airport, to include whether a DBE firm arrangement is a sublease or joint venture;
 - (2) Payments to DBE (s) per (1) above;
 - (3) Rental annual gross income for business conducted at Fayetteville Regional Airport; and
 - (4) Percentage of DBE participation for the current October 1st to September 30th timeframe bases on (2) and (3) above.

ARTICLE VI—OBLIGATIONS OF LESSEE

The LESSEE covenants and agrees:

- (a) To promptly pay all charges, rents and fees by delivering same to the City of Fayetteville, PO Drawer D, Fayetteville, NC 28302.
- (b) The LESSEE shall take out or obtain all licenses or permits as required by federal, state or local law. The LESSEE shall pay any and all lawful taxes and assessments (including but not limited to ad valorem and inventory taxes) which, during the term of this Lease Agreement, or any part thereof, may become a lien upon or which may be levied by state, county, city or any other tax levying body, upon any and all of the leased premises of this Agreement. And upon any and all taxable interest of the LESSEE acquired in this Lease Agreement, as well as all taxes on taxable property, real or personal, owned by the LESSEE in or about said leased premises, but deferment of payment of any tax by the LESSEE shall not constitute a default or breach of this Lease Agreement during the time the LESSEE is contesting in good faith the payment of said tax before any duly constituted authority, and pending the final determination of such contest.

- (c) To furnish, install, operate and maintain the space and facilities provided herein and keep the same, as well as other premises made available to the LESSEE, and the furniture, fixtures and equipment installed therein in good working condition and repair, and upon termination or the expiration of this Agreement, to deliver the premises to LESSOR in good order, condition and repair, reasonable wear and tear excepted.
- (d) To provide and have available at all times for use by patrons at the Fayetteville Regional Airport, a sufficient number of rental automobiles to meet the normal demands and needs of the public for automobile rental services. Service shall be available for all scheduled commercial flights. Rental automobiles shall be in good working condition and free from known mechanical defects and in a clean, neat and attractive condition both inside and out and shall be no more than two years older than current year models.
- (e) Solicitation of business shall be restricted to the space allotted LESSEE in the Airport Terminal Building.
- (f) LESSEE shall not maintain in a position of public interaction any person reasonably objectionable to Airport Management on account of said person's reputation, appearance, dress or conduct; provided that termination of any such employee shall be subject to such due process rights, if any, as may be extended to said employee by LESSEE.
- (g) LESSEE covenants and agrees to at all times observe, obey and comply fully with all laws, assurances, ordinances, rules, regulations, and requirements now in effect and hereafter promulgated by the LESSOR, City, State, Federal, or other governmental entity having jurisdiction over the leased premises or activities of LESSEE.
- (h) Maintenance of vehicles, including cleaning and washing, shall not be performed on Airport property without prior written permission of Airport Management.

ARTICLE VII—INDEMNIFICATION & INSURANCE

- (a) Indemnification. It is agreed that LESSEE is, and shall be deemed to be an independent contractor, and that LESSOR shall in no way be responsible to any person, firm or corporation for the LESSEE, its invitees, agents, officers, servants or employees acts or omissions. It is further agreed that in the exercise or enjoyment of the privileges herein granted, the LESSEE shall indemnify, defend, and save and hold harmless the LESSOR and all of its elected officials, employees, officers agents, successors and assigns from any and all claims, demands, suits, judgments, costs, expenses (including attorney fees) and liability to persons and/or property that may result from or grow out of any act, omission, or negligence on the part of the LESSEE or the LESSEE's invitees, agents, servants, employees, or officers. Indemnification of the LESSOR by LESSEE does not constitute a waiver of the City's governmental immunity in any respects under North Carolina law.

- (b) Commercial General Liability. LESSEE shall procure and maintain in full force and effect at all times and at its sole expense, Commercial General Liability insurance covering premises operations, independent contractors and contractual liability, with single limits coverage of one million dollars (\$1,000,000) per occurrence.
- (c) Automobile Liability. The LESSEE shall, prior to commencing its operations pursuant to the terms of this Lease Agreement, take out and maintain continuously in effect at all times during the term of this Agreement, in addition to insurance required by law, automobile liability insurance in the sum of ONE HUNDRED THOUSAND & NO/100 DOLLARS (\$100,000.00) for each person injured and THREE HUNDRED THOUSAND & NO/100 DOLLARS (\$300,000.00) for each accident, and FIFTY THOUSAND & NO/100 DOLLARS (\$50,000.00) for property damage. The LESSEE shall maintain such insurance with insurance underwriters authorized to do business in the State of North Carolina satisfactory to the LESSOR. The LESSEE shall, prior to commencing its operations pursuant to the terms of this Lease Agreement, furnish the LESSOR with a certificate of insurance from the LESSEE's carrier indicating there is such insurance coverage as herein before provided. Said Certificate of Insurance shall provide that the policy cannot be canceled or materially changed except after giving notice by registered mail to LESSOR at least thirty (30) days before the effective date of such cancellation or change.
- (d) The insurance coverage's and limits required of the LESSEE under this agreement are designed to meet the minimum requirements for the LESSOR. They are not designed as a recommended insurance program. LESSEE alone is responsible for the sufficiency of its own insurance program(s). If LESSEE has any questions concerning exposures and/or coverage issues, professional insurance assistance should be obtained by LESSEE.
- (e) All insurances shall be placed with an insurance company licensed to do business in the State of North Carolina.

ARTICLE VIII-ASSIGNMENT OF LEASE

LESSEE shall not assign this Agreement or any part thereof nor sublet the leased premises or any part thereof, without prior written consent of LESSOR, except to an affiliate of the LESSEE. For all purposes hereof, an "affiliate" is any person, firm or corporation controlled by, under common control with, or controlling the LESSEE. "Control" is the power to direct the management and policies of another, whether arising by virtue of stock ownership, contract, or otherwise.

ARTICLE IX—CANCELLATION OR TERMINATION

- (a) Termination by Airport. This agreement and all rights and privileges and interests created hereunder may be terminated by LESSOR upon written notice to LESSEE upon LESSEE's default in the payment of any sums when due hereunder and failure to cure said default within 10 days after said written notice. The acceptance of any monies by LESSOR, after default shall not be deemed to be a waiver of the right of termination by LESSOR, nor shall LESSOR be stopped from evicting LESSEE from its premises and re-letting said premises to other parties.
- (b) Except as provided in (a) above, this agreement and all rights and privileges and interests created hereunder may be terminated by LESSOR upon ten (10) days written notice to LESSEE upon the occurrence of any of the following events:
- (1) The LESSEE defaults in the performance of any term, covenant, or condition hereunder and such default shall continue for thirty (30) days after written notice of such default from LESSOR to LESSEE; provided, however, that no such default shall continue for more than twenty-four (24) hours after written notice of such default if it presents a hazard to the safety of Airport personnel or the general public. The acceptance of any monies by LESSOR after default shall not be deemed to be a waiver of the right of termination by LESSOR, nor shall LESSOR be stopped from evicting LESSEE from its premises and re-letting said premises to other parties.
 - (2) The LESSEE shall become insolvent or take the benefit of any present or future insolvency statute or make any assignment for the benefit of creditors or file a voluntary petition in bankruptcy or consent to the appointment of a receiver of its property.
 - (3) By order or decree of a court that LESSEE is adjudged bankrupt.
 - (4) A petition under any part of the Federal Bankruptcy Law is filed by any person, firm, or corporation against LESSEE and such petition is not vacated or discharged within ninety (90) days thereafter.
 - (5) LESSEE shall voluntarily abandon and discontinue its rental service at the Fayetteville Regional Airport for a period of ten (10) consecutive days. LESSOR shall be deemed to have not waived any of its rights or privileges due to its failure to notify LESSEE of any default or violation of any of the terms of this Agreement. Within thirty (30) days of the termination or cancellation of this Agreement, LESSEE shall remove all of its property from LESSOR's premises and leave the same in substantially the same condition as prior to LESSEE's entry thereon, ordinary wear and tear excepted. Any item or property not removed by LESSEE within thirty (30) days following the cancellation or termination of this Agreement shall be deemed to have been abandoned by LESSEE and shall become the property of the LESSOR without compensation and LESSOR shall be entitled to remove and dispose of same in any manner it deems fit.

(c) Termination by LESSEE. LESSEE shall have the right to terminate this Agreement by giving 30 days' written notice, unless another notice period is identified, to LESSOR upon the occurrence of any of the following events, provided said event or events shall then be continuing:

- (1) The issuance by any court of competent jurisdiction of any injunction, order or decree preventing or restraining the use by LESSEE of any part of the Fayetteville Regional Airport which is necessary for LESSEE's operations hereunder, which Order remain in force for a period of at least one hundred twenty (120) days.
- (2) The LESSOR's default in fulfilling any of the terms, covenants, and conditions required under this Agreement and fails to cure said default within forty-five (45) days following receipt of written notice thereof from LESSEE.
- (3) The destruction by fire, explosion, earthquake, the public enemy or other acts of God of a substantial or material part of the Fayetteville Regional Airport which substantially interferes with or disrupts LESSEE's use of said premises.
- (4) The United States Government or any of its agencies shall occupy the Fayetteville Regional Airport or any substantial part thereof to such an extent as to materially interfere with LESSEE's operations for a period of sixty (60) consecutive days, or more.

ARTICLE X—COVENANT NOT TO GRANT MORE FAVORABLE TERMS

LESSOR covenants and agrees not to enter into any concession agreement or contract with any other rental car agency that contains more favorable terms or conditions than contained herein.

ARTICLE XI—AFFIRMATIVE ACTION

LESSEE agrees that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment activities covered in 14 CFR, Part 152, Subpart E. LESSEE agrees that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. LESSEE agrees that it will require that its covered sub-organizations provide assurances to the LESSOR that they similarly will undertake affirmative action programs and that they will require assurances from said sub organizations, as required by 14 CFR, Part 152, Subpart E, to the same effect.

ARTICLE XII – CUSTOMER FACILITY CHARGE (CFC)

LESSOR approved the imposition of a Customer Facility Charge (CFC) on April 29, 2014 to be collected by LESSEE from rental car customers at the Airport effective July 15, 2014. The CFC remains in effect and continues at the current rate of Four Dollars (\$4.00) for the full Agreement period.

- (a) LESSEE agrees to continue imposition of the CFC fee as specified by the LESSOR in Section (b) below for each customer entering into a rental contract with LESSEE at the Fayetteville Regional Airport for the purpose of securing or recovering LESSOR's costs associated with certain Airport rental car facility related improvements that may be made at the Airport by the LESSOR at its sole discretion, including but not limited to, a parking deck and new service area facilities as contemplated by LESSOR.
- (b) The proceeds of all CFCs shall be used solely for payment of costs relating to rental car facilities and parking areas at the Airport and which are deemed necessary by the LESSOR from time to time. The CFC shall be charged to LESSEE's customers for each day, or portion thereof for which a late fee or rental is charged to the customer, and a rental contract is in effect between LESSEE and its customers, up to a maximum of ten (10) CFCs per single rental contract. The amount of the CFC shall be FOUR DOLLARS (\$4.00) per contract day, or portion thereof and shall apply to, and be collected by LESSEE on, all rental contracts reserved, issued or written on or after July 1, 2021. Notwithstanding any of the other terms in the Agreement, the LESSOR reserves the right to adjust the amount of the CFC from time to time as the LESSOR deems necessary in its sole discretion. LESSOR shall provide LESSEE at least sixty (60) days prior notice of an adjustment in the CFC.
- (c) LESSEE shall collect the CFC from each customer with which LESSEE enters into an automobile rental contract at the Airport. The CFC shall be identified on a separate line on all rental car customer contracts, after taxes, and shall be described as the "Airport Customer Facility Charge". All Customer Facility Charges collected and/or held by LESSEE shall: (i) be collected from all customers, including without limitation all customers receiving complimentary or discounted car rentals under the LESSEE's bona fide marketing plans; and (ii) be held in trust by LESSEE for the LESSOR's benefit. All CFCs so collected shall be remitted to the LESSOR on or before the twentieth (20th) day of the calendar month immediately following the end of the calendar month during which such CFCs were collected. Failure by the LESSEE to collect and remit the CFCs to the LESSOR as provided for in this Concession Agreement shall result in termination of the AGREEMENT between LESSOR and LESSEE.
- (d) The method of calculating the CFC and the amount of such Customer Facility Charge shall be determined by the LESSOR at its sole discretion.

LESSEE shall maintain records and controls, as prescribed by the LESSOR, which are sufficient to demonstrate the correctness of any such Customer Facility Charges collected by LESSEE and the amount of Customer Facility Charges remitted to the LESSOR. Said records shall be made available for inspection and examination by the LESSOR or its duly authorized representatives. The LESSOR reserves the right to audit LESSEE's records which are required to be maintained by LESSEE as provided for in *Article V – Reports and Records* of the AGREEMENT, for the purpose of verifying the Gross Revenue and Customer Facility Charges reported by LESSEE. Gross revenue shall specifically exclude any amounts collected from its customers as Customer Facility Charges.

ARTICLE XIII – N.C. IRAN DIVESTMENT ACT

As mandated by N.C.G.S. 143C-6A-5(a), LESSEE certifies that it is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 143C-6A-4. LESSEE further certifies that in accordance with N.C.G.S. 143C-6A-5(b) that it shall not utilize any subcontractor found on the State Treasurer's Final Divestment List. LESSEE certifies that the signatory to this Agreement is authorized by the LESSEE to make the foregoing statement.

ARTICLE XIV - E-VERIFY

LESSEE hereby acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. LESSEE further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). LESSEE hereby pledges, attests and warrants through execution of this contract that LESSEE complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by LESSEE shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Amendment.

ARTICLE XV - SEVERABILITY

The parties agree that if any provision of this contract shall be held invalid for any reason, the remaining provisions shall not be affected if they may continue to conform with the purposes of this contract and the requirements of applicable law.

ARTICLE XVI – COMPLIANCE WITH LAWS, GOVERNING LAW, & VENUE AND FORUM

LESSEE agrees to comply with all applicable statutes, ordinances, and regulations of the United States, the State of North Carolina, the City and units of local government. Except to the extent a federal law, rule or order may apply, this Agreement shall be governed by the laws of the State of North Carolina (without resort to the choice of law rules thereof). If any action or proceeding is brought by either party to enforce the provisions hereof, the prevailing party shall be entitled to recover all reasonable costs and attorneys' fees incurred in such action or proceeding, including those on appeal, in such amounts as the court may determine without a jury. The Parties expressly agree that if litigation is brought in connection with this contract and (1) the litigation proceeds in the Courts of the State of North Carolina, the parties agree that the appropriate venue shall be in Cumberland County (Twelfth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina.

ARTICLE XVII- MORALITY CLAUSE

If, in the sole opinion of the City of Fayetteville, at any time LESSEE or any of its owner(s) or employee(s) or agent(s) (collectively referenced as an "Actor") engages in any one or more actions that bring disrepute, contempt, scandal, or public ridicule to the Actor or subject the Actor to prosecution or offend the community or public morals or decency or denigrate individuals or groups in the community served by the City of Fayetteville or are scandalous or inconsistent with community standards or good citizenship or may adversely affect the City of Fayetteville's finances, public standing, image, or reputation or are embarrassing or offensive to the City of Fayetteville or may reflect unfavorably on the City of Fayetteville or are derogatory or offensive to one or more employee(s) or customer(s) of the City of Fayetteville, the City of Fayetteville may immediately upon written notice to LESSOR terminate this Contract, in addition to any other rights and remedies that the City of Fayetteville may have hereunder or at law or in equity.

ARTICLE XVIII—NOTICES

All notices required or permitted to be given hereunder to LESSOR shall be sufficient if sent by registered mail, postage prepaid, and addressed to: **City of Fayetteville, 433 Hay Street, Fayetteville, NC 28301**. All notices required or permitted to be given hereunder to LESSEE shall be sufficient if sent by registered mail, postage prepaid, and addressed to: **The Hertz Corporation**_____

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized officers, as of the day and year first above written.

CITY OF FAYETTEVILLE

BY: _____
Douglas J. Hewett, ICMA-CM, City Manager

ATTEST:

Pamela Megill, City Clerk
(Corporate Seal)

THE HERTZ CORPORATION

BY: _____

Vice President
Properties and Concession

ATTEST:

Secretary

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

I, _____, a Notary Public for _____ County, North Carolina, certify that **Pamela Megill** personally came before me this day and acknowledged that she is the **City Clerk** of **City of Fayetteville**, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its City Manager, sealed with its corporate seal and attested by herself as its **City Clerk**.

Witness my hand and notarial seal, this the _____ day of _____, 2022.

Notary Public

My commission expires: _____

STATE OF _____
COUNTY OF _____

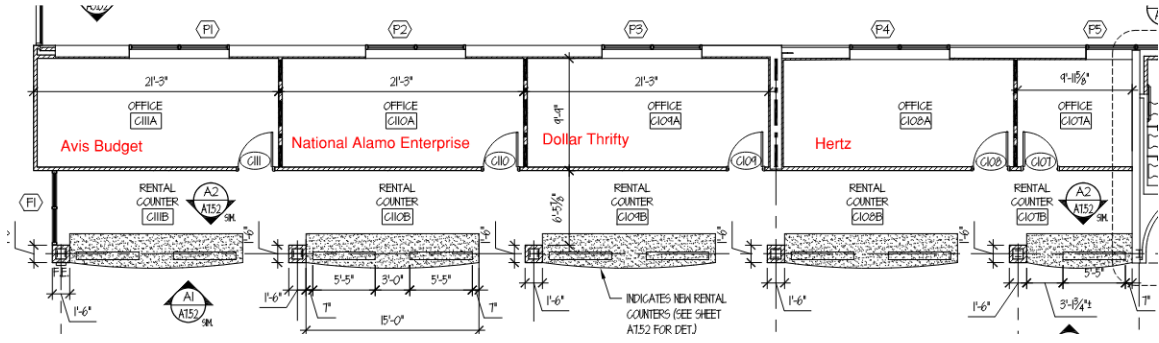
I, _____, a notary public of said County and State hereby certify that _____ personally came before me this day and acknowledged that he/she is _____ of **The Hertz Corporation**, a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its _____, sealed with its corporate seal and attested by _____ self as its _____.

Witness my hand and notaries seal, this the _____ day of _____, 2022.

Notary Public

My commission expires: _____

EXHIBIT A



**NORTH CAROLINA
CUMBERLAND COUNTY**

FAYETTEVILLE REGIONAL AIRPORT

**AIR CARGO BUILDING
LEASE AGREEMENT**

by and between

**the CITY OF FAYETTEVILLE
LESSOR**

and

**SIERRA NEVADA CORPORATION
LESSEE**

NORTH CAROLINACUMBERLAND COUNTY

FAYETTEVILLE REGIONAL AIRPORT

AIR CARGO BUILDING LEASE

THIS AIR CARGO BUILDING LEASE AGREEMENT, entered into as of this 1st day of July 2022, by and between the CITY OF FAYETTEVILLE, (the "City") (hereinafter collectively referred to as "LESSOR") and SIERRA NEVADA CORPORATION (hereinafter referred to as "LESSEE").

WHEREAS, LESSOR is duly empowered to operate and manage and control the Fayetteville Regional Airport (the "Airport") and all facilities located thereon, under the authority of N.C.G.S. 63-53(3) and Chapter 3 of the Code of Ordinances of the City of Fayetteville, North Carolina;

AND WHEREAS, LESSEE desires to occupy and maintain a portion of the Air Cargo Building located at 3139 Doc Bennett Road, Fayetteville, NC and owned by the LESSOR.

AND WHEREAS, LESSOR has determined that the leasing of this facility is necessary and essential in order to accommodate the needs of aeronautical entities and other persons using the facilities of the Airport.

NOW, THEREFORE, the parties for and in consideration of the covenants and agreements contained herein do hereby contract and agree as follows:

Article 1. Authorized Aeronautical Activities.

LESSEE is hereby authorized to provide general business services as specifically identified in Exhibit A to this lease agreement, subject to the terms and conditions identified in Exhibit A and in this Agreement.

Article 2. Term of Lease Agreement.

2.1 Effective and Expiration Dates. The term of this Agreement and the Lease it confers shall be the Effective Date of this Agreement (the "Agreement Date") and continue until the 30th day of June, 2024 (the "Expiration Date") or such earlier or later date on this Agreement may be terminated under the terms and conditions of this Agreement (the "Term"). After June 30, 2024, the term shall automatically renew in two (2) biannual increments with the first two-year period being from July 1, 2024 to June 30, 2026 and the final automatic lease renewal period being from July 1, 2026 and ending June 30, 2028, unless notice of termination is given by Lessor or Lessee to the other party at least thirty (30) days in advance of the noticed termination date. Upon the giving of such required advance notice, this Agreement shall terminate on the date of termination specified in the notice.

Article 3. Closing

3.1 Effective Date. Shall occur on July 1, 2022, unless both LESSOR and LESSEE otherwise agree in writing.

3.2 LESSEE's Inability/Failure to Begin Activity. LESSEE's inability or failure to begin activity at the Airport shall not delay the Closing.

3.3 Conditions. A) Prior to The Effective date, LESSEE shall:

3.3.1 Deliver to LESSOR certificates or binders evidencing the existence of the insurance requirements as described in Article 10 of this Agreement.

B) While occupying the Premises, LESSEE shall:

3.3.3 Deliver to LESSOR a list of LESSEE's employees, with their titles and with an identification of which of LESSEE's employees will require Airport security identification area badges.

Article 4. Required Aeronautical Services.

4.1 N/A

Article 5. Prohibited Activities

5.1 No Unauthorized Commercial Activity. LESSEE shall not conduct any commercial activity on the Airport unless such activity is specifically listed in Exhibit A of this Agreement.

5.2 No Unauthorized Aeronautical Activity. LESSEE shall not conduct any aeronautical activity on the Airport, whether for compensation or otherwise, unless this Agreement expressly permits such activity.

5.3 No Convicted Criminal. LESSEE shall not employ at the Airport any person whom LESSEE knows to have been convicted of any of the crimes listed in 14 C.F.R. § 1542.209(d), as amended from time to time.

5.4 No Waste. LESSEE shall neither commit nor create, nor permit its representatives, suppliers, customers, or invitees to commit or create any unlawful nuisance, waste or injury on the Airport, and shall neither do, nor permit its representatives, suppliers, customers, or invitees to do, anything which may result in the commission, creation, or maintenance of such nuisance, waste or injury on the Airport.

5.5 No Interface. LESSEE shall neither do, nor permit its representatives, suppliers, customers, or invitees to do anything which may interfere with the effectiveness of accessibility of the drainage system, sewage system, fire protection system, sprinkler system, alarm system, fire hydrants, or fire hoses, if any, installed or located on the Airport.

5.6 No Hazard. LESSEE shall neither do, nor permit its representatives, suppliers, customers, or invitees, to do, any act or thing on the Airport;

5.7.1 Which will invalidate or conflict with the terms of any insurance policies covering the Airport or any part of it; or

5.7.2 Which may create a hazardous condition on the Airport.

5.7 No Living on the Airport. LESSEE shall not live on the Airport nor permit LESSEE's representatives, suppliers, customers, or invitees to do so.

5.8 No Fueling. LESSEE shall neither fuel nor de-fuel vehicles, aircraft, or other equipment in the covered and enclosed portions of the Airport, nor permit its representatives, suppliers, customers, or invitees to do so.

5.9 No Maintenance; Hazardous Materials. LESSEE shall neither conduct nor permit its representatives, suppliers, customers, or invitees to conduct, any aircraft maintenance on the Airport without the prior written approval of the Airport Director, except such minor maintenance as would normally be performed by an aircraft owner without benefit of an aircraft mechanic. LESSEE shall take steps to ensure that the performance of any such maintenance work shall not damage any Airport facility, or endanger any person.

5.9.1 LESSEE shall not generate, use, store, or dispose of any Hazardous Materials in or about the Airport, nor permit LESSEE's representatives, suppliers, customers, or invitees to do so. Hazardous Materials shall mean (a) "hazardous waste," as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, (b) "hazardous substances", as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, (c) "toxic substances", as defined by the Toxic Substances Control Act, as amended from time to time, (d) "hazardous materials", as defined by the Hazardous Materials Transportation Act, as amended from time to time, (e) oil or other petroleum products (except in such quantities as may be reasonably necessary for the customary maintenance of aircraft using the Airport), and (f) any substance whose presence could be detrimental to the Airport or hazardous to health or the environment.

LESSEE shall indemnify and hold LESSOR harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses arising during or after the Term from LESSEE's breach of this subsection. The indemnification requirement set forth in this subsection shall survive termination of this Agreement for a period of twelve (12) months and shall not limit any other indemnification provisions in this Agreement.

5.9.2 LESSEE agrees to comply, and to cause its representatives, suppliers, customers, or invitees to comply with all of the terms and provisions of the Fayetteville Regional Airport Fuel Spill

Prevention and Clean-Up Plan (the "Clean-Up Plan") and all amendments and revisions made thereto from time to time.

5.9.3 In the event LESSEE, its representatives, suppliers, customers, or invitees spill, leak or otherwise discharge any fuel onto the premises, or any other areas on the Airport, LESSEE shall immediately take steps to notify the Airport Director and at its own expense, clean up, contain, and dispose of all spilled materials and comply fully with the aforementioned Clean-Up Plan while engaging in such clean-up operations. Failure by LESSEE to notify the Airport Director or take immediate action to clean up any spills or leaks shall entitle LESSOR to proceed with clean-up procedures and action, the entire expense of which shall be paid in full by LESSEE within ten (10) business days after notice and invoice from LESSOR of the actual costs incurred in such clean-up operations.

Article 6. Additional Obligations of LESSEE.

6.1 Lease. LESSEE must request amendment of this lease or enter into a separate lease agreement with Lessor, for the space, facilities and general support necessary to conduct any activity not specifically authorized by this Agreement and planned to be conducted by LESSEE.

6.2 Maintenance of Building and Equipment. LESSEE shall maintain all of LESSEE's equipment stored or operated on the Airport in a safe condition consistent with all grant assurances and all federal, state and local laws, regulations, and rules and in accordance with all manufacturer manuals and bulletins. LESSOR shall be responsible for the repair of faulty utility systems to include water and electrical. LESSOR shall also be responsible for the structural integrity of the demised premises. Nonetheless, if in either of the forgoing cases the condition or fault is directly attributable to negligence of LESSEE's agents, officers, appointees, members, representatives, employees, guests or invitees, then LESSEE shall be solely responsible for said cost of repair(s).

6.3 Utilities. LESSOR shall have electrical system upgraded to allow for accurate monitoring of cost associated with LESSEE's operations. LESSEE shall be solely responsible for all other utility costs associated with its operations.

6.4 Safe Operation of Equipment. LESSEE shall operate all of LESSEE's equipment in a safe manner and in accordance with all grant assurance and all federal, state, and local laws, regulations, and rules, including noise rules, and in accordance with all manufacturers manuals and bulletins.

6.5 Considerate Conduct. LESSEE shall conduct its operations hereunder in an orderly and proper manner, considering the nature of such operation, so as not to unreasonably annoy, disturb, endanger or be offensive to others at the Airport or in areas of LESSEE's operation.

6.6 Qualified Personnel. LESSEE shall employ persons qualified to conduct safe operations, and in accordance with all grant assurances and all federal, state and local laws, regulations and rules; as applicable.

6.7 Observance of Airport Rules. Lessee shall observe and obey, and require its representatives, suppliers and customers to observe and obey, such rules, regulations and/or standards as may be promulgated by LESSOR from time to time for reasons of safety, security, health, sanitation or good order.

6.8 Sufficient Service. N/A.

6.9 Hours of Operation. N/A

6.10 Quality of Service. N/A

6.11 Business Area. N/A

6.12 Payment of Fees. LESSEE shall pay on a timely basis, any and all due and owing taxes, fees, fines, or assessments, including related interest or penalties levied by the state, county, city, or any other lawful body which is authorized to levy taxes or fees relating to any activity conducted by LESSEE or relating to any property or equipment owned, operated or leased by LESSEE. LESSEE further agrees to pay LESSOR for the use of all premises, facilities, services, rights, licenses, and privileges granted hereunder the fees and charges as set forth below.

6.12.1 Rent.

For the first term of this Agreement, LESSEE shall pay to LESSOR the sum of FIFTEEN THOUSAND EIGHT HUNDRED AND SIXTY-EIGHT DOLLARS AND EIGHTY-EIGHT

CENTS. (\$15,868.88) per month or ONE HUNDRED NINETY THOUSAND FOUR HUNDRED AND TWENTY-SIX DOLLARS & FIFTY-SIX CENTS (\$190,426.56) per year, payable in advance on or before the first day of the month (if annual payment option is not accepted) each and every month thereafter until June 30, 2024.

6.12.2 CPI Adjustment. Effective July 1, 2023, at a minimum square footage rates are to be readjusted every three (3) years for the average of the percent of change in the Consumer Price Index (All Urban Consumers, all items, South Group, 50,000-450,000 population) for the previous three (3) years. First readjustment shall be effective July 1, 2026 and shall be calculated based on the adjustment in CPI during the 3-year period July 1, 2023 and ending June 30, 2026. Future readjustments shall be effective every 3 years thereafter.

6.12.3 Late Payment Fee Payments. Any fee payable by LESSEE under this agreement which is not paid when due shall bear late payment fee for the rate of five (5%) percent per month from the due date until paid.

6.13 Cleanliness. LESSEE shall keep all Airport areas leased and/or controlled by LESSEE in a clean and slightly condition and not permit any unsightly conditions to exist. Reasonable determinations on such matters by LESSOR, as the Airport proprietor, shall be binding upon LESSEE.

6.14 Refuse Collection. LESSEE shall provide for its own refuse collection and disposal.

6.15 Conduct. LESSEE shall make reasonable attempts to control the conduct and demeanor of its representatives, suppliers, customers, and invitees, on, from and around the Airport, and shall take all steps necessary to remove persons whom LESSOR may for good and sufficient cause deem objectionable.

6.16 Affecting Aircraft Operations. LESSEE shall not use the Airport in any manner that might interfere with the landing or taking off of aircraft from the Airport or otherwise constitute a hazard.

6.17 Parking. LESSEE shall ensure that its vehicles and those of its representatives, suppliers, customers, and invitees are parked only in Airport areas designated by LESSOR as parking areas.

6.18 Limitations. LESSEE's rights hereunder shall be subject to express conditions and limitations contained herein and the lawful rights and owners of all governmental authorities having jurisdiction. In addition to the limitations stated elsewhere in this Agreement, LESSEE shall not use the Airport in any manner that would constitute waste, nuisance, or unreasonable annoyance to LESSOR or any other tenant, occupant, or user of the Airport.

6.19 Improvements

6.19.1 Payment of Cost(s) and Authorization. LESSEE may, at its sole cost and expense, construct, erect and install in and on the leased premises such additional improvements, furnishings, fixtures and equipment that LESSEE determines to be necessary to service aircraft. All improvements to be constructed or installed shall be done so in accordance with all applicable statutes, laws, codes, regulations and ordinances; PROVIDED, HOWEVER, that prior to the commencement of any construction, improvements, installations, additions and alterations on or to the leased premises, the plans and specifications for the same shall be reviewed and approved in writing by the Airport Director and the City Inspections Department. LESSOR may refuse to permit the installation, alteration or modification of any structure or appurtenance upon the leased premises which would, in its sole opinion, damage, be detrimental to, or detract from the appearance of the Airport property or buildings, damage or endanger the structural soundness of Airport buildings, or fail to meet Airport Management's requirements for the safe use of buildings and appurtenances. All improvements, additions, installations and alterations on or to the leased premises made by LESSEE shall be completed in a workman like manner without damage to the leased premises. LESSEE shall pay all additional maintenance and operating costs which may be incurred by reason of any improvements, additions, installations or alterations on or to the leased premises made by LESSEE, in accordance with Article 6 herein.

6.19.2 Improvement(s) Design. LESSEE covenants and agrees that the improvements to be made by it on said premises shall correspond in design and appearance with existing and other known new facilities to be constructed on the airport, agree with design criteria incorporated in the Airport Master Plan and architectural standards that may be subsequently promulgated by the Airport

Commission. LESSEE further covenants that it will submit and have all improvement designs approved by the Fayetteville Building Inspector before improvements are made.

6.19.3 Ownership of Improvement(s). The improvements constructed on the demised premises by LESSEE shall be the property of the LESSEE during the term of the lease, and that during the term of the said lease, the LESSEE shall have full responsibility to pay any sums for the construction thereof, and LESSEE shall not remove from said premises any buildings erected thereon during or at the end of the term herein granted. That at the end of the first term of this lease or June 30, 2024, whichever occurs first, the improvements constructed on the demised premises by LESSEE shall be and become the sole property of the LESSOR. The forestated is subject to 6.19.5 below.

6.19.4 Portable Improvements. The LESSOR must approve any improvement(s) constructed or placed on the demised premises that LESSEE or LESSOR considers to be portable, in writing before construction or placement on the demised premises. All unapproved portable improvements on the demised premises at the end of the lease period shall be and become the sole property of the LESSOR.

6.19.5 LESSEE's Cost for Improvements, Fixtures, and Equipment. As soon as practicable following completion, LESSEE shall submit to Airport Director an itemized statement, certified by an officer of LESSEE, showing the actual cost of fixed improvements, inclusive of fees paid to independent architects and engineers, as constructed and installed by LESSEE pursuant to this agreement and shall, if so requested by LESSOR within sixty (60) days following receipt thereof from LESSEE, constitute prima facie evidence of the cost shown therein, it being contemplated by the parties hereto that LESSEE shall fully depreciate said cost on a straight line basis without allowance for salvage, commencing with the date on which said fixed improvements are completed and ready for occupancy/use by LESSEE and extending over the balance of the term of this agreement or extensions thereof. In the event the LESSEE should no longer have the right or will to use improvements at the Airport or in the event the LESSOR cancels this agreement for any reason other than destruction of the fixed improvements, breach or default by LESSEE hereunder, and the term of this agreement has not expired, LESSEE agrees to give LESSOR first right of refusal to purchase improvements. Should LESSOR elect to exercise its right, LESSOR shall purchase or cause to be purchased from LESSEE all of said fixed improvements at the cash price equal to LESSEE's actual cost as above set forth, less depreciation as aforesaid to the nearest complete month then elapsed under this agreement; provided, however, that LESSOR's obligation hereunder shall be offset by the amount of any fees and charges due and owing to the LESSOR by LESSEE.

Article 7 Airport Functions.

7.1 Airport Maintenance. LESSOR shall have the right but shall be under no obligation to LESSEE to maintain and keep in repair the landing area (which shall include, without limitations, the runway, taxiway, and apron areas) of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of LESSEE and its representatives, suppliers, customers, and invitees in this area. LESSOR shall have the right to further develop or improve the landing area of the Airport or any other facility or function of the Airport as it sees fit and LESSEE shall be prohibited from interfering with or hindering such development or improvement.

7.2 LESSOR's Government Obligations LESSOR retains the right and power to perform all conditions and obligations required of it by (i) any authorized agency of the United States, including but not limited to, the United States Department of Transportation ("DOT") and the United States Federal Aviation Administration ("FAA") or Transportation Security Administration ("TSA"), (ii) any authorized agency of the State of North Carolina, (iii) the airport grants assurance contained in agreements with the FAA or the State of North Carolina, or (iv) any federal, state, or local law, ordinance, or regulation. LESSEE shall not interfere with the exercise of such rights by LESSOR or LESSOR's performance of such conditions and obligations.

7.3 Airspace. There is hereby reserved to LESSOR, its designees, successors, and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of any area of the Airport used by LESSEE. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation of flight through the said airspace or for landing at, taking off from, or operation on the Airport.

7.4 No Exclusive Right. It is understood and agreed that LESSOR's granting of certain rights to LESSEE herein shall not be construed to grant to LESSEE or to authorize the granting of an exclusive right in violation of 49 U.S.C. § 40103 (e), as amended from time to time.

7.5 United States Government Rights. This Agreement and all the provisions hereof shall be subject to whatever right the United States Government now has, or in the future may have or acquire, affecting the control, operation, regulation, or taking over the Airport or the exclusive or nonexclusive use of the Airport by the United States Government during a time of war or national emergency.

7.6 Force Majeure.

7.6.1 LESSOR shall in no event be liable in damages or otherwise because of the interruption of any service, or a termination, interruption or disturbance, attributable to strike, lockout, accident, war, or other emergency, law, order, rule, or regulation of or by any governmental authorities, airport grant assurance, failure of supply, inability to obtain supplies, parts, or employees, or any cause beyond LESSOR's reasonable control, or any cause due to any act of neglect of LESSOR or its agents, officers, representatives, employees, guests, suppliers, invitees, or any person claiming by, through, or under LESSOR.

7.6.2 LESSEE shall in no event be liable in damages or otherwise because of the interruption of any service, or a termination, interruption or disturbance, attributable to strike, lockout, accident, war, or other emergency, law, order, rule, or regulation of or by any governmental authorities, airport grant assurance, failure of supply, inability to obtain supplies, parts, or employees, or any cause beyond LESSEE's reasonable control, or any cause due to any act of neglect of LESSEE or its agents, officers, representatives, employees, guests, suppliers, invitees, or any person claiming by, through, or under LESSEE.

Article 8. Compliance with Law: Grant Assurances, Nondiscrimination; Affirmative Action

8.1 Compliance. LESSEE shall comply with this Agreement, all applicable federal, state, county, or local agreements (including agreements between LESSOR and federal, state, county or local governmental authorities or agencies), laws, rules, regulations, ordinances, grant assurances, and orders of any and all governmental authorities and agencies concerning the Airport or the use thereof, including, but not limited to, the United States Department of Transportation ("DOT"), United States Federal Aviation Administration ("FAA"), the United States Environmental Protection Agency ("EPA"), the North Carolina Transportation Department and the North Carolina Environmental, Health, and Natural Resources Department, and shall also comply with any rules of occupancy or airport rules, regulations, or minimum standards which may be issued by LESSOR or LESSOR's successor from time to time.

8.2 Nondiscrimination. LESSEE shall ensure that (i) no person on the grounds of race, creed, color, national origin, sex, sexual orientation, age, or handicap, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the LESSEE's providing employment and in the use of, LESSEE's services, (ii) in the construction of any improvements on, over or under any land leased by LESSEE at the Airport, in LESSEE's providing employment, and in LESSEE's furnishing of services at the Airport, no person, on the grounds of race, creed, color, national origin, sex, sexual orientation, age or handicap, shall be excluded from participation in, or denied the benefits of such construction or such services, or otherwise be subject to discrimination, and (iii) LESSEE shall use the Airport in compliance with all other requirements imposed by or pursuant to 41 C.F.R Part 60; 49 U.S.C § 306; 49 C.F.R Part 21; 49 C.F.R Part 27; or the grant assurances contained in FAA Order 5100.38A; as said laws, regulations, or assurances may be amended from time to time.

8.3 Civil Rights. LESSEE shall comply with pertinent statutes, Executive Orders and such applicable rules as are promulgated to assure that no person shall on the grounds of race, creed, color, national origin, sex, sexual orientation, age, or handicap, be excluded from participating in any activity conducted with or benefiting from federal assistance.

8.4 Nondiscriminatory Pricing. Lessee shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof, and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided however, that Lessee may make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers or users.

8.5 Affirmative Action. LESSEE will ensure that no person shall, on the grounds of race, creed, color, national origin, sex, or sexual orientation be excluded by LESSEE from participating in any employment activities covered in 14 C.F.R. Part 152, Subpart E. LESSEE assures that no person shall be excluded by LESSEE on these grounds from participating in or receiving the services or benefits of any program or activity covered by the subpart. LESSEE agrees that in the event facilities are constructed, maintained, or otherwise operated on any property leased by LESSEE at the Airport, for a purpose for which a DOT program or activity is extended, or for another purpose

involving the provision of similar service or benefits. LESSEE shall maintain and operate such facilities and services in compliance with all requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, as said regulations may be amended from time to time.

8.6 Inclusion of Provisions in Sublease or Assignment. LESSEE agrees to insert the provisions set forth in Sections 8.1 through this Section 8.6 in any Sub-Lease or assignment (if permitted by LESSOR) by which LESSEE grants a right or privilege to any person, firm or entity to render accommodations and/or services to the public on the Airport.

Article 9. Security.

9.1 All Applicable Rules. LESSEE shall be responsible for fully complying with any and all applicable grant assurances and all applicable rules, regulations, restrictions, ordinances, statutes, laws, and/or orders or any federal, state, and/or local governmental entity regarding airport and airfield security.

9.2 Access to Secured Areas. LESSEE shall comply fully with applicable provisions of the Federal Aviation Administration Regulations, 14 C.F.R Part 1542, amended from time to time, including the establishment and implementation of procedures acceptable to the Airport Director to control access from space leased or controlled by LESSEE to air operation areas in accordance with the Airport Security Program required by Part 1542. Further, LESSEE shall exercise exclusive security responsibility for space leased or controlled by LESSEE.

9.3 Doors and Gates. LESSEE shall be responsible for the maintenance and repair of gates and doors that are located on space leased or controlled by LESSEE. Gates and doors located on space leased or controlled by LESSEE which permit entry into restricted areas at the Airport shall be kept locked by LESSEE at all times when not in use or under LESSEE's constant security surveillance. Gate or door malfunctions that permit unauthorized entry into restricted areas shall be reported to the Airport Director without delay and affected gates or LESSEE shall maintain doors under constant surveillance until repairs are affected and/or the gate or door is properly secured.

9.4 Penalties. All civil penalties levied by the Federal Aviation Administration for violation of Federal Aviations Regulations pertaining to security, gates, or doors located on the space leased by or otherwise controlled by LESSEE shall be the sole responsibility of LESSEE. LESSEE shall indemnify the Airport and LESSOR for any federal civil penalties or amounts the Airport or City must pay due to any security violation arising from the use of the Airport by LESSEE or the breach of any obligation imposed by Article 6 herein. The indemnification requirement set forth in this Section shall survive termination of this Agreement and shall not limit any other indemnification provisions in this Agreement.

Article 10. Insurance.

10.1 Coverage's. Subject to the provisions of Section 10.2, hereof, LESSEE shall procure and maintain in full force and effect at all times and at its sole expense the insurance coverage's listed below, and shall provide the LESSOR with certificates of insurance evidencing the required coverage.

10.1.1 All Risk Property Insurance to the extent of not less than 90% of the replacement value of all improvements constructed by LESSEE.

10.1.2 Comprehensive automobile liability insurance with the following minimum limits; if applicable.

Bodily Injury or death	\$ 500,000.00	per person
Bodily Injury or death	\$1,000,000.00	per occurrence
Property damage	\$ 500,000.00	per occurrence

10.1.3 Comprehensive general liability insurance covering premises, operations, independent contractors, and contractual liability, with minimum single limits coverage of \$5,000,000.00 per occurrence.

10.1.4 Workers compensation Insurance as required by North Carolina law.

10.2 Waiver of Coverage Requirement. In situations where one or more of the above coverage's is clearly not necessary to be maintained by LESSEE as determined by LESSEE's underwriters, LESSEE shall notify LESSOR and the LESSOR may waive such coverage(s) by appropriate written letter or memorandum.

10.3 Review of Coverage Limits. LESSOR reserves the right to review all insurance minimum coverage limits every two years and to require LESSEE to adjust such minimum coverage limits as recommended by the City of Fayetteville Risk Management Office.

10.4 Certificates of Insurance. LESSEE shall provide LESSOR with Certificate(s) of insurance evidencing all required insurance coverage (including appropriate minimum coverage limits) and evidencing that the City of Fayetteville and the Commission are additional insureds on the General Liability policy.

10.5 Notices of Cancellation. Each of the insurance policies and certificates required above, except for those related to Workers' Compensation, All Risk Property and Auto Liability, shall show the City of Fayetteville and the Commission as additional insured's and shall bear the following provision:

This policy cannot be canceled, reduced in amount or coverage eliminated without providing at least ten days advance notice to the insured and the City of Fayetteville and the Fayetteville Airport Commission of such cancellation.

10.6 Sufficiency. The insurance Coverage's and minimum coverage limits required of LESSEE under this Agreement are required solely in order to meet LESSOR's minimum requirements. LESSEE alone is responsible for the sufficiency of its own insurance programs(s). If LESSEE has any questions concerning exposures and/or coverage issues, LESSEE shall have the obligation to seek professional insurance assistance.

10.7 North Carolina. All insurance coverage's shall be placed with an insurance company or companies licensed to do business in the State of North Carolina.

Article 11. Indemnity.

Mutual Indemnification. To the extent permitted by law, for two years after the parties' obligations under this

Agreement have ended, each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred by any third party, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is promptly notified of any such claims. The indemnifying party shall have the sole right to defend such claims at its own expense. The other party shall provide, at the indemnifying party's expense, such assistance in investigating and defending such claims as the indemnifying party may reasonably request. This indemnity shall survive the termination of this Agreement. Indemnification of City by LESSEE does not constitute a waiver of the City's governmental immunity or defenses the City may have in any respects under North Carolina law.

Article 12. Inspection.

LESSEE hereby acknowledges that LESSOR shall have the right to inspect the space used and business operated by LESSEE on the Airport. Accordingly, except in cases of an emergency, LESSOR shall provide LESSEE 24-hour notice to gain access to governmental approved high security areas. Other areas may be inspected upon reasonable prior notice to LESSEE, and LESSOR and/or LESSOR's agents shall have the right to enter any area on the Airport leased or controlled or used by LESSEE during regular business hours for the purpose of inspecting the same or for such other purposes as LESSOR may determine are appropriate to carry out LESSOR's responsibilities as the proprietor of the Airport. LESSOR shall make a reasonable effort not to interfere with the normal conduct of LESSEE on the Airport. LESSEE shall establish procedures so that in an emergency threatening LESSOR property or any property of another, or threatening substantial damages to LESSOR's interest as LESSOR or as the proprietor of the Airport, LESSOR may gain prompt admittance to any area leased, controlled or used by LESSEE on the Airport at all hours. LESSEE agrees to make available to LESSOR at reasonable times and upon reasonable notice, a representative who may, at LESSOR's election, accompany LESSOR's representative during LESSOR's exercise of its right of entry and access and inspection under Article 12.

LESSOR acknowledges LESSEE may include within the Demised Premises certain areas that will be governmental approved high security areas. LESSOR, its agents, employees and any existing or prospective mortgagee, purchaser or tenant shall not have unrestricted access to these areas, and, except in the case of an emergency, must have a tenant escort and provide proof of US Citizenship to access these areas.

Article 13. Assignment: Transfer of Interest.

13.1 No Transfer Without LESSOR's Consent. LESSEE shall not sell, sublet, assign, transfer, sublease, or encumber any of its rights under this Agreement, in whole or in part, without the Airport Director's prior written consent, on behalf of LESSOR (which may be withheld in the LESSOR's sole and absolute discretion), and any such purported subletting, assignment, transfer, sublicensing, or encumbrance without such consent shall be null and void.

13.2 Transfer of Majority Interest in LESSEE. In the event of a sale, transfer, or assignment of a majority interest in LESSEE or any sales or transfers or assignments of interests in LESSEE which singly or cumulatively result in the majority interest in LESSEE being owned by any person or entity other than the owner of the majority interest at the time of Closing, LESSOR shall have the right, but not the obligation, to terminate this Agreement by providing written notice of such termination to LESSEE or any such purchaser, transferee, or assignee. LESSEE shall inform LESSOR within one (1) week of the occurrence of any such sale or transfer or assignment of interest, and LESSEE's failure to do so shall constitute an Event of Default under this Agreement.

13.3 Transfer of Obligation. All of LESSEE's obligations under this Agreement shall become the obligation of any acquirer of an interest in LESSEE's rights under this Agreement and/or any acquirer of a majority interest in LESSEE.

Article 14. Breach of Agreements; Events of Default.

14.1 Breach of Agreement. LESSEE's failure to observe or perform any of the terms, covenants, conditions, requirements, or provisions of this Agreement shall constitute a breach of this Agreement by LESSEE.

14.2 Events of Default. In addition to the other events specified in this Agreement as constituting defaults, the occurrence of any one or more of the following events shall constitute an Event of Default:

14.2.1 Incorrect Representation. LESSOR becomes aware that a representation made by LESSEE in this Agreement was materially incorrect at the time of closing.

14.2.2 Uncorrected Breach. The continuation of a breach of this Agreement by LESSEE for fifteen (15) or more days after LESSEE's receipt of LESSOR's written notice of such breach and a demand for correction of the breach.

14.2.3 Recurring Breach. Three or more safety related breaches of Agreement within any two-year period, regardless of LESSEE's correction of breaches within fifteen (15) days.

14.2.4 Vacating Premises. LESSEE's vacating or abandoning the Airport. This will be deemed to have occurred if LESSEE ceases its business at the Airport for more than fourteen (14) days in any calendar year.

14.2.5 Bankruptcy. LESSEE's making any general assignment or general arrangement for the benefit of creditors; or the filing by or against LESSEE for a petition for reorganization or arrangement under any law relating to bankruptcy (unless the petition filed against LESSEE is involuntary and is dismissed within ninety (90) days; or upon the appointment of a trustee or receiver to take possession of LESSEE's assets located at the Airport or LESSEE's interest in this Agreement.

14.2.6 Failure to Disclose Transfer of Majority Interest in LESSEE. LESSEE's failure to notify LESSOR of any sale, transfer, or assignment of a majority interest in LESSEE within one (1) week of such occurrence, as required by subsection 13.2 of this Agreement.

14.2.7 Transfer of Majority Interest in LESSEE. One or more sales, transfers, or assignments of one or more interests in LESSEE resulting in the majority interest in LESSEE being owned by any person or entity other than the owner of the majority interest at the time of Closing.

Article 15. Waiver.

LESSOR's waiver of a breach of any term, covenant, condition, requirement, or provision of this Agreement shall not be deemed to be a waiver of such term, covenant, condition, requirement, or provision upon any subsequent breach of the same or of any other term, covenant, condition, requirement, or provision. Any waiver by LESSOR must be in writing.

Article 16

16.1. Termination by LESSOR/Default. Upon the occurrence of an Event of Default of LESSEE, LESSOR may, at LESSOR's election, at any time thereafter (with or without prior notice or demand, and without limiting LESSOR's other lawful rights and remedies) immediately terminate this Agreement by providing ninety (90) days written notice of such termination to LESSEE. Notwithstanding the foregoing, the LESSEE shall be provided with thirty (30) days to cure any such Event of Default prior to any termination by LESSOR.

16.2 Termination by LESSEE. LESSEE may terminate this Agreement at any time so long as it has provided to LESSOR at least ninety (90) days prior written notice of such termination to LESSOR and given the LESSEE thirty (30) days to cure such default.

Article 17. Miscellaneous.

17.1 Applicable Law: Attorneys' Fees. Except to the extent a federal law, rule, or order may apply, this Agreement shall be governed by the laws of the State of North Carolina (without resort to the choice of law rules thereof.) If any action of proceeding is brought by either party to enforce the provisions hereof, the prevailing party shall be entitled to recover all reasonable costs and attorneys' fees incurred in such action or proceeding, including those on appeal, in such amounts as the court may determine without a jury.

17.2 Estoppels Certificates. Within ten (10) days of a party's receipt of written request therefore by the other party hereto such party shall provide a written statement acknowledging the Commencement Date and Expiration Date of this Agreement, that this information as the requesting party or its agent might reasonably request. Failure to comply with this Section within said ten (10) day period shall be deemed to be an acknowledgment by such party of the truth of the matters set forth in the other party's request.

17.3 Notices. Any notice, request, demand, or other communication required or desired to be given in connection with this Agreement shall be made in writing and delivered by hand or recognized overnight courier or mailed, postage prepaid. Notices or other communications, which are delivered by hand or recognized courier shall be deemed effective upon receipt. Notices or other communications mailed by registered or certified mail shall be deemed effective as of the third day after being accepted by the U.S. Postal Service. Notices shall be addressed to the party's address specified below, or as may hereafter be designated by such party in writing to the other:

LESSOR:
City of Fayetteville
339 Alexander Street
Fayetteville, NC 28301

Attn: Real Estate Manager

LESSEE:
Sierra Nevada Corporation
444 Salomon Circle
Sparks, NV 89434

Attn: CRE Business Manager

17.4 Representations: LESSEE has the full and unrestricted lawful power and authority to enter into and carry out the terms of this Agreement.

17.5 No Partnership. The relationship between the parties hereto shall at all times hereto be solely that of LESSOR and LESSEE, and not that of a partnership, joint venture or other association.

17.6 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and/or assignees, if any such successors and/or assignees are permitted by this Agreement.

17.7 Section Headings. The headings in this Agreement are inserted for reference only, and shall not define or limit the provisions hereof.

17.8 Severability. Any provision of this Agreement that is legally invalid, void, or unenforceable shall in no way affect, impair or invalidate any other provision hereof, and the other provisions shall remain in full force and effect.

17.9 Remedies Not Exclusive. No remedy or election hereunder shall be deemed exclusive, but shall whenever possible, be cumulative with all available remedies at law or in equity.

17.10 Entire Agreement: Amendment. This Agreement contains all of the agreements of the parties hereto with respect to the subject matter hereof, and no prior or contemporaneous agreements or understandings shall be

effective for any purpose. This Agreement may be amended or modified only by a written document signed by LESSOR and LESSEE.

Article 18. N.C. Iran Divestment Act.

As mandated by N.C.G.S. 143C-6A-5(a), LESSEE certifies that it is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 143C-6A-4. LESSEE further certifies that in accordance with N.C.G.S. 143C-6A-5(b) that it shall not utilize any subcontractor found on the State Treasurer's Final Divestment List. LESSEE certifies that the signatory to this Agreement is authorized by the LESSEE to make the foregoing statement.

Article 19. E-Verify.

LESSEE hereby acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. LESSEE further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). LESSEE hereby pledges, attests and warrants through execution of this contract that LESSEE complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by LESSEE shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Amendment.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized parties, as of the day and year first above written.

CITY OF FAYETTEVILLE

BY: _____
City Manager

ATTEST:

Secretary

SIERRA NEVADA CORPORATION

BY: 
Vice President Corporate Real Estate

ATTEST:


CRE Business Manager

APPROVED AS TO FORM:

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

Paul Allen, Assistant City Attorney

Chief Financial Officer

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

I, _____, a Notary Public for _____ County, North Carolina, certify that *Pamela Megill* personally came before me this day and acknowledged that she is the *City Clerk* of *City of Fayetteville*, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its City Manager, sealed with its corporate seal and attested by herself as its *City Clerk*.

Witness my hand and notarial seal, this the _____ day of _____, 2022.

Place seal here ↓

NOTARY PUBLIC

My commission expires: _____

STATE OF NEVADA
COUNTY OF WASHOE

I, CATHERINE A. ALVIN Notary Public of said County and State, do hereby certify that Brandon Main, personally appeared before me this day and acknowledged that he/she is VP of CRE of SIERRA NEVADA CORPORATION and being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and notarial seal, this the 19 day of April, 2022.

Place seal here ↓



Catherine Alvin
NOTARY PUBLIC

My commission expires: 11/9/24

Exhibit "A"

AUTHORIZED SERVICE ACTIVITIES

1. Depot maintenance and repair for customer(s) equipment.
2. Business related equipment storage
3. Customer training
4. Equipment Installation

Exhibit "B"

REQUIRED AERONAUTICAL SERVICES ACTIVITIES

1. **Customer Service Operations** (based on Airport Commission Approved Minimum Standards) if applicable -

2. **Land** (based on Airport Commission Approved Minimum Standards; if applicable -

3. **Buildings** (based on Airport Commission Approved Minimum Standards); if applicable –

a.

b.

c.

4. **Personnel** (based on Airport Commission Approved Minimum Standards); if applicable -

5. **Hours of Operation** (based on Airport Commission Approved Minimum Standards); if applicable –

6. **Insurance Requirements** (based on Airport Commission Approved Minimum Standards); if applicable -

A RESOLUTION AUTHORIZING THE LEASES FOR AVIS RENT A CAR SYSTEM, LLC, BUDGET RENT A CAR SYSTEM, LLC, ENTERPRISE LEASING SOUTHEAST, LLC, ENTERPRISE LEASING COMPANY, SOUTHEAST D/B/A NATIONAL/ALAMO, ILM TRANSPORTATION, INC. AND THE HERTZ CORPORATION, THEIR SUCCESSORS OR ASSIGNS AT THE FAYETTEVILLE REGIONAL AIRPORT

WHEREAS, the City of Fayetteville owns property being designated at the Fayetteville Regional Airport building and parking lot located at 400 Airport Road.

AND WHEREAS, The City of Fayetteville and the above rental car companies have agreed upon a lease to each for exclusive or shared office/counter space and an allocated number of ready car spaces for each for a term of five years beginning July 1, 2022 with a right to renew the lease for one additional five-year term; and

WHEREAS, the agreed amount of rent shall be based on a rate of \$20.79 per square foot of counter space and \$10.40 per square foot of office space per month, \$20.00 per space per month for the allocated number of ready car space for each company, a \$25,000 Minimum Annual Guarantee or 10% of gross revenue whichever is greater for each company, and a \$50.00 Utility and Maintenance fee from each monthly; and

WHEREAS, the City of Fayetteville has had previous leases with the above mentioned rental car companies and desires to continue lease agreements with said companies to continue longstanding relationship; and

NOW THEREFORE, BE IT RESOLVED on behalf of the people of Fayetteville, the City Council declares that the City Manager is authorized to execute all necessary documents to move forward with the execution of the above described leases at the authorization and direction of City Council.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA, on this, the 13th day of June 2022; such meeting was held in compliance with the Open Meetings Act, at which meeting a quorum was present and voting.

CITY OF FAYETTEVILLE

(SEAL)

By: _____
MITCH COLVIN, Mayor

ATTEST:

PAMELA MEGILL, City Clerk

**A RESOLUTION AUTHORIZING THE LEASE FOR SIERRA NEVADA CORPORATION,
THEIR SUCCESSORS OR ASSIGNS AT THE FAYETTEVILLE REGIONAL AIRPORT**

WHEREAS, the City of Fayetteville owns property being designated at the Fayetteville Regional Airport located at 3139 Doc Bennett Road.

AND WHEREAS, The City of Fayetteville and Sierra Nevada Corporation have agreed upon a lease for the former Air Cargo building located on the site for an initial term of two years beginning July 1, 2022 with an option to extend for two additional two year terms; and

WHEREAS, the agreed amount of rent shall be \$15,868.88 per month or \$190,426.56 annually with a CPI adjustment every three years; and

WHEREAS, the City of Fayetteville has had previous leases with the above mentioned corporation and desires to continue lease agreement with said corporation to continue the longstanding relationship; and

NOW THEREFORE, BE IT RESOLVED on behalf of the people of Fayetteville, the City Council declares that the City Manager is authorized to execute all necessary documents to move forward with the execution of the above described leases at the authorization and direction of City Council.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA, on this, the 13th day of June 2022; such meeting was held in compliance with the Open Meetings Act, at which meeting a quorum was present and voting.

CITY OF FAYETTEVILLE

(SEAL)

By: _____
MITCH COLVIN, Mayor

ATTEST:

PAMELA MEGILL, City Clerk

NORTH CAROLINA

**ILM TRANSPORTATION, INC
RENTAL CAR LEASE AND
CONCESSION AGREEMENT**

CUMBERLAND COUNTY

THIS LEASE AND CONCESSION AGREEMENT made and entered into as of this **1st day of July, 2022**, by and between the **CITY OF FAYETTEVILLE**, hereinafter called "**LESSOR**" and **ILM TRANSPORTATION, INC.**, a corporation having an office in Cumberland County, North Carolina, hereinafter called "**LESSEE**";

WITNESSETH:

WHEREAS, the City of Fayetteville through its City Council is duly empowered as the owner and operator of the Fayetteville Regional Airport and all facilities located thereon, under the authority of N.C.G.S. § 63-53(3) and Chapter 3 of the Code of Ordinances of the City of Fayetteville, North Carolina;

AND WHEREAS, automobile rental services are necessary and desirable for the proper accommodation of passengers arriving at and departing from the Fayetteville Regional Airport;

AND WHEREAS, LESSEE is engaged in the operation of an automobile rental business and is ready, willing and able to provide a sufficient number of late model automobiles to meet the needs of passengers using the Fayetteville Regional Airport at rates comparable to those generally prevailing in the area;

NOW, THEREFORE, the parties for and in consideration for the rents, covenants and agreements contained herein do hereby contract and agree as follows:

ARTICLE I—SPACE AND FACILITIES

LESSOR does hereby rent and let unto the LESSEE and the LESSEE does hereby hire and take from the LESSOR, subject to the terms and conditions herein stated, the following:

- (a) Space and facilities in the Fayetteville Regional Airport Terminal Building for the exclusive use by the LESSEE as office and ticket counter space, to wit:

Approximately 200.77 square feet located in the Baggage Claim Area of the Fayetteville Regional Airport Terminal Building, and designated as Office C109A on a mechanical drawing attached hereto and labeled Exhibit "A" which is incorporated herein by reference and is further designated on said mechanical drawing as Dollar/Thrifty.

- (b) The use, together with others holding car rental leases at the Fayetteville Regional Airport, a portion of the 250 available spaces now and hereafter designated by LESSOR as "Ready Car Space."
- (c) LESSOR reserves the right to relocate the office and ticket counter space and ready car spaces rented to LESSEE hereunder should relocation become necessary for the efficient and orderly operation of the Fayetteville Regional Airport; provided, however, that should relocation become necessary, the space provided LESSEE shall be as near as possible, equal to or better than, the space described herein. In the event that the replacement space is unsuitable for LESSEE's business, LESSEE, at its sole discretion, may cancel this Agreement upon thirty (30) days advance written notice.

ARTICLE II—TERM

The term of this Concession Agreement shall be for FIVE (5) years beginning JULY 1, 2022 and ending on the JUNE 30, 2027. The term may be renewed for an additional FIVE (5) years, subject to an increase in fees to defray any additional expenses incurred by the LESSOR, and any adjustment to the terms hereof as may be appropriate at the time, which shall involve at a minimum increase in rent to reflect any increase in the Consumer Price Index (CPI) after the first THREE (3) years. Said adjustment shall be based on the average of the percent of change in Consumer Price Index (All Urban Consumers, all items, South Group, 50,000-450,000 population) for the previous three years. At the end of the three (3) year period which is June 30, 2025, and through any extension period(s), CPI adjustments shall continue to be made triennially. Lessee may exercise its right to renew the term of this Concession Agreement for the additional five (5) year term on not less than ninety (90) days prior written notice to the Lessor.

ARTICLE III—USE OF SPACE AND FACILITES

- (a) LESSOR hereby grants to the LESSEE the following non-exclusive privileges, uses and rights, all of which shall be subject to the terms, conditions and covenants hereinafter set forth, and the rules and regulations as may now or hereafter be promulgated by the City of Fayetteville or the Fayetteville Airport Commission:
 - (1) The right, license and privilege to operate an automobile rental service at the Fayetteville Regional Airport for the purpose of renting automobiles to passengers and such other persons who request such services at said airport;
 - (2) The right of ingress and egress to and from the Fayetteville Regional Airport by its agents, employees, patrons, customers and invitees; and

(3) The right to install and display appropriate signs in the Terminal Building to advertise said auto rental concession, provided that such design, installation and display shall be subject to the prior approval of the Airport Commission.

(b) LESSOR reserves the right to contract with other individuals, firms, or corporations to engage in like activities at the Fayetteville Regional Airport.

ARTICLE IV—RENT

(a) Concession Fee. LESSEE shall pay to LESSOR for the rights and privileges herein granted as a concession fee a minimum annual guarantee (MAG) payment of TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$25,000.00), or ten percent (10%) of annual gross revenue as hereinafter defined, whichever sum is greater, payable monthly. On or before occupancy by LESSEE and on the same day monthly each and every month thereafter until the termination of this lease, LESSEE shall pay LESSOR a minimum of TWO THOUSAND EIGHTY-THREE DOLLARS AND THIRTY-THREE CENTS (\$2083.33). On or before the first day of occupancy by LESSEE and on the same day monthly each and every month thereafter until the termination of this lease, LESSEE shall pay LESSOR, in addition to the minimum monthly payment of TWO THOUSAND EIGHTY THREE DOLLARS AND THIRTY-THREE CENTS (\$2083.33), an additional sum equal to ten percent (10%) of the monthly gross revenue for said previous month if ten percent (10%) of the monthly gross revenue for said previous month exceeds TWO THOUSAND EIGHTY-THREE DOLLARS AND THIRTY-THREE CENTS (\$2083.33). The ten percent (10%) of gross (less \$2,083.33 if concession receipts exceed said amount) shall be remitted to the Lessor on or before the twentieth (20th) day of the calendar month immediately following the end of the calendar month during which the revenues were collected. Reconciliation of minimum annual guarantee (MAG) shall occur at the end of the LESSOR's fiscal year which is June 30th and additional payment/reimbursement shall be made to LESSOR or LESSEE, as applicable.

(b) Gross Revenue. For all purposes hereof, the term "gross revenue" shall mean all revenue received from LESSEE's customers (after all discounts applied thereto) made by the LESSEE to its customers for those cars which the LESSEE shall have rented to them at or through any of the leased premises, less bad debts which become owing for the first time as of the close of the period for which the determination of gross receipts is made, plus payments received during said period on account of bad debts deducted in determining gross receipts for the last previous period for which a determination of gross receipts was made. A "bad debt" is any sum that is owed the LESSEE under a car rental agreement applicable to a car rented as aforesaid and which is four (4) months or more overdue at the close of any period for which gross receipts

are determined hereunder. By way of illustration, but not by way of limitation, gross revenue shall include:

- (1) All charges made by LESSEE to its customers for those vehicles rented at or through the leased premises, without regard to where the customer placed the order or the LESSEE received the order for said vehicle and without regard to whether said vehicle is returned to the leased premises or elsewhere;
- (2) All charges made by the LESSEE to its customers for exchanged vehicles regardless of where said exchange was made, when the vehicle originally rented to the customer was rented at or through the leased premises; and
- (3) All charges made by the LESSEE to its customers for accident insurance.

(c) Excluded from "gross revenue" for the purpose of this Agreement, shall be:

- (1) The amount of federal, state or local sales taxes which are separately stated and collected by LESSEE from customers;
- (2) All sums received by LESSEE as damages for the loss, conversion, abandonment, or destruction to vehicles leased by LESSEE under this Agreement;
- (3) All sums received by reason of LESSEE's sale of its capital assets;
- (4) Revenue arising out of or collected on amount of charges made by Lessee to its customers in return for which Lessee agrees to waive its rights to recover from said customers for loss or damage to rental automobiles, otherwise known as loss damage waiver (LDW), and/or collision damage waiver (CDW);
- (5) All sums received from customers for the purchase of fuel; and
- (6) Any amount collected from its customers as Customer Facility Charges (CFCs).

This definition of "gross revenue" shall be subject to renegotiation between the parties prior to any extension of this Concession Agreement becoming effective as provided by Article II of this Agreement.

(d) Office and Counter Space. In addition to the above payments, LESSEE shall pay the LESSOR rent for its space occupied in the Terminal Building at the rate of TWENTY DOLLARS AND SEVENTY-NINE CENTS (\$20.79) per square foot per year for counter space and TEN DOLLARS AND FORTY CENTS (\$10.40) per square foot per year for office space computed below, payable monthly on or before July 1, 2022, or on or before the first day of each and every succeeding month thereafter during the term of this Agreement.

Counter Space:

177 sq. ft. X \$20.79 per sq. ft.=\$3,679.83/12= \$306.65 per month

Office Space:

198 sq. ft. X \$10.40 per sq. ft.=\$2,059.20/12= \$171.60 per month

Total:

\$ 478.25 per month

- (e) Ready Car Space. In addition to the above payments, LESSEE shall pay LESSOR rent of TWENTY DOLLARS AND NO CENTS (\$20.00) per month for each ready space allocated to LESSEE, payable monthly on or before JULY 1, 2022, and on or before the first day of each and every succeeding month thereafter during the term of this Agreement. LESSEE shall have the right to tow away any unauthorized vehicles parked in LESSEE's designated Ready Car space, provided each space is properly signed in accordance with North Carolina State law. Any vehicle towed shall be stored in the Airport parking lot and LESSEE shall notify and submit a storage report to Airport Firefighter personnel.

The location of LESSEE's spaces shall be based on the gross revenue received from the previous three (3) years, with the LESSEE having the highest revenue choosing the location of their ready spaces first, etc. The number of ready spaces LESSEE receives will be based on the gross revenue received from the previous twelve months.

The number of spaces will be increased or decreased on a triannual basis and the preceding year's revenues received from July 1st to June 30th will determine space allocations. The reallocation shall take place August 1st of each year.

The City reserves the right to contract with additional lessees during the term of this agreement, including any extensions. In the event a new lessee commences operation during the Term of this Agreement, that lessee shall receive ten (10) ready car spaces, with two (2) spaces being taken from each of the existing lease holders. On August 1st of the following year, all spaces will be reallocated based on previous year's market share (including any partial year market share of a new lessee), but in no event shall any lessee ever receive less than a minimum of ten (10) ready car spaces.

- (f) Utilities Fee. In addition to the above payments, LESSEE shall pay LESSOR a fee for water, lights, heat, air conditioning and maintenance the sum of FIFTY DOLLARS AND NO CENTS (\$50.00) per month, payable on or before July 1, 2022 or on or before the 1st day of each and every succeeding month thereafter during the initial five (5) year term of this Agreement; thereafter, the LESSOR and LESSEE shall mutually agree in writing upon any increase for utilities to defray the costs of any increase LESSOR may incur.

(g) Abatement of Minimum Guarantee. In no event shall payment of counter space, office space, ready car space and utilities abate. The minimum concession fee provided in Article IV (a) shall be suspended upon the occurrence of any of the following conditions:

- (1) A strike by employees of a commercial airline providing service to the Fayetteville Regional Airport that causes a total cessation of airline service for a period of fifteen (15) days or longer in any one calendar month. The continued service by a non-striking commercial airline so that there is not a total cessation of airline service to the Fayetteville Regional Airport shall not constitute an abatement of the minimum guarantee as defined herein;
- (2) In the event of the declaration of a national emergency by executive decree or legislative action, which causes a material, and substantial curtailment of the supply of fuel, tires, or parts for motor vehicles and airplanes for use by the general public; or
- (3) If, for any reason, the number of passengers deplaning from scheduled airline flights at Fayetteville Regional Airport during any two (2) consecutive calendar months shall be less than seventy percent (70%) of the number of such deplaning passengers for the same period of the preceding calendar year. The percentage of deplaning passengers shall be subject to renegotiation between the parties prior to any extension of this Concession Agreement becoming effective as provided by Article II of this Agreement.

If during this period, any of the foregoing conditions exist, LESSEE shall pay to the LESSOR for the rights, privileges, and facilities, rent based upon 10 percent of annual gross revenue.

(h) Late Fees: Any fee payable by Lessee under this agreement that is not paid when due shall bear a late payment fee at the rate of five percent (5%) per month from the due date until paid."

ARTICLE V—REPORTS AND RECORDS

- (a) LESSEE shall furnish LESSOR on or **before the 20th day of each calendar month a Certified and signed copy of its statement of operations for the previous month** which said statement shall show in detail a breakdown of LESSEE's gross revenue for the previous month to enable LESSOR to verify the accuracy of LESSEE's payment of percentage of gross revenue. LESSEE shall furnish LESSOR, upon demand, such additional detail and breakdown as LESSOR shall deem necessary to verify gross revenue.
- (b) LESSOR shall have the right to inspect LESSEE's books and records for a period of three (3) years, to determine the accuracy of the matters reports in said monthly report required above and LESSEE agrees to maintain all books

and records upon leased premises, or to mail same to LESSOR within ten (10) days of LESSOR's request therefore.

- (c) At the end of the first lease year under this Agreement, which is June 30, 2022, and at the end of each lease year thereafter during the term of this Agreement, or not more than sixty (60) days thereafter, LESSEE shall furnish to LESSOR a certified copy of an audit of LESSEE's operations hereunder by LESSEE's certified public accountant. LESSOR shall have the right to conduct its own audit to verify LESSEE's certified audit and in the event LESSOR's audit to verify LESSEE's payments of rent to LESSOR is as much as two and one-half percent (2 ½%) less than the amount LESSEE is required to pay LESSOR under the terms of this Agreement, then LESSEE shall pay to LESSOR all costs and expenses incurred by LESSOR in conducting said audit, including transportation, food and lodging expenses.
- (d) LESSEE shall submit to LESSOR no later than the 1st of November each year, a Concession Activities Report listing the following:
 - (1) Names and types of Disadvantaged Business Enterprise (DBE) firms that supported operations at the Fayetteville Regional Airport, to include whether a DBE firm arrangement is a sublease or joint venture;
 - (2) Payments to DBE (s) per (1) above;
 - (3) Rental annual gross income for business conducted at Fayetteville Regional Airport; and
 - (4) Percentage of DBE participation for the current October 1st to September 30th timeframe bases on (2) and (3) above.

ARTICLE VI—OBLIGATIONS OF LESSEE

The LESSEE covenants and agrees:

- (a) To promptly pay all charges, rents and fees by delivering same to the City of Fayetteville, PO Drawer D, Fayetteville, NC 28302.
- (b) The LESSEE shall take out or obtain all licenses or permits as required by federal, state or local law. The LESSEE shall pay any and all lawful taxes and assessments (including but not limited to ad valorem and inventory taxes) which, during the term of this Lease Agreement, or any part thereof, may become a lien upon or which may be levied by state, county, city or any other tax levying body, upon any and all of the leased premises of this Agreement. And upon any and all taxable interest of the LESSEE acquired in this Lease Agreement, as well as all taxes on taxable property, real or personal, owned by the LESSEE in or about said leased premises, but deferment of payment of any tax by the LESSEE shall not constitute a default or breach of this Lease Agreement during the time the LESSEE is contesting in good faith the payment of said tax before any duly constituted authority, and pending the final determination of such contest.

- (c) To furnish, install, operate and maintain the space and facilities provided herein and keep the same, as well as other premises made available to the LESSEE, and the furniture, fixtures and equipment installed therein in good working condition and repair, and upon termination or the expiration of this Agreement, to deliver the premises to LESSOR in good order, condition and repair, reasonable wear and tear excepted.
- (d) To provide and have available at all times for use by patrons at the Fayetteville Regional Airport, a sufficient number of rental automobiles to meet the normal demands and needs of the public for automobile rental services. Service shall be available for all scheduled commercial flights. Rental automobiles shall be in good working condition and free from known mechanical defects and in a clean, neat and attractive condition both inside and out and shall be no more than two years older than current year models.
- (e) Solicitation of business shall be restricted to the space allotted LESSEE in the Airport Terminal Building.
- (f) LESSEE shall not maintain in a position of public interaction any person reasonably objectionable to Airport Management on account of said person's reputation, appearance, dress or conduct; provided that termination of any such employee shall be subject to such due process rights, if any, as may be extended to said employee by LESSEE.
- (g) LESSEE covenants and agrees to at all times observe, obey and comply fully with all laws, assurances, ordinances, rules, regulations, and requirements now in effect and hereafter promulgated by the LESSOR, City, State, Federal, or other governmental entity having jurisdiction over the leased premises or activities of LESSEE.
- (h) Maintenance of vehicles, including cleaning and washing, shall not be performed on Airport property without prior written permission of Airport Management.

ARTICLE VII—INDEMNIFICATION & INSURANCE

- (a) Indemnification. It is agreed that LESSEE is, and shall be deemed to be an independent contractor, and that LESSOR shall in no way be responsible to any person, firm or corporation for the LESSEE, its invitees, agents, officers, servants or employees acts or omissions. It is further agreed that in the exercise or enjoyment of the privileges herein granted, the LESSEE shall indemnify, defend, and save and hold harmless the LESSOR and all of its elected officials, employees, officers agents, successors and assigns from any and all claims, demands, suits, judgments, costs, expenses (including attorney fees) and liability to persons and/or property that may result from or grow out of any act, omission, or negligence on the part of the LESSEE or the LESSEE's invitees, agents, servants, employees, or officers. Indemnification of the LESSOR by LESSEE does not constitute a waiver of the City's governmental immunity in any respects under North Carolina law.

- (b) Commercial General Liability. LESSEE shall procure and maintain in full force and effect at all times and at its sole expense, Commercial General Liability insurance covering premises operations, independent contractors and contractual liability, with single limits coverage of one million dollars (\$1,000,000) per occurrence.
- (c) Automobile Liability. The LESSEE shall, prior to commencing its operations pursuant to the terms of this Lease Agreement, take out and maintain continuously in effect at all times during the term of this Agreement, in addition to insurance required by law, automobile liability insurance in the sum of ONE HUNDRED THOUSAND & NO/100 DOLLARS (\$100,000.00) for each person injured and THREE HUNDRED THOUSAND & NO/100 DOLLARS (\$300,000.00) for each accident, and FIFTY THOUSAND & NO/100 DOLLARS (\$50,000.00) for property damage. The LESSEE shall maintain such insurance with insurance underwriters authorized to do business in the State of North Carolina satisfactory to the LESSOR. The LESSEE shall, prior to commencing its operations pursuant to the terms of this Lease Agreement, furnish the LESSOR with a certificate of insurance from the LESSEE's carrier indicating there is such insurance coverage as herein before provided. Said Certificate of Insurance shall provide that the policy cannot be canceled or materially changed except after giving notice by registered mail to LESSOR at least thirty (30) days before the effective date of such cancellation or change.
- (d) The insurance coverage's and limits required of the LESSEE under this agreement are designed to meet the minimum requirements for the LESSOR. They are not designed as a recommended insurance program. LESSEE alone is responsible for the sufficiency of its own insurance program(s). If LESSEE has any questions concerning exposures and/or coverage issues, professional insurance assistance should be obtained by LESSEE.
- (e) All insurances shall be placed with an insurance company licensed to do business in the State of North Carolina.

ARTICLE VIII-ASSIGNMENT OF LEASE

LESSEE shall not assign this Agreement or any part thereof nor sublet the leased premises or any part thereof, without prior written consent of LESSOR, except to an affiliate of the LESSEE. For all purposes hereof, an "affiliate" is any person, firm or corporation controlled by, under common control with, or controlling the LESSEE. "Control" is the power to direct the management and policies of another, whether arising by virtue of stock ownership, contract, or otherwise.

ARTICLE IX—CANCELLATION OR TERMINATION

- (a) Termination by Airport. This agreement and all rights and privileges and interests created hereunder may be terminated by LESSOR upon written notice to LESSEE upon LESSEE's default in the payment of any sums when due hereunder and failure to cure said default within 10 days after said written notice. The acceptance of any monies by LESSOR, after default shall not be deemed to be a waiver of the right of termination by LESSOR, nor shall LESSOR be stopped from evicting LESSEE from its premises and re-letting said premises to other parties.
- (b) Except as provided in (a) above, this agreement and all rights and privileges and interests created hereunder may be terminated by LESSOR upon ten (10) days written notice to LESSEE upon the occurrence of any of the following events:
- (1) The LESSEE defaults in the performance of any term, covenant, or condition hereunder and such default shall continue for thirty (30) days after written notice of such default from LESSOR to LESSEE; provided, however, that no such default shall continue for more than twenty-four (24) hours after written notice of such default if it presents a hazard to the safety of Airport personnel or the general public. The acceptance of any monies by LESSOR after default shall not be deemed to be a waiver of the right of termination by LESSOR, nor shall LESSOR be stopped from evicting LESSEE from its premises and re-letting said premises to other parties.
 - (2) The LESSEE shall become insolvent or take the benefit of any present or future insolvency statute or make any assignment for the benefit of creditors or file a voluntary petition in bankruptcy or consent to the appointment of a receiver of its property.
 - (3) By order or decree of a court that LESSEE is adjudged bankrupt.
 - (4) A petition under any part of the Federal Bankruptcy Law is filed by any person, firm, or corporation against LESSEE and such petition is not vacated or discharged within ninety (90) days thereafter.
 - (5) LESSEE shall voluntarily abandon and discontinue its rental service at the Fayetteville Regional Airport for a period of ten (10) consecutive days. LESSOR shall be deemed to have not waived any of its rights or privileges due to its failure to notify LESSEE of any default or violation of any of the terms of this Agreement. Within thirty (30) days of the termination or cancellation of this Agreement, LESSEE shall remove all of its property from LESSOR's premises and leave the same in substantially the same condition as prior to LESSEE's entry thereon, ordinary wear and tear excepted. Any item or property not removed by LESSEE within thirty (30) days following the cancellation or termination of this Agreement shall be deemed to have been abandoned by LESSEE and shall become the property of the LESSOR without compensation and LESSOR shall be entitled to remove and dispose of same in any manner it deems fit.

(c) Termination by LESSEE. LESSEE shall have the right to terminate this Agreement by giving 30 days' written notice, unless another notice period is identified, to LESSOR upon the occurrence of any of the following events, provided said event or events shall then be continuing:

- (1) The issuance by any court of competent jurisdiction of any injunction, order or decree preventing or restraining the use by LESSEE of any part of the Fayetteville Regional Airport which is necessary for LESSEE's operations hereunder, which Order remain in force for a period of at least one hundred twenty (120) days.
- (2) The LESSOR's default in fulfilling any of the terms, covenants, and conditions required under this Agreement and fails to cure said default within forty-five (45) days following receipt of written notice thereof from LESSEE.
- (3) The destruction by fire, explosion, earthquake, the public enemy or other acts of God of a substantial or material part of the Fayetteville Regional Airport which substantially interferes with or disrupts LESSEE's use of said premises.
- (4) The United States Government or any of its agencies shall occupy the Fayetteville Regional Airport or any substantial part thereof to such an extent as to materially interfere with LESSEE's operations for a period of sixty (60) consecutive days, or more.

ARTICLE X—COVENANT NOT TO GRANT MORE FAVORABLE TERMS

LESSOR covenants and agrees not to enter into any concession agreement or contract with any other rental car agency that contains more favorable terms or conditions than contained herein.

ARTICLE XI—AFFIRMATIVE ACTION

LESSEE agrees that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment activities covered in 14 CFR, Part 152, Subpart E. LESSEE agrees that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. LESSEE agrees that it will require that its covered sub-organizations provide assurances to the LESSOR that they similarly will undertake affirmative action programs and that they will require assurances from said sub organizations, as required by 14 CFR, Part 152, Subpart E, to the same effect.

ARTICLE XII – CUSTOMER FACILITY CHARGE (CFC)

LESSOR approved the imposition of a Customer Facility Charge (CFC) on April 29, 2014 to be collected by LESSEE from rental car customers at the Airport effective July 15, 2014. The CFC remains in effect and continues at the current rate of Four Dollars (\$4.00) for the full Agreement period.

- (a) LESSEE agrees to continue imposition of the CFC fee as specified by the LESSOR in Section (b) below for each customer entering into a rental contract with LESSEE at the Fayetteville Regional Airport for the purpose of securing or recovering LESSOR's costs associated with certain Airport rental car facility related improvements that may be made at the Airport by the LESSOR at its sole discretion, including but not limited to, a parking deck and new service area facilities as contemplated by LESSOR.
- (b) The proceeds of all CFCs shall be used solely for payment of costs relating to rental car facilities and parking areas at the Airport and which are deemed necessary by the LESSOR from time to time. The CFC shall be charged to LESSEE's customers for each day, or portion thereof for which a late fee or rental is charged to the customer, and a rental contract is in effect between LESSEE and its customers, up to a maximum of ten (10) CFCs per single rental contract. The amount of the CFC shall be FOUR DOLLARS (\$4.00) per contract day, or portion thereof and shall apply to, and be collected by LESSEE on, all rental contracts reserved, issued or written on or after July 1, 2021. Notwithstanding any of the other terms in the Agreement, the LESSOR reserves the right to adjust the amount of the CFC from time to time as the LESSOR deems necessary in its sole discretion. LESSOR shall provide LESSEE at least sixty (60) days prior notice of an adjustment in the CFC.
- (c) LESSEE shall collect the CFC from each customer with which LESSEE enters into an automobile rental contract at the Airport. The CFC shall be identified on a separate line on all rental car customer contracts, after taxes, and shall be described as the "Airport Customer Facility Charge". All Customer Facility Charges collected and/or held by LESSEE shall: (i) be collected from all customers, including without limitation all customers receiving complimentary or discounted car rentals under the LESSEE's bona fide marketing plans; and (ii) be held in trust by LESSEE for the LESSOR's benefit. All CFCs so collected shall be remitted to the LESSOR on or before the twentieth (20th) day of the calendar month immediately following the end of the calendar month during which such CFCs were collected. Failure by the LESSEE to collect and remit the CFCs to the LESSOR as provided for in this Concession Agreement shall result in termination of the AGREEMENT between LESSOR and LESSEE.
- (d) The method of calculating the CFC and the amount of such Customer Facility Charge shall be determined by the LESSOR at its sole discretion.

LESSEE shall maintain records and controls, as prescribed by the LESSOR, which are sufficient to demonstrate the correctness of any such Customer Facility Charges collected by LESSEE and the amount of Customer Facility Charges remitted to the LESSOR. Said records shall be made available for inspection and examination by the LESSOR or its duly authorized representatives. The LESSOR reserves the right to audit LESSEE's records which are required to be maintained by LESSEE as provided for in *Article V – Reports and Records* of the AGREEMENT, for the purpose of verifying the Gross Revenue and Customer Facility Charges reported by LESSEE. Gross revenue shall specifically exclude any amounts collected from its customers as Customer Facility Charges.

ARTICLE XIII – N.C. IRAN DIVESTMENT ACT

As mandated by N.C.G.S. 143C-6A-5(a), LESSEE certifies that it is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 143C-6A-4. LESSEE further certifies that in accordance with N.C.G.S. 143C-6A-5(b) that it shall not utilize any subcontractor found on the State Treasurer's Final Divestment List. LESSEE certifies that the signatory to this Agreement is authorized by the LESSEE to make the foregoing statement.

ARTICLE XIV - E-VERIFY

LESSEE hereby acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. LESSEE further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). LESSEE hereby pledges, attests and warrants through execution of this contract that LESSEE complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by LESSEE shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Amendment.

ARTICLE XV - SEVERABILITY

The parties agree that if any provision of this contract shall be held invalid for any reason, the remaining provisions shall not be affected if they may continue to conform with the purposes of this contract and the requirements of applicable law.

ARTICLE XVI – COMPLIANCE WITH LAWS, GOVERNING LAW, & VENUE AND FORUM

LESSEE agrees to comply with all applicable statutes, ordinances, and regulations of the United States, the State of North Carolina, the City and units of local government. Except to the extent a federal law, rule or order may apply, this Agreement shall be governed by the laws of the State of North Carolina (without resort to the choice of law rules thereof). If any action or proceeding is brought by either party to enforce the provisions hereof, the prevailing party shall be entitled to recover all reasonable costs and attorneys' fees incurred in such action or proceeding, including those on appeal, in such amounts as the court may determine without a jury. The Parties expressly agree that if litigation is brought in connection with this contract and (1) the litigation proceeds in the Courts of the State of North Carolina, the parties agree that the appropriate venue shall be in Cumberland County (Twelfth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina.

ARTICLE XVII- MORALITY CLAUSE

If, in the sole opinion of the City of Fayetteville, at any time LESSEE or any of its owner(s) or employee(s) or agent(s) (collectively referenced as an "Actor") engages in any one or more actions that bring disrepute, contempt, scandal, or public ridicule to the Actor or subject the Actor to prosecution or offend the community or public morals or decency or denigrate individuals or groups in the community served by the City of Fayetteville or are scandalous or inconsistent with community standards or good citizenship or may adversely affect the City of Fayetteville's finances, public standing, image, or reputation or are embarrassing or offensive to the City of Fayetteville or may reflect unfavorably on the City of Fayetteville or are derogatory or offensive to one or more employee(s) or customer(s) of the City of Fayetteville, the City of Fayetteville may immediately upon written notice to LESSOR terminate this Contract, in addition to any other rights and remedies that the City of Fayetteville may have hereunder or at law or in equity.

ARTICLE XVIII—NOTICES

All notices required or permitted to be given hereunder to LESSOR shall be sufficient if sent by registered mail, postage prepaid, and addressed to: **City of Fayetteville, 433 Hay Street, Fayetteville, NC 28301**. All notices required or permitted to be given hereunder to LESSEE shall be sufficient if sent by registered mail, postage prepaid, and addressed to: **ILM Transportation, Inc.**,

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized officers, as of the day and year first above written.

CITY OF FAYETTEVILLE

BY: _____
Douglas J. Hewett, ICMA-CM, City Manager

ATTEST:

Pamela Megill, City Clerk
(Corporate Seal)

ILM TRANSPORTATION, INC.

BY: _____

Vice President
Properties and Concession

ATTEST:

Secretary

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

I, _____, a Notary Public for _____ County, North Carolina, certify that **Pamela Megill** personally came before me this day and acknowledged that she is the **City Clerk** of **City of Fayetteville**, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its City Manager, sealed with its corporate seal and attested by herself as its **City Clerk**.

Witness my hand and notarial seal, this the _____ day of _____, 2022.

Notary Public

My commission expires: _____

STATE OF _____
COUNTY OF _____

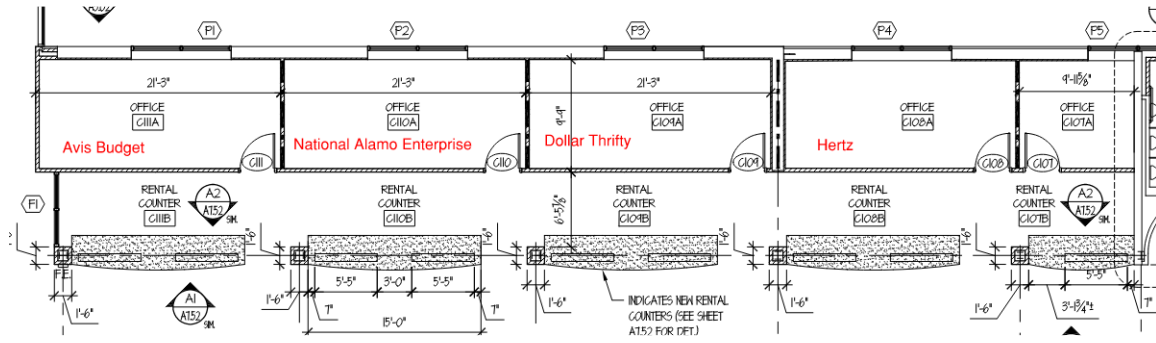
I, _____, a notary public of said County and State hereby certify that _____ personally came before me this day and acknowledged that he/she is _____ of **ILM Transportation, Inc.**, a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its _____, sealed with its corporate seal and attested by _____ self as its _____.

Witness my hand and notaries seal, this the _____ day of _____, 2022.

Notary Public

My commission expires: _____

EXHIBIT A





City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-2746

Agenda Date: 6/13/2022

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 7.03

TO: Mayor and Members of City Council

THRU: Jay Toland, Assistant City Manager
Telly C. Whitfield, PhD., Assistant City Manager

Alvester T. (Toney) Coleman, PhD, A.A.E., Airport Director

FROM: Deontae K. Watson, MBA, A.A.E., Deputy Airport Director

DATE: June 13, 2022

RE:

Acceptance of Aviation Career Education (ACE) Academy Grant Offer

COUNCIL DISTRICT(S):

All

Relationship To Strategic Plan:

Goal IV - Desirable Place to Live, Work and Recreate

4.1 - To maintain public transportation investments with high quality transit and airport services.

Executive Summary:

City Council is asked to accept the Aviation Career Education (ACE) Academy Grant Offer for the Fayetteville Regional Airport, and to authorize the City Manager to execute the Agreement.

Background:

- The Fayetteville Regional Airport is planning to host its inaugural ACE Academy to support tomorrow's aerospace workforce
- The NCDOT ACE Academy Grant Program is providing grants of up to \$3,000 per academy for public airports that host aerospace and aviation career-focused summer academies for middle and high school students.
- The academy will cover the following topics;

- Aviation/aerospace history, including N.C.'s legacy as "first in flight"
 - Principles of flight
 - Career discovery and planning
 - Post-secondary aviation education programs
 - Unmanned aircraft systems (UAS, or drones)
- Any incidental cost(s) associated with the program will be covered through sponsorships and/or through the Airport's Operating Budget of \$17,000.

Issues/Analysis:

None

Budget Impact:

There is no impact to the General Fund.

Options:

1. Accept ACE Academy Grant Offer from NCDOT to the Fayetteville Regional Airport and authorize the City Manager to execute the grant.
2. Do not accept ACE Academy Grant Offer from NCDOT to the Fayetteville Regional Airport nor authorize the City Manager to execute the grant.

Recommended Action:

3. Staff recommends that Council move to accept ACE Academy Grant Offer from NCDOT for the Fayetteville Regional Airport and authorize the City Manager to execute the Agreement.

Attachments:

Grant Agreement and Program Overview



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

ROY COOPER
GOVERNOR

J. ERIC BOYETTE
SECRETARY

2022 Aviation Career Education (ACE) Academy Grant Agreement

This Agreement is made between the **Fayetteville Regional Airport, 400 Airport Road, Fayetteville, North Carolina 28306** (also referred to as "Sponsor") and the North Carolina Department of Transportation, Division of Aviation, 1050 Meridian Drive, North Carolina 27560 (hereinafter referred to as "Agency").

- A. Pursuant to NC GS 63-66, the North Carolina Department of Transportation is charged with promoting aviation safety throughout the state and conduct such promotional, educational and other programs as may be necessary to keep the people of the state properly informed with respect to aviation and to further aeronautics generally throughout the state. The purpose of this agreement is for the Agency to assist financially in the 2022 Aviation Career Education (ACE) Academies for school-age students across North Carolina. The ACE Academy agenda must include components on aviation careers, history of flight, principles of flight and other topics that supplement the aviation theme. To support the expanded strategic mission of the Agency, unmanned aerial systems (UAS) and in-state post-secondary aviation program opportunities are required to be offered as topic segments. Post-secondary opportunities should include a statewide view of community and four-year college/university aviation programs, not limited to certificate/degree concentrations in: aviation maintenance, career pilot, aeronautical engineering, electrical engineering (aviation specific), air traffic control, etc. The Agency will provide material and program support as one of the sessions during the academy.
- B. The Agency representative is Amanda Conner, aviation business development manager, and will be the contact representative during the term of this Agreement. The Agency will have final approval of when the terms of the agreement have been fulfilled.
- C. The Agency agrees to compensate the Sponsor a maximum of \$3,000 for ACE Academies conducted during the summer of 2022. Payment under this agreement will be made upon receipt by the Agency of an original invoice from the Sponsor requesting the needed funds for hosting the ACE Academies up to the maximum amount, showing dates, course syllabus and location of all camps. Payment to the Sponsor may be made before the ACE Academy begins. The Sponsor will have 60 days from completion of the 2022 camp(s) to submit an itemized accounting of funds used. This detailed accounting and supporting documentation will include all receipts, invoices, bills, etc., supporting the utilization of the previously requested funds. The final charge to the Agency will reflect only actual costs. A post-academy report will also be required consisting of: agenda, total number of youth in the respective camps, post-event synopsis, youth questionnaire (supplied by the Agency) and digital photographs from the camp. Funds that are not requested by invoice prior to September 30, 2022 will be forfeited.

The Sponsor shall be responsible for all North Carolina governing laws. The Sponsor agrees to provide the Agency with the entity's correct taxpayer identification number upon execution of this agreement.

Mailing Address:
NC DEPARTMENT OF TRANSPORTATION
DIVISION OF AVIATION
1560 MAIL SERVICE CENTER
RALEIGH, NC 27699-1560

Telephone: 919-814-0550
Fax: 919-840-9267

Location:
1050 MERIDIAN DRIVE
MORRISVILLE, NC 27560

Website: ncdot.gov/aviation

IN WITNESS WHEREOF, the **AGENCY** and the **Fayetteville Regional Airport** have each executed this Agreement, this 19th day of April, 2022.

CONTRACTING AGENCY: DEPARTMENT OF TRANSPORTATION
DIVISION OF AVIATION

AGENCY ADMINISTRATOR:

Printed Name: Bobby Walston


Title: Director, NCDOT Division of Aviation

Signature  59C6E3E8B04E410...

SPONSOR: Fayetteville Regional Airport

Printed Name: Toney Coleman

Title Airport Director

Signature  7F405F07C00F40D...

Tax Identification Number 56-6001226

Attachment: ACE Academy Overview

Aviation Career Education (ACE) Academy Grant Program

Developing North Carolina's Aerospace Talent Pipeline

Apply for 2022 grants by Monday, March 7, 2022

Program Overview

North Carolina's system of 72 public airports generates more than \$61 billion of economic impact each year - 10 percent of the state's GDP - and more than 373,000 jobs.

Public airports support a vibrant aerospace sector that includes aerospace manufacturing and maintenance, air freight and military aviation, as well as on-airport businesses, from airlines to fixed-based operations, flight schools to crop dusting operations. Added to that is the state's rapidly expanding unmanned aircraft systems industry, which is opening new markets and new ways of doing business.

All of these businesses and industries spell jobs and opportunity for North Carolina people and communities. North Carolina must inspire and develop a strong talent pipeline to sustain and grow this important sector.

The Aviation Career Education (ACE) Academy Grant Program supports aerospace workforce development by providing grants of up to \$3,000 per academy for public airports that host aerospace and aviation career-focused summer academies for middle and high school students.

The North Carolina Department of Transportation Division of Aviation, in alignment with the Federal Aviation Administration's ACE Academy program, offers this grant program to inspire young people to explore and pursue the many rewarding careers available in the state's aerospace sector.

Eligibility

N.C.'s 72 public use airports that are eligible for infrastructure development grant funding through the NCDOT Division of Aviation are eligible to apply for ACE Academy grants.

Airports are encouraged to team with a local educational or nonprofit organization to benefit from their expertise in educating young people and to encourage strong airport-community connections. The Division can provide information on organizations that have hosted ACE academies in the past.



2022 Grants

NCDOT Aviation has allocated \$24,000 for grants of up to \$3,000 per academy for summer 2022. A selection committee will review applications and notify applicants of their funding determination on March 31, 2022.

Use of Grant Funds

Grant funds must be used to cover the direct cost of ACE academies, such as supplies and vendor costs. Past ACE academies have purchased such items as flight simulators, field trip tickets, aircraft rides, model rocket kits and safety materials. Grant funds may not be expended on administration or staffing.

Academy Requirements

Format. ACE academies must host at least 30 middle and/or high school students. Preference will be given to airports serving students in lower-socio-economic areas, as determined by N.C. Department of Commerce county tier designation, and programs providing an engaging experience for as many students as practicable.

Content. ACE academies are encouraged to cover the following topics:

- Aviation/aerospace history, including N.C.'s legacy as "first in flight"
- Principles of flight
- Career discovery and planning (age appropriate)



- Exploring N.C. post-secondary aviation education programs
- Unmanned aircraft systems (UAS, or drones), including uses, N.C. operating regulations and permitting program, FAA's The Recreational UAS Safety Test (TRUST) program and N.C. UAS educational offerings.

In addition, ACE academies must include a virtual or in-person presentation by the NCDOT Division of Aviation on "NCDOT Aviation Works for You."

Academies can develop their own personality and themes, covering additional topics or can expand on one or more of the suggested topics in greater detail.

Career Exploration. ACE academies should place a priority on exploring high-demand aviation and aerospace careers (manned and unmanned pilots, aircraft technicians, electronics, including coding and programming, avionics, air traffic controllers and engineers) and how N.C. students can gain education and credentials through N.C. community college and university programs to pursue those professions.

NCDOT Aviation can provide information and guidance on curriculum topics and connect academy hosts with resources and networks that can support their academy.

Application and Grant Award Timetable

- January 25-March 7: Grant applications accepted
- March 8-18: Selection Committee reviews and scores applications
- March 31: Division notifies applicants of grant application determination
- April: Grant recipients and their academy details are publicly announced through joint press releases, social media and posting on the FAA ACE Academy website

Reporting Requirements

As with any publicly funded program, reporting is required to ensure responsible stewardship of grant funds and maintain support for public funding. We strive to make reporting requirements simple and efficient for grantees while meeting our fiscal and program responsibilities.

Reported items will allow the Division to report, promote and determine the effectiveness of this program, as well as plan for growth and improvements.

Grantees will be required to report these items within 30 days of the academy end date:

Post-academy synopsis of program, including:

- Dates, times and location
- Itinerary/schedule of activities
- Description (theme, curriculum focus)
- Number and demographic breakdown of participants (age, race, gender, county of residence)
- Newsworthy activity highlights or success stories suitable for call-out in the annual report
- 5-10 photos of students participating in academy activities, with NCDOT permission form completed allowing NCDOT to use photos (no names) of photographed students in promotional materials
- Copy of your student evaluation survey and summary of responses (NCDOT can provide an evaluation template, if desired)
- Itemized accounting with receipts and purpose of expenditure of grant funds
- NCDOT post-academy evaluation survey (online)

ACE Academy Annual Report

NCDOT will use the Information reported by academy hosts to create an ACE Academy Annual Report showcasing highlights, successes, photos and quantitative results. Grantees can use the report to advertise their academies in future years and garner additional support such as sponsorships and partners.

Ready to Apply?

Apply [online](#) by Monday, March 7, 2022.

Questions?

Contact Amanda Conner, Aviation Business Development Manager, (919) 814-0590 (office), (919) 618-2051 (mobile) or aconner1@ncdot.gov.



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-2577

Agenda Date: 6/13/2022

Version: 2

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 7.04

TO: Mayor and Members of City Council

THRU: Douglas J. Hewett, ICMA-CM, City Manager
Adam Lindsay, Assistant City Manager

FROM: Michael Gibson, Parks, Recreation, and Maintenance Director
Robert Stone, PE, Construction Management Department Director
Kimberly Toon, CLGPO, Purchasing Manager

DATE: June 13, 2022

RE:

Approval for City Manager to Execute a Construction Contract with Mohammad Construction, LLC for Site Work for Mazarick Park Tennis Center

COUNCIL DISTRICT(S):

District 2

Relationship To Strategic Plan:

Goal 4 - The City of Fayetteville will be a highly desirable place to live, work and recreate with thriving neighborhoods and a high quality of life for its citizens.

Executive Summary:

City Council is asked to authorize the City Manager to execute a construction contract with the apparent lowest responsive, responsible bidder Mohammad Construction, LLC for the site work for the Mazarick Park Tennis Center.

Background:

On March 15, 2016, Fayetteville voters passed a \$35 million bond referendum for parks and recreation projects including several new projects as well as renovations to a few existing parks and facilities. Since voters approved the bond package, several projects have been completed and several more are currently under construction or under design.

Included in that bond package was a Tennis Center, planned for Mazarick Park. The

intended site is currently undeveloped and will allow for the courts and clubhouse to overlook Glenville Lake. There is an existing walking trail that extends approximately one mile from the currently developed area of Mazarick Park, to Filter Plan Drive.

The conceptual design was developed by the United States Tennis Association (USTA) in conjunction with City Staff. This design was developed at no cost to the City of Fayetteville, due to receipt of a Facilities grant from USTA to provide the schematic design for the new facility.

CRA Associates, Inc. was awarded the site design contract by Council in April 2021 and the Tennis Center Clubhouse design was awarded to Summit Design through an existing General Services Contract. Construction of the Tennis Center Clubhouse and the construction of the tennis and pickleball courts will be put out for bid separately later in March 2022 and will be brought to Council for approval once the bids are received.

The Mazarick Park Tennis Center site work project was advertised to the general public on January 26, 2022, consistent with North Carolina law, and a voluntary pre-bid meeting took place on-site February 17, 2022. Bids were scheduled to be opened on March 3, 2022, but were delayed to March 10, 2022, due to an addendum to the bid documents. There were no bidders on March 10, 2022, so the contract was put back out for bid on April 12, 2022. On May 19, 2022, the City opened bids from General Contractors and accepted two bids for the site work for the Tennis Complex. The site work included all clearing, grading, infrastructure, utilities, stormwater, parking lot, driveway, and landscaping. All bids included a 5% bid bond, acknowledgment of the City's Small Disadvantaged Business Enterprise program and addenda, as well as the appropriate required signatures.

Bids were received for the site work for the Tennis Center in Mazarick Park on May 19, 2022, as follows:

BIDDERS	TOTAL COST
Mohammad Construction, LLC	\$3,844,196
Cooper Tacia General Contractors	\$4,001,557

Issues/Analysis:

There were no bids received for March 10, 2022 bid due date for the site work, so the construction of the tennis and pickleball courts were separated out and the project was put back out to bid on April 12, 2022, with bids due on May 19, 2022.

Budget Impact:

There is no impact to the General Fund as the project is to be funded through Parks and Recreation bond funds. City Council approved a total budget of \$6,000,000 for the tennis center.

Options:

1. Award and authorize the City Manager to execute a contract with the apparent lowest responsive, responsible bidder, Mohammad Construction, LLC, in the total amount of \$3,844,196.
2. Do not authorize the City Manager to execute the contract and provide further direction to staff.

Recommended Action:

Staff recommends that Council move to approve the contract award authorizing the City Manager to execute the contract with the lowest responsive, responsible bidder, Mohammad Construction, LLC, in the total amount of \$3,844,196.

Attachments:

Tennis Center Site Work Certified Bid Tabulation

Certified Bid Tabulation for Mazarick Park Tennis Center
Fayetteville, North Carolina
CRA Project No. 2102
Bids Received: May 19, 2022

REBID
Original Date: March 11, 2002

Single-Prime General Contractors	Lic. #	Bid Bond	MBE	Add. 1-3 Ack'd.	Base Bid	Alternate #1 2" Conduit	Alternate #2 Sod	Alternate #3 Concrete Stain
Alpha Builders and Consultants								
Cooper Tacia General Contractors	2705180861	■	■	■	\$3,847,000	\$19,557	\$135,000	\$0
Skane Electric, LLC								
T. A. Loving Co.								
Mohammad Construction, LLC	87476	■	■	■	\$3,770,000	\$1,939	\$57,487	\$14,770

Bids as shown above, received at 2:00 pm, Thursday, May 19, 2022, have been checked, validated and are hereby certified as correct.

Kenneth E. Redfoot, AIA, LEED AP
CRA Associates, Inc., President





City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-2715

Agenda Date: 6/13/2022

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 7.05

TO: Mayor and Members of City Council

THRU: Telly C. Whitfield, Ph.D. - Assistant City Manager

FROM: Christopher Cauley, MPA - Economic & Community Development
Director
Kelly Olivera - Budget & Evaluation Director

DATE: June 13, 2022

RE:

Adoption of Special Revenue Fund Project Ordinance 2022-14 for a North Carolina Department of Commerce Rural Economic Development Grant for ChenMed, LLC

COUNCIL DISTRICT(S):

District 5

Relationship To Strategic Plan:

Strategic Operating Plan FY 2022- 2026

Goal II: Responsive City Government Supporting a Diverse and Viable Economy

- 2.2: To invest in community places to ensure revitalization and increase quality of life

Goal VI: Collaborative citizen and Business Engagement

- 6.2: To ensure trust and confidence in City government through transparency and high-quality customer service
- 6.3: To inform and educate about local government by enhancing public outreach and increasing community dialog, collaboration, and empowerment

Executive Summary:

The City has been awarded a \$300,000 Rural Economic Development Grant from the North Carolina Department of Commerce (NCDOC) for a Building Reuse grant for ChenMed, LLC. The Fayetteville-Cumberland Economic Development Corporation

(FCEDC), in partnership with the Economic and Community Development Department (ECD), is assisting ChenMed, LLC with funding for the substantial rehabilitation of an existing commercial facility. The company will undertake substantial renovations of its property at 4101 Raeford Road, and in turn, guarantee the creation of 30 full-time jobs. The grant requires that the City provide a 5% or \$15,000 cash match for the project. Special Revenue Fund Project Ordinance 2022-14 will appropriate \$300,000 of grant proceeds and the City's \$15,000 match for the project.

Background:

The Building Reuse Program, under the Rural Grants/Programs Section of the North Carolina Department of Commerce, provides grants to local governments. Three categories of funding are available for 1) the renovation of vacant buildings, 2) the renovation or expansion of a building occupied by an existing North Carolina company wishing to expand in their current location and 3) the renovation, expansion or construction of health care entities that will lead to the creation of new, full-time jobs. The amount of state funding approved in the grant is \$300,000 based upon the number of jobs that will be created in the specified timeframe of the grant. At the time of the application for the grant, it was projected that total investment by ChenMed, LLC in the rehabilitation project would reach \$1,482,500.

The program delivers the funding to the recipient in the form of a forgivable loan. The ChenMed, LLC project will be required to create 30 full-time jobs, and maintain them in existence for six consecutive months prior to the termination date of the agreement with NCDOC. If the terms of the agreement are not met, the funding must be repaid by the recipient to the City, and subsequently back to the grantor agency.

Issues/Analysis:

Documents required to move this agreement forward include the Grant Agreement between the City and the NCDOC, Loan Agreement, and Legally Binding Commitment between the City and ChenMed, LLC. The company will also be required to execute a promissory note and deed of trust on the property to secure the City's position.

Budget Impact:

The City's contribution for this project is \$15,000, which will be provided by a General Fund transfer. There is sufficient funding available in the ECD general fund budget for the fiscal year 2022 to accommodate this grant match.

Options:

- 1) Adopt Special Revenue Fund Project Ordinance 2022-14, and authorize the City Manager to execute the required documents to accept the grant and execute the agreements.
- 2) Do not adopt Special Revenue Fund Project Ordinance 2022-14 and provide additional direction to staff.

Recommended Action:

Staff recommends that the City Council move to adopt Special Revenue Fund Project Ordinance 2022-14 and to authorize the City Manager to execute appropriate documents to accept the grant and execute the agreement with ChenMed, LLC.

Attachments:

- Special Revenue Project Ordinance 2022-014
- ChenMed, LLC - Grant Agreement
- ChenMed, LLC - Reuse Application

SPECIAL REVENUE FUND PROJECT ORDINANCE
ORD 2022-14

BE IT ORDAINED by the City Council of the City of Fayetteville, North Carolina, that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following special revenue project ordinance is hereby adopted:

- Section 1. The project authorized is to fund a forgivable loan to ChenMed, LLC for the renovation of a building at 4101 Raeford Road, as funded under a Building Reuse Program grant from the NC Department of Commerce, Rural Economic Development Division.
- Section 2. The project director is hereby directed to proceed with the project within the terms of the various contract agreements executed with the Federal and State governments and within the funds appropriated herein.
- Section 3. The following revenues are anticipated to be available to the City to complete the project:

North Carolina Department of Commerce, Rural Economic Development Division	\$ 300,000
Local Match - General Fund Transfer	15,000
Local Match - In-kind Expenditures, ChenMed, LLC	285,000
	<u>\$ 600,000</u>

- Section 4. The following amounts are appropriated for the project:

Project Expenditures	<u>\$ 600,000</u>
----------------------	-------------------

- Section 5. Copies of this special revenue project ordinance shall be made available to the budget officer and the finance officer for direction in carrying out this project.
- Section 6. The City Manager is hereby authorized and directed to take such action as he may deem necessary or appropriate to execute this ordinance.

Adopted this 13th day of June, 2022.



The Rural Economic Development Division, as authorized under N.C.G.S. 143B-472.127, provides grants and loans to local government units to support economic development activity that will lead to the creation of new, full-time jobs. The program gives priority to projects located in the 80 most distressed counties in the state; and resident companies as defined in N.C.G.S. 143B-472 (a) 4.

PROGRAM CATEGORIES

Rural Building Reuse—Three categories of funding are available for 1) the renovation of vacant buildings, 2) the renovation or expansion of a building occupied by an existing North Carolina company wishing to expand in their current location and 3) the renovation, expansion or construction of health care facilities that will lead to the direct creation of new, full-time jobs.

Rural Infrastructure—Funding is available for publicly-owned infrastructure including water, sewer, electric, broadband, rail, and road improvements that will lead to the direct creation of new, full-time jobs.

HOW TO APPLY

Funding Availability and Target Industry Projects

The potential funding available for each project will be assessed through analysis of the project and will be based upon the project's location, the quantity and quality of jobs committed, the overall economic impact of the project, and at the discretion of the Rural Infrastructure Authority.

Projects that meet all the criteria below may receive the highest priority consideration:

- Located in a Tier 1 or Tier 2 county,*
- Meet or exceed the county average annual wage,*
- Identified as a Target Industry (see table below),
- Offer at least 50% employer-paid health insurance
- Will create a significant number of new, full-time jobs

*Check County Tier Designations and County Average Private Sector Wages at: <http://www.nccommerce.com/research-publications/incentive-reports/county-tier-designations>

Target industries are identified in the table below. The first step in assisting target industry projects begins with the developers at the Economic Development Partnership of North Carolina (EDPNC). EDPNC Representatives will guide the local government and business through the initial information gathering phase of the project and EDPNC will refer the project to Commerce. Applicants may find more information about the EDPNC at www.edpnc.com.

Target Industries
Aerospace/Aviation/Defense
Automotive/Truck/Heavy Equipment
Agriculture/Forestry/Food
Biotech/Life Sciences
Business and Financial Services
Energy
Information Technology
Manufacturing (Chemical/Furniture/Metals/Plastics/Textiles)
Other Headquarters

Conference Call

The application process requires a pre-application conference call. For a target industry projects, the conference call will be conducted after the project's referral to Commerce is complete.

- To request a pre-application conference call, submit pages 6-10 of this application package along with at least two proposed dates/times for the call to the appropriate program manager.
- The local government, business owner, and property owner (Building Reuse) are required to be on the call. Other project partners may also participate.
- Once the conference call is complete, eligible applicants should submit the full application package—pages 6-10 of this including any revisions discussed in the pre-application conference call, along with the documents requested in Tabs 1-5 on pages 4-5 of this application package.

ELIGIBLE APPLICANTS

- **Rural Building Reuse**—Eligible applicants are units of local government located in Tier 1 or Tier 2 counties, and rural census tracts in Tier 3 counties. As authorized in N.C.G.S. 143B-472.127(a)(2), a rural census tract[†] is an area having a population density of less than 500 people per square mile in accordance with the most recent decennial federal census.
- **Rural Infrastructure**—Eligible applicants are units of local government with priority given to the Tier 1 and Tier 2 counties.

[†]Check census tracts at: <http://ncommerce.maps.arcgis.com/apps/webappviewer/index.html?id=5863f411469f4c08a40edded88b42167>

BUILDING REUSE ELIGIBLE PROJECTS AND EXPENSES

Vacant Building Category

- renovation of buildings that have been vacant for at least three months prior to application deadline
- initial upfit of a shell building is eligible if the building is at least 5 years old and has never been occupied
- only renovations within the existing footprint are eligible

Existing Business Building Category

- buildings occupied for at least 12 months by one of a business identified as a target industry (see table on page 1)
- jobs are required to meet the county wage standard and provide 50% paid health insurance
- renovation within the existing footprint and connected additions are eligible

Rural Health Category

- new construction, renovation, or expansion of health care facilities
- NC licensure required for participating health care companies

Eligible Expenses – Building Reuse, All Categories

- improvements to real property, including, but not limited to: materials and labor to install HVAC, electrical, plumbing, fire alarm/suppression system, roofing, flooring, carpentry, drywall, paint, etc.
- a company owned or operated by any project partner may not be used as a contractor for the renovation project unless the company holds a valid NC General Contractors license. A copy of the company's NC General Contractor's license must be included in Tab 3 of the application materials

Ineligible Expenses – Building Reuse, All Categories

- the following are examples of prohibited expenses and may not be submitted for reimbursement or to meet the matching funds requirement: building purchase, design costs, engineering costs, permit fees, surveys, legal fees, machinery & equipment, cranes, security, telephone, and computer hardware and software, solar panels, signage, landscaping, silo and other ancillary structures, furnishings, paving, fencing, kitchen equipment, and refrigeration equipment. This list is not comprehensive and specific items of concern should be discussed with program staff.
- renovations for housing or government uses are not eligible

INFRASTRUCTURE ELIGIBLE PROJECTS AND EXPENSES

- construct public infrastructure improvements
- upgrade or repair of public drinking water or wastewater treatment plants
- upgrade, extensions, or repair of public water or sewer lines
- publicly owned natural gas lines (requires an executed Pipeline Construction, Operating and Resale Agreement)
- installation or extension of public broadband infrastructure
- construction of publicly owned access roads not funded or owned by the Department of Transportation
- construction of public rail spur improvements

Eligible Expenses – Infrastructure

- eligible expenses include planning, materials, labor, and administration to complete public infrastructure improvements

Ineligible Expenses – Infrastructure

- privately owned infrastructure improvements
- projects that address building construction
- land acquisition costs or fees with the exception those associated with public easements for the project

JOB CREATION REQUIREMENTS

- Applicants must show that the improvements will result in the creation of new, full-time jobs in the private sector within 18 months of the grant award. Part-time, Full-Time Equivalents (FTE) positions, or contract and consulting jobs are ineligible.
- Each position must be filled with one full-time employee. Full-time employment is defined as one person working at least 35 hours per week, whose wages are subject to withholding, and who is employed in a permanent position.
- Priority will be given to projects that offer higher salaries/wages and provide at least 50% employer-paid health benefits to employees.
- The company must pay North Carolina Unemployment Insurance on each employee for whom a job is committed.
- The company will be expected to maintain all existing full-time jobs in North Carolina reported at the time of application (baseline) plus create the new, full-time jobs committed.
- The baseline will be established using the most recently filed NCUI 101 Form filed with the NC Department of Commerce Division of Employment Security at the time of application submittal.
- To meet the terms of the grant the company must maintain the baseline number plus the new, full-time jobs concurrently for at least six consecutive months.
- All participating companies must agree to provide the local government and the Department of Commerce access to company employment records necessary to verify the creation of new jobs.

LOCAL GOVERNMENT REQUIREMENTS & LIABILITIES

- The local government will coordinate and oversee all aspects of the project, including the application process, contracting process, reporting requirements, payments, job verification, and loan repayment if required.
- The local government is required to analyze the participating company's financial and organizational strength regarding its ability to successfully meet the terms of the job creation and maintenance requirements, and the ability to meet the potential for repayment of loan funds.
- In the event the company defaults on the job commitment, the local government is required to repay the loan to Commerce irrespective of whether the funds are collected from the property/business owner.
- When the improvements are owned by the local government, state regulations regarding procurement, including N.C.G.S.14-234 are required.
- Local governments are subject to state audit and reporting requirements.

MATCH REQUIREMENTS

- A cash match equivalent to at least 5% of the grant amount is required for all projects.
- The cash match shall come from local resources and may not be derived from other State or federal grant funds.
- Costs that are ineligible for grant funding may not be considered for the match. The only exception is paid grant administration when paid to an organization separate from the applicant organization.
- In-kind match is not allowable.
- In addition to the 5% match described above, the building reuse program requires a dollar for dollar match up to the total grant amount.

REPAYMENT REQUIREMENTS

- If job creation goals are not met, a pro-rata share of funds for each job not created must be repaid to the Department of Commerce by the local government.
- For Building Reuse projects, the local government will secure the funds through a Legally Binding Commitment and Promissory Note executed between the local government and the property owner.
- For Infrastructure projects, the local government will secure the funds through a Legally Binding Commitment executed between the local government and the company owner.
- Repayment forgiveness is offered upon the successful verification of the required job creation by the Department of Commerce.

APPLICATION CHECKLIST

Submit a complete application package including the application form and the documents listed within the checklist below.
Provide one tabbed and bound copy along with two tabbed, non-bound copies of the materials.

Tab 1

- ☐ **Application Form.** The form should be signed by local government chief elected official.
- ☐ **Local Government Resolution.** Submit a signed resolution adopted by the governing board in support of application submission to the Department of Commerce. The resolution must state the purpose of the project, indicate the local government's support for the project, and commitment to provide a cash match of at least 5% of the grant request amount toward the project.

Tab 2

- ☐ **Job Commitment Letters.** Submit a signed letter of job commitment from each company that will participate in the project. The letter should include (1) the number of existing full-time and part-time employees (listed separately) at all company locations in North Carolina, and (2) the number of new, full-time jobs to be created by the company and maintained concurrently for six-consecutive months within two years of the grant award date. The letter must be printed on the company's letterhead and signed by the company's Chief Executive Officer, Chief Financial Officer or President.
- ☐ **Employer's Quarterly Tax and Wage Report—NCUI 101 Form(s).** Submit a copy of the of the *Employer's Quarterly Tax and Wage Report* (NCUI 101 form) for each company that will commit jobs to the project. The form must have been filed with the North Carolina Department of Commerce Division of Employment Security for the quarter ending closest to the application deadline. The entire Social Security Number for each person should be redacted (blacked out). The name and wages must remain readable. Any discrepancy in the number of employees listed on the NCUI 101 form(s) for the last month of the quarter and the number reported in the Job Commitment letter must be thoroughly explained in the narrative section of this application.
NOTE: If any company has more than one location in North Carolina, a NCUI-101 multi-site report or forms for each company location must be provided.
- ☐ **Business Financial Documents.** Submit a copy of the most recent three years of certified or CPA prepared financial statements that include Balance Sheet, Income Statement and Statement of Cash Flows for each non-start-up company participating in the project.

Tab 3 – Building Reuse Projects Only

- ☐ **Line Item Budget.** Submit a line item budget that lists the proposed renovation/construction expenses and the cost for each expense (example expenses include, but are not limited to: HVAC, electrical, plumbing, roofing, flooring, painting, etc.).
- ☐ **Cost Estimates.** Submit cost estimates for each expense identified in the line item budget. The estimates must be prepared by a contractor, sub-contractor or architect and provided on that company's letterhead. A company owned or operated by any project partner may not provide estimates or be used as a contractor for the renovation project unless the company holds a valid NC General Contractors license. A copy of the company's valid NC General Contractor's license must be included in this section of the application materials.
- ☐ **Site Control Documents.** Submit a copy of the property deed. Also, if the job creating company does not own the building, submit a copy of an executed lease agreement. If the property ownership will change, provide a detailed explanation of the real estate transaction that will occur with the legal names of the seller and buyer and date that the sale will close. Once the transaction is complete, a copy of the new deed must be submitted. The project will not be placed under contract until all correct, complete site control documents are received.

Tab 3 – Infrastructure Projects Only

- ☐ **Preliminary Engineering Report (PER).** The PER should detail the proposed improvements and the current infrastructure that supports the proposed improvements. The PER should be sealed and dated and include an opinion of cost that is not more than six months old at the time of the application. The PER should include a map that shows the location of the business(es) as well as the location of the current infrastructure serving the project area and the proposed infrastructure improvements that will be supported through the project assistance.
- ☐ **Line Item Budget.** Submit a line item budget that lists the expenses associated with the proposed infrastructure improvements and the cost for each expense.
- ☐ **Proof of Funding Availability.** Submit a signed letter of funding availability from each source of funds committed for the project. The total of all funding commitment letters must meet or exceed the total project cost. If loan or other grant funds are pledged, a loan/grant commitment letter from each source of funds must be included.

Tab 4

- ☐ **Photographs.** Submit photographs representative of the proposed project. Include digital copies on a flash drive along with printed copies.

Tab 5 – Start-Up Businesses Only

- ☐ **Business Plan.** A complete and detailed Business Plan that includes three years of financial projections (including balance sheets, cash flow statements and income statements) along with a Source and Use of Funds statement, with detailed assumptions upon which the financial projections were built. The Business Plan must also include a marketing plan that details what the company plans to sell and how they will market the product or service. The Business Plan should also provide a thorough description of the management team and the members' background that support the success of the venture. A description of the company's competitors should be provided, with an explanation of how the company will garner its expected share of the market.
- ☐ **Capital Plan.** Details and evidence regarding the capital that has been or will be raised. This must include where the capital is currently on deposit and the total amount that is required to launch the business and sustain it in the early years. A letter from the depository holding the funds in escrow can serve as proof of the available capital.
 - Evidence of initial capitalization (loans, private investor commitments), as well as the ability to meet working capital needs must be provided.
 - A commitment letter from a bank for an operating line of credit needed to fund the "cash cycle" of the business and provide for unforeseen needs. In addition, the source of the funding for any machinery and equipment required for the project.
- ☐ **Articles of Incorporation.** For each start-up company submit a copy of the company's "Articles of Incorporation" filed with the NC Department of the Secretary of State.
- ☐ **Contracts with potential customers or letters of intent to buy from the company when it begins operations.**
- ☐ **Copies of the bylaws, shareholder agreement or operating agreement of the business.**
- ☐ **Copies of any certifications by regulatory bodies necessary to operate the business.**
- ☐ **An understanding with the principal owners that they may be required to sign a personal guarantee of the performance of the grant and provide complete personal financial statements for each guarantor.**

APPLICATION SUBMISSION

Applicants should submit pages 6-10 of this application package including any revisions discussed in the pre-application conference call, along with the documents requested in Tabs 1-5 on pages 4-5 of this application package. Full applications should be received at Commerce by 5:00 p.m. on the selected full-application deadline. The full list of application deadlines can be found on the Commerce website at <http://www.nccommerce.com/rgp>.

Mail Application Materials:

Building Reuse Projects-Hazel Edmond or Infrastructure Projects-Melody Adams
North Carolina Department of Commerce
Rural Economic Development Division
4346 Mail Service Center (US Mail)
301 North Wilmington Street (FedEx, UPS)

Raleigh, NC 27699-4346



Application # _____
(For internal use only)

Vacant Building ☐ Existing Business Building ☐ Rural Health Care ☒ Rural Infrastructure ☐

Applicant Information

Local Government

Name: City of Fayetteville County: Cumberland Tier #: 1

Mailing Address: 433 Hay Street City: Fayetteville State: NC Zip: 28301

Primary Telephone: 910-433-1329 Federal Tax ID #: 56-600-1226

Website: https://www.fayettevillenc.gov

Chief Elected Official Name: Mitch Colvin Title: Mayor

Telephone: 910-433-1992 Email: mitch.colvin@ci.fay.nc.gov

Manager/Administrator Name: Douglas Hewitt Title: City Manager

Telephone: 910-433-1990 Email: dhewitt@ci.fay.nc.gov

Local Government Project Manager (If different than above):

Name: Robert Van Geons Title: FCEDC President and CEO

Telephone(s): 910-500-6464 Email: robert@fayedc.com

Grant Administrator Company Name (If applicable): _____

Mailing Address: _____ City: _____ State: _____ Zip: _____

Name: _____ Title: _____

Telephone(s): _____ Federal Tax ID #: _____

Website: _____ Email: _____

Project Information

Project Title: ChenMed/Dedicated Medical Center Grant Amount Requested (\$): 300,000

Number of Businesses to be Assisted: 1 Number of Jobs to be Created: 30

Project Description (provide a summary of the project below):

ChenMed is locating a primary care medical center, serving senior adults who participate in a Medicare Advantage insurance plan, in Fayetteville, NC at 4101 Raeford Road. ChenMed and its associated brands - Dedicated and JenCare - is the largest family-owned, physician-led primary care provider serving the neediest and most underserved populations in the United States. Our company currently has more than 4,300 team members serving patients in nearly 100 centers in 12 states. We operate under ChenMed, Dedicated and JenCare medical center brands. We offer VIP, concierge-style medical services to many of the most health-vulnerable, low-income and underserved patients in any community. Our primary care physician to patient ratio is no more than 450 patients per doctor, and all of our patients are given their doctor's mobile phone number. Additionally, we see our patients on average once per month with a focus on preventative medicine and chronic illness management. Our high-touch patient care model has resulted in lowering ER visits and hospitalizations by between 35% and 50% and we have additional data demonstrating dramatic improvements in health outcomes for our patients. ChenMed/Dedicated believes that our medical centers should be beautiful and welcoming to our patients. We renovate existing facilities to the highest construction and design standards to create both functional and aesthetically pleasing medical centers. It is important that we are partners in every sense of the word with communities where we locate. Our goal is to be a local resource for community leaders on eldercare issues. We believe our centers will be an asset in each community as a leader in addressing health equity, as an asset towards redevelopment efforts and as a creator of high-wage full-time jobs.



Has any project participant ever benefitted from a grant with
the Department of Commerce?

Yes ☐

No ☒

If Yes, please explain 1

Rural Building Reuse and Infrastructure Application Form

- Ohio
- Pennsylvania
- Tennessee
- Texas
- Virginia

3 Provide a detailed description of the construction/renovation project.

Complete renovation of an existing building located at 4101 Raeford Ste, Fayetteville, NC 28304, with a square footage of 9,500 sq/ft. We are doing a complete renovation on the outside and inside of the space, replace the interior framing and new drywall, replace storefront and windows, replace lightning and electrical, replacing the plumbing inside, complete change in acoustical ceiling and facade, new cabinetry and countertops, replacing all doors and windows, replacing the floor, new painting on the inside and outside, and complete renovated building to service our patients in the area.

4 Provide description of the project property/building and its significance.

The property is located at 4101 Raeford Ste, Fayetteville, NC 28304, just off the corner of Ireland Drive and 401 Bus on Raeford Road. This is a building located at a shopping center, with a current space of 9,500 square feet. This building was a former rehabilitation clinic and currently has 310 parking spaces, excellent digital signage and also other stores that serve the community.

Rural Building Reuse and Infrastructure
Application Form

Property Owner Information

Property Owner Legal Name: New Lowes Center, LLC

Property Owner Representative Name (First and Last): Tommy Bradford
(Authorized to sign loan documents for Building Reuse)

Property Owner Rep.
Mailing Address: PO Box 87555 City: Fayetteville State: NC Zip: 28304

Property Owner Rep.
Phone: 910-308-9500 Email: graylyn411@aol.com

Property Information

Property Address
for Project: 4101 Raeford Ste City: Fayetteville State: NC Zip: 28304

Year Building Was Constructed: 2005 Number of Months
Building Vacant: 12 months Square Footage
of Building: 9,500

Is the property listed on the National Register of Historic Places? ☐ Yes ☒ No

If you are unsure whether the property is listed on the National Register of Historic Places, you can check the address by accessing the following website: <http://gis.ncdcr.gov/hpweb/>. If the property is listed, the provisions of NCGS 121-12(a) will be required.

Company Information

BUSINESS Name: ChenMed LLC Federal ID Tax #: 46-3929096

Business Representative Name: Lisa Ard NAICS Code: 621111

Business Mailing Address: 1395 NW167th St. City: Miami Gardens State: FL Zip: 33169

Business Representative
Phone: 850-284-5165 Business
Representative Email: lisa.ard@chenmed.com

Check ONE box below for the Industry Type of the Business:

- ☐ Data & Call Services ☒ Healthcare ☐ Manufacturing ☐ Processing ☐ Warehouse/Distribution
☐ Professional ☐ Service ☐ Restaurant ☐ Retail ☐ Non-Profit

Is the proposed Business a startup? Yes ☐ No ☒ If no, how many years in business in NC? 0

Number of existing part-time employees in NC: 0 Will the business provide health benefits? Yes ☒ No ☐

Number of existing full-time employees in NC: 0 What % of health benefits are employer paid? 60 - 70, dependent on position %

Number of new full-time jobs committed: 30 Average annual wage of the new jobs committed? \$90,339

If more than one company will participate in the project, please copy this page and complete for each additional company.

Average Annual Wage Computation Work Sheet

Number of New Employees	Position Type	Gross Annual Wages
1	Administrative Assistant	\$55,000
1	Associate Field Support Technician	\$35,000
3	Care Coordinator	\$44,418
3	Care Facilitator	\$33,647
1	Care Supervisor	\$60,000
1	Center Manager	\$120,000
1	Center Medical Director	\$324,298
1	Center Operations Manager/Center Manager in Training	\$100,000
1	Echo/Ultrasound Technologist	\$89,440
1	Front Desk Team Lead	\$37,386
1	Housekeeper	\$31,467
7	Memberships Growth Consultant	\$40,000
1	Nurse Case Manager	\$96,471
1	Nurse Case Manager Lead	\$105,154
1	Cardiologist	\$350,241
1	Podiatrist	\$350,241
1	Pharmacy/Medication Tech	\$37,386
1	Primary Care Physician	\$278,033
1	Referral Manager	\$68,343
1	X-Ray Technician	\$57,523

Total 30 (A)

Total Annual Wages
Divide Total Wages (B) by the Total Number of New Employees (A)
for the Average Annual Wage

Percent Employer-Paid Health Insurance

\$2,710,178	(B)
\$90.339	(B/A)
60% - 70% - dependent on position	%

Company Certifications

- 1 **Overdue Tax Debts** Does the Company or the Related Member(s) currently have any overdue tax debts with any City, Town or County in, or with the State of North Carolina?
☐ Yes ☒ No
- 2 **Occupational Safety and Health Act Violations** Does the Company, or the Related Member(s) have any citation under the Occupational Safety and Health Act that have become a final order within the past three years for willful serious violations or for failing to abate serious violations?
☐ Yes ☒ No
- 3 **Loan Defaults** Is the Company, or the Related Member(s) currently in default on any loan or grant previously made by the State of North Carolina?
☐ Yes ☒ No
- 4 **Incentive History** Has the Company, or Related Member(s) ever defaulted on an economic development grant or incentive or been sued by a grantor with respect to an economic development grant or incentive?
☐ Yes ☒ No
- 5 **Creditor Losses, Litigation, Government Investigations** Has any member of management or any principal of the Company, or the Related Member(s) been involved in a financial reorganization, a bankruptcy, or other situation that led to losses by creditors or bond buyers, investor lawsuits, or government investigation alleging fraud or impropriety?
☐ Yes ☒ No
- 6 **Pending or Threatened Litigation** Is the Company, or Related Member(s) subject to any claim, suit, action, proceeding, or government investigation that is pending or threatened that, individually or in the aggregate, would reasonably be expected to have a material adverse effect on the proposed grantee's finances or operations or the ability to conduct the proposed project, or that would reasonably be expected to impact the Rural Infrastructure Authority's decision to award a grant?

**Rural Building Reuse and Infrastructure
Application Form**

☐ Yes ☒ No

If you answered YES to any of the questions above, please provide a detailed description:

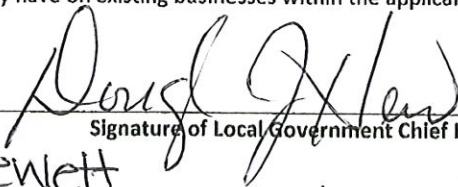
If more than one company will participate in the project, please copy this page and complete for each additional company.

Rural Building Reuse and Infrastructure
Application Form

Local Government Certifications

The attached statements and exhibits are hereby made part of this application, and the undersigned representative of the applicant certifies that the information in this application and the attached statements and exhibits are true, correct, and complete to the best of the signatory's knowledge and belief. The signatory further certifies:

- 1 as Authorized Representative, the signatory has been authorized to file this application by formal action of the governing body;
- 2 that the governing body or agrees that if a grant is awarded, the applicant will provide proper and timely submittal of all documentation requested by the Grantor Agency;
- 3 that the applicant has substantially complied with or will comply with all federal, state, and local laws, rules, regulations, and ordinances as applicable to this project;
- 4 that the applicant has analyzed the participating companies' financial and organizational strength regarding the ability to successfully meet the terms of the job creation and maintenance requirements, carry out the renovation project, as well as, the ability to meet the potential for repayment of loan funds; and
- 5 that the project is in accordance with the applicant's economic development plan and that the applicant has investigated any impact that the project may have on existing businesses within the applicant's jurisdiction.



Signature of Local Government Chief Elected Official

Douglas J. Hewlett

Typed Name

City Manager

Typed Title

04/28/22

Date



Signature of Property Owner Representative

Thomas L Bradford

Typed Name

u/m

New Lowes Center, LLC

Typed Title

3/9/2022

Date



Signature of Company CEO/CFO/COO/President

Jason Barker

Typed Name

Chief Operating Officer

Typed Title

2/16/2022

Date

RESOLUTION AUTHORIZING THE CITY MANAGER AND MAYOR OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA TO APPLY FOR FUNDING THROUGH THE NORTH CAROLINA DEPARTMENT OF COMMERCE BUILDING REUSE PROGRAM FOR THE DEDICATED NORTH CAROLINA HOLDING, LLC BUILDING REUSE PROJECT

WHEREAS, The North Carolina General Assembly has authorized funds to stimulate economic development and job creation in distressed areas through constructing critical water and wastewater facilities, addressing technology needs, renovating vacant buildings, and implementing research and demonstration projects; and

WHEREAS, The Building Reuse and Restoration Grants Program is designed to spur economic activity and job creation by assisting in the productive reuse of vacant or existing buildings; and

WHEREAS, the City has a need for and intends to assist in the renovation of an existing building located at 4101 Raeford RD., Fayetteville, NC; and

WHEREAS, the City intends to request funding assistance in the amount of \$300,000 from the North Carolina Department of Commerce from its Building Reuse Program for the project that will create 30 full-time jobs.

NOW, THEREFORE, be it resolved by the City Council for the City of Fayetteville that;

The City is in full support of the application and the project, if funding is received. The City will arrange for a local cash match, not to exceed \$15,000; and

The City of Fayetteville has substantially complied or will substantially comply with all State and local laws, rules, regulations, and ordinances applicable to the project and to the grants pertaining thereto.

NOW, THEREFORE, be it resolved by the City Council for the City of Fayetteville is hereby authorizing the City Manager and Mayor to authorize and execute all necessary documents to apply for the Building Reuse Grant described above.

Adopted this the 28th day of March, 2022.



ATTEST:


Pamela Megill, City Clerk

CITY OF FAYETTEVILLE

By: 
Mitch Colvin, Mayor



**NC DEPARTMENT
of COMMERCE**
RURAL ECONOMIC
DEVELOPMENT

Roy Cooper
GOVERNOR

Machelle Baker Sanders
SECRETARY

Kenny Flowers
ASSISTANT SECRETARY

April 28, 2022

The Honorable Mitch Colvin
Mayor
City of Fayetteville
433 Hay Street
Fayetteville, NC 28301-5537

Re: Contract Agreement for Grant Number 2022-095-3201-2587; Your Signature and Reply is Requested
Project Title: "ChenMed, LLC"

Dear Mayor Colvin:

Enclosed for your review and signature is a complete set of contract documents required to finalize the grant award from the North Carolina Rural Infrastructure Authority. Below is a description of the documents enclosed along with an explanation of the signatures required for each document.

Document:	Document Description:	Signed By:
Grant Agreement	Contract: Outlines the terms of Grant Agreement between the Department of Commerce and the Unit of Local Government.	Highest Elected Official - Unit of Local Government
Exhibit A	Scope of Services: Outlines the scope of the renovation/construction project.	No Signature Required
Exhibit B	Payment Schedule: Outlines the process for the Unit of Local Government to request reimbursements from Department of Commerce.	No Signature Required
Exhibit C	Reporting Schedule: Outlines the schedule of reports that are due from the Unit of Local Government to the Department of Commerce and when they are due.	No Signature Required
Exhibit D	Closeout/Job Requirements: Outlines the process for the Unit of Local Government to report the creation and maintenance of jobs to the Department of Commerce.	No Signature Required
Exhibit E	Legally Binding Commitment (LBC): Outlines terms and conditions of the Loan.	Highest Elected Official - Unit of Local Government and Legal Property Owner listed on the Deed.
Exhibit F	Promissory Note: Defines the repayment terms of the Loan in the event of default.	Legal Property Owner listed on the Deed.
Exhibit G	Limited Waiver of Confidentiality: Contains employment information reported to the Department of Commerce's Division of Employment Security.	Each Business involved in the project.
Exhibit H	Deed of Trust Documentation	Highest Elected Official - Unit of Local Government

Execute these documents, scan a quality copy and return to my attention at rgpreports@nccommerce.com. If you have any questions or if I can be of any assistance, please contact me at bethany.davenport@nccommerce.com.

Sincerely,

Bethany P. Davenport
Business & Fiscal Compliance Officer

Enclosure

The North Carolina Department of Commerce (“Commerce”), an agency of the State of North Carolina (“State”), enters into this Rural Economic Development Grant Agreement (“Grant Agreement”) with the **City of Fayetteville** (the “Governmental Unit” and, together with Commerce, the “Parties”).

WHEREAS, the North Carolina General Assembly (“General Assembly”) has determined that it is the policy of the State to stimulate economic activity and to create new jobs for citizens of the State by providing matching grants or loans to specific local governmental units so as to productively reuse certain buildings and properties or expand rural health care facilities subject to the requirements of N.C.G.S. §§143B-472.127 and .128; and

WHEREAS, under N.C.G.S. §143B-472.128, the General Assembly created the North Carolina Rural Infrastructure Authority (“Rural Authority”) to review applications for and, where appropriate, authorize such matching grants or loans, and, under N.C.G.S. §§143B-472.126 and .127, the General Assembly authorized Commerce to administer such grants or loans; and

WHEREAS, pursuant to N.C.G.S. §§143B-472.127 and .128, and based on the terms, conditions and representations in this Grant Agreement’s Exhibits A (Scope of Project), Exhibit B (Payment Schedule), Exhibit C (Reporting Schedule), Exhibit D (Closeout Schedule/Job Requirements), Exhibit E (LBC), Exhibit F (Promissory Note) and Exhibit G (Waiver of Confidentiality (“Waiver”)), the Rural Authority has approved a grant (the “Grant”) to the Governmental Unit; and

WHEREAS, without limitation, the Rural Authority awarded the Grant: (1) based on the application filed by the Governmental Unit and any subsequent materials supporting the application that have been approved of by Commerce in writing, all of which are incorporated by reference herein; (2) based on the representation in the application that **4104 Raeford Road, LLC** (the “Owner”) owns certain real property located at:

4101 Raeford St
Fayetteville, NC 28304

in **Cumberland** County, North Carolina (the “Property”); (3) based on Commerce’s Grant requirements and guidelines, which are incorporated herein and which may be amended, modified or supplemented and applied accordingly to this Grant Agreement by Commerce in its sole discretion; and for (4) the creation and retention of certain jobs in the course of completing certain renovations/construction work at the Property (altogether, the “Project,” as summarized in Exhibit A to this Grant Agreement).

NOW, THEREFORE, in consideration of the mutual promises and such other valuable consideration as set out herein, the Parties mutually agree to the following terms and conditions:

1. Scope of Program/Agreements to be Executed.

- (a). As conditions of the Grant Agreement:
 - i. The highest elected official of the Governmental Unit shall execute two originals of this Grant Agreement in its exact form (unless Commerce approves of a change to its terms in writing) and shall return one of them to Commerce;
 - ii. The Governmental Unit shall ensure that its highest elected official and a duly authorized representative of the Owner execute two originals of the Rural Economic Development Loan Agreement and Legally Binding Commitment (“LBC”) in its exact form (unless Commerce approves of a change to its terms in writing) and shall return one such original to Commerce with the one executed original of the Grant Agreement;
 - iii. The Governmental Unit shall ensure with the Owner that every individual or entity that has any ownership interest in the real property which is the subject of the Project executes two originals of the Promissory Note attached as Exhibit F in its exact form and shall return one such original to Commerce with the one executed originals of the Grant Agreement; and
 - iv. Exhibit A refers to the entity (or entities, as applicable) required to create and maintain certain full-time new jobs (“New Jobs”) to complete the Project as the “Company,” the “Employer” and the “Business” (together and hereinafter, the “Business”). The Governmental Unit shall ensure that an authorized representative of each Business executes a Waiver of Confidentiality (“Waiver”), attached as Exhibit G, and shall return the original of any such Waiver to Commerce with the executed originals of the Grant Agreement. The Governmental Unit shall also ensure that any additional Business which becomes involved in the Project after the Grant Agreement is finalized executes a Waiver upon its involvement, the original of which the Governmental Unit shall promptly forward to Commerce.
- (b). The Governmental Unit shall provide Commerce with any information obtained pursuant to the LBC and allow Commerce to execute any rights of the Governmental Unit under the LBC, including the Governmental Unit’s rights of access, review or monitoring and Commerce’s rights as a third-party beneficiary thereunder.
- (c). The Governmental Unit shall exercise all of its rights and duties under the LBC in a prudent and timely manner to ensure the use of the Grant funds for the intended purposes and objectives and to preserve the rights of Commerce in this Grant Agreement and the LBC.
- (d). The LBC specifies how many New Jobs the Business must create and maintain in the performance of the Project and, if the Business fails to do so, those Grant funds that the Owner must repay to the Governmental Unit for return to Commerce or else repay directly to Commerce, upon request and as directed. If such New Jobs are not created or maintained, then the Governmental Unit shall return to Commerce any Grant funds it has not already disbursed to the Owner, make a timely demand for repayment from the Owner and, if such repayment is not forthcoming, initiate and fully litigate legal proceedings against the Owner to recover such repayment.

- (e). Without limitation, failure by the Governmental Unit to timely demand repayment from and, if necessary, initiate and fully litigate such legal proceedings against the Owner may affect the future consideration of the Governmental Unit for grant programs administered by Commerce. Further, and without limitation, if the Governmental Unit fails to timely initiate legal proceedings against the Owner for such repayment and Commerce elects to do so instead, the Governmental Unit is responsible and agrees to reimburse Commerce for all litigation costs and reasonable attorneys' fees that Commerce incurs in pursuing repayment.

2. Changes in the Project or Other Conditions.

- (a). A "Project Change" is any material alteration, addition, deletion or expansion of the Project, including (without limitation) material changes to construction or rehabilitation, the terms or conditions of the loan under the LBC ("Loan"), the required number of New Jobs, the matching investment in the Project, any cessation of business by the Owner or any Business and any filing of bankruptcy by the Governmental Unit, the Owner or any Business. There shall be no Project Changes unless expressly approved of by Commerce in a separate, prior written agreement stating, if applicable, the costs and schedule for completing the Project Change.

Notwithstanding the foregoing and wherever referred to in this Grant Agreement, "cessation of business," "ceasing to do business" and "ceases to do business" shall not include (1) ceasing operations to maintain, service or upgrade real or personal property of the Owner, (2) seasonal shutdowns of operations as long as such cessation do not exceed a total of four (4) weeks in any calendar year (excluding time attributable to an event of force majeure as described below) and (3) under the circumstances of for the period of time described in Paragraph 17 below.

- (b). Additionally, the Governmental Unit shall immediately notify Commerce of any change in conditions or local law, or any other event, which may significantly affect its ability to oversee, administer or perform this Grant Agreement, the LBC or the Project. In its sole and unreviewable discretion, Commerce may deem such a change in conditions, local law or other event to constitute a Project Change.

3. Term of Grant Agreement. The effective period of this Grant Agreement shall commence on **4/21/2022** ("Effective Date") and shall terminate on **4/21/2024** unless terminated on an earlier date under the terms of this Grant Agreement (either one of which dates shall constitute the "Termination Date") or unless extended for an express term in writing by the Governmental Unit.

4. Funding. The Rural Authority grants to the Governmental Unit an amount not to exceed **\$300,000.00** for expenditures directly relating to the Project. The Governmental Unit hereby represents and warrants that all Grant funds shall be utilized exclusively for the purpose of the Project and consistent with all applicable laws, rules, regulations and requirements, and that the Governmental Unit shall not make or approve of any improper expenditure of Grant funds (including Loan funds). Administrative expenses of the

Governmental Unit are not eligible for Grant funding and any such use of Grant funds will violate this Grant Agreement.

5. Independent Status of the Governmental Unit.

- (a). The Governmental Unit is an entity independent from the Rural Authority and Commerce. The Grant Agreement, the LBC, the Project and any actions taken pursuant to them shall not be deemed to create a partnership or joint venture between or among Commerce, the Rural Authority, the Governmental Unit or any third party (including, without limitation, the Owner or any Business). Nor shall the Grant Agreement, the LBC or the Project be construed to make the Governmental Unit (including its employees, agents, members or officials) or any third party (including, without limitation, the Owner or any Business) employees, agents, members or officials of Commerce or the Rural Authority. Neither the Governmental Unit nor any third party (including, without limitation, the Owner or any Business) shall have the ability to bind Commerce or the Rural Authority to any agreement for payment of goods or services or represent to any person that they have such ability.
- (b). The Governmental Unit shall be responsible for payment of all of its expenses, including rent, office expenses and all forms of compensation to employees. The Governmental Unit shall provide worker's compensation insurance to the extent required for its operations and shall accept full responsibility for payments of unemployment tax or compensation, social security, income taxes, and any other charges, taxes or payroll deductions required by law in connection with its operations, for itself and its employees who are performing work pursuant to this Grant Agreement. All expenses incurred by the Governmental Unit are its sole responsibility, and neither Commerce nor the Rural Authority shall be liable for the payment of any obligations incurred in the performance of the Project.

6. Method of Payment. Commerce shall pay the Grant funds to the Governmental Unit in accordance with the Payment Schedule attached hereto as Exhibit B after receipt of written requests for payment from the Governmental Unit certifying that the conditions for such payment under this Grant Agreement have been met and that the Governmental Unit is entitled to receive the amount so requested and any other documentation that may be required by Commerce.

7. Obligation of Funds. The Governmental Unit shall not obligate Grant funds prior to the Effective Date or subsequent to the Termination Date of this Grant Agreement. All obligations outstanding as of the Termination Date shall be liquidated within thirty days.

8. Project Records.

- (a). The Governmental Unit shall maintain full, accurate and verifiable financial records, supporting documents and all other pertinent data for the Project in such a manner as to clearly identify and document the expenditure of the State funds provided under this Grant Agreement separate from accounts for other awards, monetary contributions or other revenue sources for this Project.

- (b). The Governmental Unit shall retain all financial records, supporting documents and all other pertinent records related to the Project for a period of five (5) years from the Termination Date. In the event such records are audited, all Project records shall be retained beyond the five-year period until the audit is concluded and any and all audit findings have been resolved.

9. Monitoring, Reports and Auditing.

- (a). The Governmental Unit agrees to ensure compliance and provide its assistance with such monitoring and auditing requirements as the State may request, including following the Termination Date of this Grant Agreement. Additionally, the Governmental Unit shall regularly monitor all performance under Grant-supported activities, including activities performed by the Owner and any Business, to ensure that time schedules are being met, New Jobs are being created and maintained and other performance goals are being achieved.
- (b). The Governmental Unit shall furnish Commerce detailed written progress reports according to the time periods specified in Exhibit C or as otherwise requested by Commerce. Such reports should describe the progress made by the Governmental Unit, the Owner and any Business toward achieving the purpose(s) of the Project, including specifically the goals of New Job creation and maintenance. Such descriptions should include the successes and problems encountered during the reporting period. Failure to submit a required report by the scheduled submission date will result in the withholding of any forthcoming payment until Commerce is in receipt of the delinquent report and the report meets with Commerce's approval, in Commerce's sole discretion.
- (c). The Governmental Unit acknowledges and agrees that, with regard to the Grant funds, it will be subject to the audit and reporting requirements prescribed by N.C.G.S §159-34, Local Government Finance Act - Annual Independent Audit; rules and regulations. Such audit and reporting requirements may vary depending upon the amount and source of Grant funding received by the Governmental Unit and are subject to change from time to time.
- (d). Within thirty (30) days after the Termination Date, the Governmental Unit shall submit a final report to Commerce describing the activities and accomplishments of the Project. The final report shall include a review of performance and activities over the entire Project period. In the final report, the Governmental Unit should describe the Project, how it was implemented, to what degree the established Project objectives were met and the difficulties encountered, what the Project changed and its cost.
- (e). The Governmental Unit grants the State and any of its related agencies, commissions or departments (including, without limitation, Commerce, the North Carolina State Auditor and the North Carolina Office of State Budget and Management) and any of their authorized representatives, at all reasonable times and as often as necessary (including after the Termination Date), access to and the right to inspect, copy, monitor, and examine all of the books, papers, records and other documents relating to the Grant Agreement, the LBC or the Project. Likewise, the Governmental Unit

shall ensure that the Owner and any Business provide the same access. In addition, the Governmental Unit agrees to comply at any time, including after the Termination Date, with any requests by the State (including, without limitation, the Rural Authority or Commerce) for other financial and organizational materials to permit the State to comply with its fiscal monitoring responsibilities or to evaluate the short- and long-range impact of its programs.

10. Termination; Availability of Funds.

- (a). If the Governmental Unit fails to fulfill in a timely and proper manner its obligations or violates any of the covenants or stipulations under this Agreement, if the Owner fails to fulfill in a timely and proper manner its obligations or violates any of its covenants or stipulations under the LBC or if any Business fails to fulfill those requirements applicable to it in the LBC, the Governmental Unit agrees that Commerce has the right to terminate this Grant Agreement and/or the LBC by giving, as applicable, the Governmental Unit or the Governmental Unit and the Owner written notice specifying the Termination Date, which Commerce may determine in its sole discretion. Upon such termination, Commerce shall have no responsibility to make additional Grant payments. Upon such termination, the Governmental Unit shall not expend any Grant funds (including Loan funds) without Commerce's express written authorization and shall return all unspent Grant funds to Commerce upon demand.
- (b). The obligations of the Rural Authority and/or Commerce to pay any amounts under this Grant Agreement are contingent upon the availability and continuation of funds for such purpose. If funds for the Grant (and therefore the Loan) become unavailable, the Governmental Unit agrees that Commerce has the right to terminate this Grant Agreement and/or the LBC by giving written notice specifying the Termination Date, which Commerce shall determine in its sole discretion. Upon such termination, the State shall have no responsibility to make additional Grant payments. Further, upon such termination, the Governmental Unit shall not expend any Grant funds (including Loan funds) without Commerce's express written authorization and shall return all unspent Grant funds to Commerce upon demand.

11. Liabilities and Loss. The Governmental Unit hereby agrees to release, indemnify and hold harmless the State (including, without limitation, the Rural Authority and Commerce), and their respective members, officers, directors, employees, agents and attorneys (together, the "Indemnified Parties"), from any claims of third parties (including, without limitation, the Owner and the Business) arising out of any act or omission of the Governmental Unit or any third party (including, without limitation, the Owner and the Business) in connection with the performance of this Grant Agreement, the LBC or the Project, and for all losses arising from their implementation. Without limiting the foregoing, the Governmental Unit hereby releases the Indemnified Parties from, and agrees that such Indemnified Parties are not liable for, and agrees to indemnify and hold harmless the Indemnified Parties against, any and all liability or loss, cost or expense, including, without limitation, reasonable attorneys' fees, fines, penalties and civil judgments, resulting from or arising out of or in

connection with or pertaining to, any loss or damage to property or any injury to or death of any person occurring in connection with the Project, or resulting from any defect in the fixtures, machinery, equipment or other property used in connection with the Project or arising out of, pertaining to, or having any connection with, the Project or the financing thereof (whether arising out of acts, omissions, or negligence of the Governmental Unit or of any third party (including, without limitation, the Owner and the Business), or of any of their agents, contractors, servants, employees, licensees, lessees, or assignees), including any claims and losses accruing to or resulting from any and all subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project.

12. Governmental Unit Representations and Warranties. The Governmental Unit hereby represents and warrants that:

- (a). The execution and delivery of this Grant Agreement have been duly authorized by all necessary Governmental Unit action and are not in contravention of law or in contravention of the provisions of any indenture agreement or undertaking to which the Governmental Unit is a party or by which it is bound.
- (b). There is no action, suit proceeding, or investigation at law or in equity or before any court, public board or body pending, or to the knowledge of the Governmental Unit, threatened against or affecting it, the Owner or the Business, that could or might adversely affect the Project or any of the transactions contemplated by this Grant Agreement or the validity or enforceability of this Grant Agreement or the abilities of the Governmental Unit or the Owner to discharge their obligations under this Grant Agreement. If it is subsequently found that an action, suit, proceeding, or investigation did or could threaten or affect the development of the Project, the Governmental Unit shall be liable to Commerce for repayment of the entire amount of the Grant and this Grant Agreement may be terminated by Commerce effective upon notice.
- (c). No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Grant Agreement by the Governmental Unit or the performance of any of its obligations hereunder, or all such requisite governmental consents or approvals have been obtained. The Governmental Unit shall provide Commerce with evidence of the existence of any such necessary consents or approvals at the time of the execution of this Grant Agreement.
- (d). The Governmental Unit is solvent.
- (e). A cash match grant, loan or other funding ("Cash Match") equal to the amount of the Loan shall have been unconditionally committed to the Project. The Governmental Unit shall have procured and contributed at least five percent (5%) of this Cash Match, but no part of this 5% contribution can have derived, either directly or indirectly, from any other State or federal source. All Cash Match funds shall be utilized exclusively for the purpose of the Project, and there shall be no improper expenditures of Cash Match funds. All Cash Match funds shall be expended prior to or simultaneously with and at the same rate as the Owner's expenditure of Loan funds.

- (f). Upon the Governmental Unit's reasonable inquiry of and receipt of supporting evidence from the Owner, both the Owner and any Business are duly authorized to do business under North Carolina law and are not delinquent on any federal, state or local taxes, licenses or fees.

13. Cessation/Termination, Bankruptcy, Dissolution or Insolvency.

- (a). Under the LBC, the Owner agrees at all times to preserve its legal existence, except that it may merge or consolidate with or into, or sell all or substantially all of its assets to, any entity that expressly undertakes, assumes for itself and agrees in writing to be bound by all of the obligations and undertakings of the Owner contained in the LBC. If the Owner so merges, consolidates or sells its assets without such an undertaking being provided, it agrees in the LBC to repay to the Governmental Unit or Commerce, upon request and as directed, all unspent Loan funds. Further, a merger, consolidation or sale without such an undertaking shall constitute a material default under the LBC, and the Governmental Unit or Commerce may terminate the LBC upon written notice to the Owner and hold the Owner liable for any other repayment provided for under the LBC.
- (b). Other than as provided for in Paragraph 13(a) above, if the Owner or any Business ceases to do business or becomes the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, it shall be the sole responsibility of the Governmental Unit to (i) immediately notify Commerce and (ii) pursue any claim for Grant funds owed the State by the Owner or Business, including in any legal proceeding, to obtain the maximum payment allowed by law. To the extent the Governmental Unit fails to pursue repayment of the Grant funds in such a proceeding and obtain the maximum payment allowed by law, and without limitation, the Governmental Unit shall be liable to Commerce for all amounts that should have been awarded to the Unit in the proceeding if it had taken the necessary action (notwithstanding whether such amounts would have actually been paid by the Owner or Business). Alternatively, without limitation, if the Governmental Unit fails to pursue repayment of the Grant funds in such a proceeding and Commerce elects to do so instead, the Governmental Unit is responsible and agrees to reimburse Commerce for all legal costs and reasonable attorneys' fees that Commerce incurs in pursuing repayment.
- (c). If the Governmental Unit fails to provide Commerce notice of the Owner or any Business ceasing to do business or becoming the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, it shall constitute a material default under this Grant Agreement. If there is such a cessation or such a proceeding, Commerce may terminate the Grant Agreement upon written notice to the Governmental Unit. If there is such a cessation or such a proceeding, the Governmental Unit agrees that Commerce has the right to terminate this Grant Agreement and/or the LBC by giving, as applicable, the Governmental Unit or the Governmental Unit and the Owner written notice specifying the Termination Date, which Commerce may determine in its sole discretion. Upon such termination, the Governmental Unit, the Owner and any Business shall not expend any Grant or Loan

funds without Commerce's express written authorization and shall return all unspent Grant or Loan funds to Commerce upon demand and if permissible under applicable bankruptcy, dissolution or insolvency law.

14. Additional Repayment Requirements and Remedies.

- (a). The repayment requirements and remedies addressed in this Paragraph 14 are in addition to those repayment requirements and other remedies set forth elsewhere in this Grant Agreement, including the requirements to repay unspent Grant funds. No remedy conferred or reserved by or to the State is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy provided for in this Grant Agreement, or now or hereinafter existing at law, in equity, or by statute, and any such right or power may be exercised from time to time and as often as may be deemed expedient.
- (b). If there is a breach of any of the requirements, covenants or agreements in this Grant Agreement or the LBC, or if there are any representations or warranties which are untrue as to a material fact in this Grant Agreement, the LBC or in relation to the LBC or the Project (including the performance thereof), the Governmental Unit agrees that Commerce has the sole discretion to require repayment from the Governmental Unit of an amount of Grant funds to be determined in Commerce's sole discretion but not to exceed the amount of Grant funds the Governmental Unit has already received under this Grant Agreement. Such requirements, covenants or agreements include but are not limited to Paragraphs 1, 2(a), 4, 10(a), 12 and 13 of this Grant Agreement and include but are not limited to the creation and retention of the New Jobs and the retention of the Baseline Number of jobs under the LBC.

15. No Waiver by the State. Failure of the State (including, without limitation, the Rural Authority and Commerce) at any time to require performance of any term or provision of this Grant Agreement or the LBC shall in no manner affect the rights of the State at a later date to enforce the same or to enforce any future compliance with or performance of any of the terms or provisions hereof. No waiver of the State of any condition or the breach of any term, provision or representation contained in this Grant Agreement or the LBC, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of that or any other term, provision or representation.

16. Waiver of Objections to Timeliness of Legal Action. The Governmental Unit knowingly waives any objections it has or may have to timeliness of any legal action (including any administrative petition or civil action) by the State (including, without limitation, the Rural Authority or Commerce) to enforce its rights under this Grant Agreement. This waiver includes any objections the Governmental Unit may possess based on the statutes of limitations or repose and the doctrines of estoppel or laches.

17. Force Majeure. If (a) during the term of this Grant the real or personal property located on or constituting the Property suffers damage or destruction caused by acts of God, fires, floods, storms, insurrection, riots, acts of the public enemy, national catastrophe, or similar unexpected events, (b) such damage or destruction was not principally caused by the negligence, willful misconduct or violation of applicable law by the Owner, (c) the Owner uses reasonable efforts to repair, or to work around, such damage or destruction reasonably promptly, and (d) as a direct result of such damage or destruction the Owner cannot satisfy the requirements and obligations of Sections 3 of the LBC as and when the LBC requires, then the Owner will be entitled to an extension of time not to exceed sixty (60) days to satisfy the requirements and obligations of Section 3 of the LBC; provided that the Governmental Unit in its sole discretion with respect to the obligations it is owed by the Owner, may elect to extend that sixty day period to give the Owner additional time to satisfy those requirements.
18. Special Provisions and Conditions.
- (a). Non-discrimination. The Governmental Unit agrees not to discriminate by reason of age, race, religion, color, sex, national origin or disability related to the activities of this Grant Agreement.
 - (b). Conflict of Interest. The Governmental Unit shall adopt and keep on file, along with the executed copies of this Grant Agreement, a copy of its policy and any ordinance or resolution it has adopted addressing conflicts of interest that may arise involving the members of the Governmental Unit's governing body and/or any of its employees or officers involved in the Grant, the LBC or the Project. Such policy, ordinance or resolution shall address situations in which any of these individuals may directly or indirectly benefit, other than through receipt of their normal compensation in their capacities as the Governmental Unit's employees, officers or members of its governing body, from the Grant, the LBC or Project, and shall include actions to be taken by the Unit or the individual, or both, to avoid conflicts of interest and the appearance of impropriety. Additionally, the Governmental Unit certifies that, as of the date it executes this Grant Agreement, no such individuals have such a conflict of interest or will directly or indirectly benefit, except in the capacities described above, from the Grant, LBC or Project. Throughout the duration of this Grant Agreement, the LBC and the Project, the Governmental Unit has the duty to promptly inform Commerce of any such conflict of interest or direct or indirect benefit of which it becomes aware.
 - (c). Compliance with Laws. The Governmental Unit shall at all times observe and comply with all laws, regulations, codes, rules, ordinances and other requirements (together, "Laws") of the state, federal and local governments which may in any manner affect the performance of the Grant Agreement, the LBC or the Project.
 - (d). Non-Assignability. The Governmental Unit shall not assign or transfer any interest in the Agreement without the prior written consent of Commerce; provided, however, that claims for money due to Governmental Unit from Commerce under this Agreement may be assigned to any commercial bank or other financial institution without such approval.

- (e). Personnel. The Governmental Unit represents that it has, or will secure at its own expense, all personnel required to monitor, carry out and perform the scope of services of this Agreement. Such employees shall not be employees of Commerce. Such personnel shall be fully qualified and shall be authorized under state and local law to perform such services.
19. Notice. All notices required or permitted to be delivered hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States mails, certified, return receipt requested, first class, postage prepaid and addressed as follows:

If to the Rural Authority or Commerce: Attn: **Hazel Edmond**
Program Manager
North Carolina Department of Commerce
Rural Economic Development Division
301 North Wilmington Street
4346 Mail Service Center
Raleigh, North Carolina 27699-4346

If to the Governmental Unit: Attn: **The Honorable Mitch Colvin**
Mayor
City of Fayetteville
433 Hay Street
Fayetteville, NC 28301-5537

or addressed to such other address or to the attention of such other individual as Commerce or the Governmental Unit shall have specified in a notice delivered pursuant to this subsection.

20. Entire Agreement. This Grant Agreement supersedes all prior agreements between or among the Rural Authority and/or Commerce and the Governmental Unit with regard to the Project and expresses their entire understanding with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to a writing signed by both Commerce and the Governmental Unit.
21. Execution. This Grant Agreement may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and such counterparts, together, shall constitute one and the same Grant Agreement which shall be sufficiently evidenced by one of such original counterparts.
22. Construction. This Grant Agreement shall be construed and governed by the laws of the State of North Carolina.
23. Severability. Each provision of this Grant Agreement is intended to be severable and, if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect or impair any other provision of this Grant Agreement, but this Grant Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

24. Acceptance. If the Governmental Unit agrees to the Grant conditions as stated, please return the executed documents specified in Paragraph 1(a). This Grant may be withdrawn if Commerce has not received such documents within thirty (30) days from the date of the cover letter from Commerce to the Governmental accompanying this Grant Agreement and its Exhibits.

IN WITNESSETH WHEREOF, the parties hereto have executed this Grant Agreement as of the date first above written.

City of Fayetteville

Signature: _____ [SEAL]

Printed Name: _____

Title: _____

Date: _____

North Carolina Department of Commerce

Signature: _____ [SEAL]



Printed Name: Kenny Flowers

Title: Assistant Secretary for Rural Economic Development

Date: 4/28/2022

**EXHIBIT A
SCOPE OF PROJECT**

Summary: The project will support the reuse of a 9,500 SF building located at 4101 Raeford Street. The building was constructed in 2005 and has been vacant for one year. ChenMed, LLC is a primary care provider specializing in senior adult care. The company has 100 facility in 12 states, with over 4,300 employees.

**EXHIBIT B
PAYMENT SCHEDULE****Eligible Expenditures:**

Vacant Building Category: within the existing building footprint

Existing Business Building Category: within the existing building and/or additions

Rural Health Care Category: within the existing building, additions and/or new construction

Eligible costs under all funding categories include, but are not limited to: materials and labor to install HVAC, electrical, plumbing, fire alarm/suppression systems, roofing, flooring, carpentry, drywall, paint, etc. This is not an exhaustive list; grantees should contact the Rural Development Division for questions about whether a specific expense is eligible under the program.

The following costs are specifically prohibited under the program and may not be submitted for reimbursement or the matching funds requirement: building purchase, architectural costs, engineering costs, permit fees, surveys, legal fees, machinery & equipment, telephone hardware and software, computer hardware and software, furnishings, paving, fencing, kitchen equipment, refrigeration equipment, etc. This is not an exhaustive list; grantees should contact the Rural Development Division for questions about whether a specific expense is eligible under the program.

Any company in which any project partner has an ownership or management interest in may act as a contractor for the renovation project only if the company holds a valid NC General Contractors license. The relationship must have been disclosed to the Rural Development Division and a copy of the company's license must have been included in the application. Licensed contracting companies owned or operated by any project partner that are used in the renovation project will be required to submit original invoices from the provider for all labor, materials, services and subcontracted work plus proof that those invoices have been paid in full.

Reimbursement Requirements:

The Department of Commerce will reimburse 50% of eligible expenditures up to the total grant amount upon receipt of the following:

1. A completed financial request form,
2. Copies of eligible project invoices that support the request amount,
3. Evidence that the invoices submitted for reimbursement have been paid-in-full. Evidence may include copies cleared checks, wire transfer or ACH receipts, and/or credit card receipts. Invoices paid with cash and those not paid in full will not be reimbursed, and
4. Satisfaction of reporting requirements according to Exhibit C below.

Eligible expenditures may not be incurred prior to the effective date or subsequent to the termination date of the grant. Payments are subject to the availability of funds.

**EXHIBIT C
REPORTING SCHEDULE**

Progress reports are due on January 15th and July 15th for each year that the grant remains open. The final report and job verification documentation are due at the time of project completion or no later than 30 days after the grant end-date, whichever is sooner. The reporting schedule remains in effect for the duration of the grant including time extensions.

Failure to submit progress reports as required:

1. Will result in non-payment of payment requests,
2. Can result in the immediate termination of the grant,
3. Can result in the demand for immediate repayment of any funds paid by The Department of Commerce, and
4. Will negatively impact the grantee's eligibility for future Commerce grants.

**EXHIBIT D
JOB VERIFICATION AND CLOSE OUT REQUIREMENTS**

Building Reuse and Rural Health Care loans are eligible for forgiveness once the creation and maintenance of the full-time jobs committed for the project, as well as, all reporting requirements are approved by Commerce. Below are the requirements and procedure for approval.

Job Verification

To be considered eligible, a full-time job must be filled with one employee who works at least 35 hours per week and is paid at least minimum wage. Part-time, full-time equivalents, or contract/consulting positions are not eligible.

Grantees should submit the following as evidence of job creation and maintenance:

1. **Job Certification Form**—both the grantee and the participating business are required to complete respective sections of this form that attests to the creation of the number of jobs full-time jobs committed to receive the grant. The form must be signed by the authorized representatives of the local government grantee and the participating business.
2. **NCUI 101 Forms**—The grantee should submit copies of each company's *Employer's Quarterly Tax and Wage Report* (NCUI 101 forms) that have been submitted to the North Carolina Employment Security Commission according to the requirements below.
 - NCUI 101 Forms should be submitted to Commerce.
 - The forms must include the appropriate number of quarters to show that the company maintained the required employment level for six-consecutive months.
 - The employment level reported must meet or exceed the baseline number of employees reported at the time of the application plus the number of new, full-time jobs committed for the grant.
 - The jobs created and the baseline must be maintained concurrently during the same six-month period.
 - If the NCUI 101 forms include employees from other locations in North Carolina, the names of the employees working in the grant funded project facility should be highlighted, and a multi-site report should be provided.
 - If the NCUI 101 forms include both full and part-time employees an "f" should be written next to the name of each full-time employee and a "p" should be written next to the name of each part-time employee.
3. **Final Report**—the grantee must submit the Final Report Form that describes the activities and outcomes of the project.
4. **Photos**—the grantee must submit digital photos that show a variety of views of the completed project.

All forms, including reporting and request for payment, can be found on the Commerce website at <http://www.nccommerce.com/rgp>. Email completed forms and reports to rgpreports@nccommerce.com.

City of Fayetteville (the “Governmental Unit”) enters into this Loan Agreement and Legally Binding Commitment (the “LBC,” including the “Loan,” defined below with **4104 Raeford Road, LLC** (the “Owner” and, together with the Governmental Unit, the “Parties”).

WHEREAS, pursuant to N.C.G.S. §§143B-472.127 and .128, the North Carolina Rural Infrastructure Authority (the “Rural Authority”) of the State of North Carolina (“State”) has awarded a grant (the “Grant”) to the Governmental Unit, and the North Carolina Department of Commerce (“Commerce”), an agency of the State, will administer the Grant; and

WHEREAS, the Grant is memorialized in an agreement (the “Grant Agreement”) between Commerce and the Governmental Unit, and the Grant Agreement includes Exhibit A (Scope of Project), Exhibit B (Payment Schedule), Exhibit C (Reporting Schedule), Exhibit D (Closeout Schedule/Job Requirements), Exhibit E (this LBC, which incorporates by reference the Grant Agreement and its other Exhibits), Exhibit F (Promissory Note) and Exhibit G (Waiver of Confidentiality (“Waiver”)); and

WHEREAS, without limitation, the Rural Authority awarded the Grant: (1) based on the application filed by the Governmental Unit and any subsequent materials supporting the application that have been approved of by Commerce in writing, all of which are incorporated into the Grant Agreement by reference; (2) based on the representation in the application that the Owner owns certain real property located at:

4101 Raeford St
Fayetteville, NC 28304

in **Cumberland** County, North Carolina (the “Property”); (3) based on Commerce’s Grant requirements and guidelines, which are incorporated herein and which may be amended, modified or supplemented and applied accordingly to the Grant Agreement and this LBC by Commerce in its sole discretion; and for (4) the creation and retention of certain jobs in the course of completing certain renovations/construction work at the Property (altogether, the “Project,” as summarized in Exhibit A to this Grant Agreement); and

WHEREAS, the Governmental Unit and the Owner are required to enter into this LBC as a condition of the Governmental Unit loaning the Grant funds to the Owner.

NOW, THEREFORE, in consideration of the mutual promises and such other valuable consideration set out herein, the Parties mutually agree to the following terms and conditions:

1. Third-Party Beneficiary. The Parties agree that the State (including, without limitation, Commerce and the Rural Authority) is an intended third-party beneficiary of this LBC (including the Loan) and may, at its option, enforce the terms of this LBC or appear as a party in any litigation concerning the LBC.

2. Loan.

- (a) The Governmental Unit hereby loans to the Owner the sum of **\$300,000.00** (the “Loan”), which consists entirely of State Grant funds, to fund the Project. Exhibit A to the Grant Agreement refers to the entity (or entities, as applicable) required to create and maintain certain full-time new jobs, as defined in Paragraph 3(a), to complete the Project under this LBC as the “Company,” the “Employer” and the “Business” (together and hereinafter, the “Business”). The Owner specifically acknowledges that: it must repay the Loan in accordance with the terms of this LBC if the Business does not create and maintain the new jobs required by Paragraph 3(a) below; and as evidence of its obligation to repay the Loan, the Owner has executed the Promissory Note, Exhibit F to the Grant Agreement, which the Owner represents, acknowledges and agrees has been signed by every individual or entity that has any ownership interest in the Property and is fully binding on the Owner.
- (b). As conditions of receiving the Loan:
 - i. The highest elected official of the Governmental Unit and a duly authorized representative of the Owner shall execute two originals of the LBC in its exact form (unless Commerce approves of a change to its terms in writing), and the Governmental Unit shall return one such original to Commerce;
 - ii. Every individual or entity that has any ownership interest in the Property shall execute two originals of the Promissory Note in its exact form, and the Governmental Unit shall return one such original to Commerce; and
 - iii. The Owner and the Governmental Unit shall ensure that an authorized representative of each Business executes a Waiver, Exhibit G to the Grant Agreement, and the Governmental Unit shall forward the original of any such Waiver to Commerce.
- (c). The Owner hereby represents and warrants that all Loan funds shall be utilized exclusively for the purpose of the Project and that it shall not make or approve of any improper expenditures of Loan funds.

3. New Job Creation, Maintenance of New Jobs and Baseline Number of Jobs and Verification.

- (a). New Job Creation and Maintenance of New Jobs and Baseline Number of Jobs. A “New Job” shall mean a full-time job (consisting of at least 35 hours per week of employment and eligibility for all benefits generally available for full-time employees of the Business) which is with the Business, is located in North Carolina, has a wage at least equal to the minimum wage, is created and maintained by the Business in order to complete the Project and is over and above the **0** full-time jobs in North Carolina (“Baseline Number”) that the Business reported having at the time of the application for the Project. The Owner agrees that the Business shall be required to create and maintain in existence for six (6) consecutive months **30** New Jobs prior to the Termination Date, unless this term is extended pursuant to Paragraph 5. Separate and apart from these New Jobs, the Owner agrees that the Business shall be required to maintain in existence its Baseline Number of jobs for as long as it takes the Business to create and maintain its required number of New Jobs.

- (b). Verification. When the New Jobs required by Paragraph 3(a) have been created and maintained for six (6) consecutive months, the Owner shall notify the Governmental Unit so that it and/or Commerce can verify their creation and maintenance, as well as the maintenance of the Baseline Number of jobs and the satisfaction of all other conditions and terms of this LBC and the Project. The Owner shall cause any Business to provide to the Governmental Unit and Commerce, or their respective designees, full and complete access to all records of the Business necessary to verify the number and types of jobs created and maintained, the wages paid to employees and all other conditions and terms of this LBC and the Project. Failure of any Business to provide such access upon request shall constitute a material default by the Owner under the terms of this LBC and, in the sole discretion of the Governmental Unit and/or Commerce, may subject the Owner to repayment in an amount calculated under Paragraph 13 below.
4. Changes in the Project or Other Conditions.
- (a). A “Project Change” is any material alteration, addition, deletion or expansion of the Project, including (without limitation) material changes to construction or rehabilitation, the terms or conditions of the loan under the LBC, the required number of New Jobs, the matching investment in the Project, any cessation of business by the Owner or any Business and any filing of bankruptcy by the Owner or any Business. There shall be no Project Changes unless expressly approved of by Commerce and the Governmental Unit in a separate, prior written agreement stating, if applicable, the costs and schedule for completing the Project Change.
- (b). Additionally, the Owner shall immediately notify the Governmental Unit of any change in conditions or local law, or any other event, which may significantly affect the ability of it or any Business to perform the LBC or the Project. In their sole discretion, the Governmental Unit or Commerce may deem such a change in conditions, local law or other event to constitute a Project Change.
5. Term of LBC. The effective period of this LBC shall commence **4/21/2022** (“Effective Date”) and shall terminate **4/21/2024** unless terminated on an earlier date under the terms of this LBC (either one of which dates shall constitute the “Termination Date”) or unless extended for an express term in writing by the Governmental Unit.
6. Independent Status of the Governmental Unit.
- (a). The State (including, without limitation, the Rural Authority and Commerce) and the Governmental Unit are independent entities from one another and from the Owner and any third party (including, without limitation, any Business). The Grant Agreement, the LBC, the Project and any actions taken pursuant to them shall not be deemed to create a partnership or joint venture between the State and the Governmental Unit or between or among either of them and the Owner or any third party (including, without limitation, any Business). Nor shall the Grant Agreement, the LBC or the Project be construed to make any employees, agents or members of the Owner or any third party (including, without limitation, any Business) into employees, agents, members or officials of the Governmental Unit or the State or to make employees, agents, members or officials of the Governmental Unit into

- employees, agents, members or officials of the State. Neither the Owner nor any third party (including, without limitation, any Business) shall have the ability to bind the Governmental Unit or the State to any agreement for payment of goods or services or represent to any person that they have such ability. Nor shall the Governmental Unit have the ability to bind the State to any agreement for payment of goods or services or represent to any person that it has such ability.
- (b). The Owner and any third party (including, without limitation, any Business) shall be responsible for payment of all their expenses, including rent, office expenses and all forms of compensation to their employees. The Owner and any third parties (including, without limitation, any Business) shall provide worker's compensation insurance to the extent required for their operations and shall accept full responsibility for payments of unemployment tax or compensation, social security, income taxes, and any other charges, taxes or payroll deductions required by law in connection with their operations, for themselves and their employees who are performing work pursuant to this LBC or the Project. All expenses incurred by the Owner or any third party (including, without limitation, any Business) are their sole responsibilities, and neither the Governmental Unit nor the State (including, without limitation, Commerce and the Rural Authority) shall be liable for the payment of any obligations incurred in the performance of the Project.
7. Project Records.
- (a). The Owner shall maintain and cause any Business to maintain full, accurate and verifiable financial records, supporting documents and all other pertinent data for the Project in such a manner as to clearly identify and document the expenditure of the State funds provided under this LBC separate from accounts for other awards, monetary contributions or other revenue sources for this Project.
- (b). The Owner shall retain and cause any Business to retain all financial records, supporting documents and all other pertinent records related to this LBC, the Loan and the Project for a period of five (5) years from the Termination Date. In the event such records are audited, all such records shall be retained beyond the five-year period until the audit is concluded and any and all audit findings have been resolved.
8. Monitoring, Reports and Auditing. The Owner agrees to generate and to cause any Business to generate such reports regarding the LBC or the Project as may be requested by the Governmental Unit or the State (including, without limitation, the Rural Authority or Commerce) in such form as they may request, including after the Termination Date. The Owner further grants and shall cause any Business to grant the Governmental Unit or the State (including any of its agencies, commissions or departments such as Commerce, the North Carolina State Auditor and the North Carolina Office of State Budget and Management) and any of their authorized representatives, at all reasonable times and as often as necessary (including after the Termination Date), access to and the right to inspect, copy, monitor and examine all of the books, papers, records and other documents relating to the LBC or the Project. In addition, the Owner agrees to comply and to cause any Business to comply at any time, including after the Termination Date, with any requests by the State (including, without limitation, the Rural Authority or Commerce) for other financial and organizational materials to permit the State to comply with its fiscal

monitoring responsibilities or to evaluate the short- and long-range impact of its programs.

9. Termination; Availability of Funds.

- (a). If the Owner fails to fulfill in a timely and proper manner its obligations or violates any of its covenants or stipulations under the LBC or if any Business fails to fulfill those requirements applicable to it in the LBC, the Owner agrees that the Governmental Unit or Commerce has the right to terminate the LBC by giving the Owner written notice specifying the Termination Date, which shall be determined by the Governmental Unit or Commerce in their sole discretion. Upon such termination, neither the State nor the Governmental Unit shall have any responsibility to make Loan payments. Further, upon such termination, the Owner shall not expend any Loan funds without the express written authorization of the Governmental Unit and Commerce and shall return all unspent Loan funds to either the Governmental Unit or Commerce, upon request and as directed.
- (b). If the Governmental Unit fails to fulfill in a timely and proper manner its obligations or violates any of the covenants or stipulations under its Grant Agreement with Commerce, the Owner agrees that Commerce has the right to terminate its Grant Agreement with the Governmental Unit and/or terminate this LBC by giving, as applicable, the Governmental Unit or the Governmental Unit and the Owner written notice specifying the Termination Date, which Commerce may determine in its sole discretion. Upon such termination, neither the State nor the Governmental Unit shall have any responsibility to make Loan payments. Further, upon such termination, the Owner shall not expend any Loan funds without the express written authorization of the Governmental Unit and Commerce and shall return all unspent Loan funds to either the Governmental Unit or Commerce, upon request and as directed.
- (c). The obligations of the Rural Authority and/or Commerce to pay any Grant funds to the Governmental Unit and for the Governmental Unit to pay any Loan amounts to the Owner under this LBC are contingent upon the availability and continuation of funds for such purpose. If funds for the Grant and therefore the Loan become unavailable, the Owner agrees that either Commerce or the Governmental Unit has the right to terminate this LBC by giving written notice specifying the Termination Date, which either the Governmental Unit or Commerce may determine in their sole discretion. Upon such termination, neither the State nor the Governmental Unit shall have any responsibility to make Loan payments. Further, upon such termination, the Owner shall not expend any Loan funds without the express written authorization of the Governmental Unit and Commerce and shall return all unspent Loan funds to the Governmental Unit or Commerce, upon demand and as directed.

10. Liabilities and Loss. The Owner hereby agrees to release, indemnify and hold harmless the Governmental Unit and the State (including the Rural Authority and Commerce), and their respective members, officers, directors, employees, agents and attorneys (hereinafter collectively referred to as "Indemnified Parties"), from any claims of third parties (including, without limitation, any Business) arising out of any act or omission of the Owner or any third party (including, without limitation, any Business) in connection with the performance of this LBC or the Project, and for all losses arising from implementation of this LBC or the Project. Without limiting the foregoing, the Owner hereby releases the

Indemnified Parties from, and agrees that such Indemnified Parties are not liable for, and agrees to indemnify and hold harmless the Indemnified Parties against, any and all liability or loss, cost or expense, including, without limitation, reasonable attorneys' fees, fines, penalties and civil judgments, resulting from or arising out of or in connection with or pertaining to, any loss or damage to property or any injury to or death of any person occurring in connection with the Project, or resulting from any defect in the fixtures, machinery, equipment or other property used in connection with the Project or arising out of, pertaining to, or having any connection with, the Project or the financing thereof (whether or not arising out of acts, omissions or negligence of the Owner or of any third party (including, without limitation, any Business), or of any of their agents, contractors, servants, employees, licensees, lessees, or assignees), including any claims and losses accruing to or resulting from any and all subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project.

11. Owner Representations and Warranties. The Owner hereby represents and warrants that:
- (a). The Owner and every Business are duly authorized to do business under North Carolina law and are not delinquent on any federal, state or local taxes, licenses or fees.
 - (b). This LBC has been entered into and executed on behalf of the Owner by an individual with full actual and apparent authority to bind the Owner to the terms hereto, and the execution and delivery of this LBC have been duly authorized by all necessary action, and are not in contravention of law nor in contravention of any certificate of authority, bylaws or other applicable organizational documents of the Owner, nor are they in contravention of the provisions of any indenture, agreement or undertaking to which the Owner is a party or by which it is bound.
 - (c). The Promissory Note has been executed by every individual or entity that has any ownership interest in the Property and is fully binding on the Owner.
 - (d). There is no action, suit, proceeding or investigation at law or in equity before any court, public board or body pending, or, to the Owner's knowledge, threatened against or affecting the Owner, that could or might adversely affect the Project, the creation of the New Jobs or any of the transactions contemplated by this LBC, or the validity or enforceability of this LBC or the Owner's ability to discharge its obligations under this LBC.
 - (e). Upon the Owner's reasonable inquiry of any Business, there is no action, suit, proceeding or investigation at law or in equity before any court, public board or body pending, threatened against or affecting any Business that could or might adversely affect the Project, the creation of the Jobs or any of the transactions contemplated by this LBC or the validity or enforceability of this LBC or the ability of any Business to create the Jobs specified herein.
 - (f). No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this LBC by the Owner or the performance of any of its obligations hereunder, or else all such requisite governmental consents or approvals have been obtained. The Owner shall provide the Governmental Unit or Commerce with evidence of the existence of any such necessary consents or approvals at the time of the execution of this LBC.

- (g). The Owner is solvent and has inquired of and received reasonable evidence from any Business of the solvency of that Business.
 - (h). A cash match grant, loan or other funding (“Cash Match”) equal to the amount of the Loan shall have been unconditionally committed to the Project. The Governmental Unit shall have procured and contributed at least five percent (5%) of this Cash Match, but no part of this 5% contribution can have derived, either directly or indirectly, from any other State or federal source. All Cash Match funds shall be utilized exclusively for the purpose of the Project, and there shall be no improper expenditures of Cash Match funds. All Cash Match funds shall be expended prior to or simultaneously with and at the same rate as the Owner’s expenditure of Loan funds.
12. Cessation/Termination, Bankruptcy, Dissolution or Insolvency.
- (a). The Owner shall at all times preserve its legal existence, except that it may merge or consolidate with or into or sell all or substantially all of its assets to any entity that expressly undertakes, assumes for itself and agrees in writing to be bound by all of the obligations and undertakings of the Owner contained in this LBC. If the Owner so merges, consolidates or sells its assets without such an undertaking being provided, it agrees to repay to the Governmental Unit or Commerce, upon request and as directed, all unspent Loan funds. Further, any merger, consolidation or sale without such an undertaking shall constitute a material default under this LBC, and the Governmental Unit or Commerce may terminate the LBC upon written notice to the Owner and hold the Owner liable for any other repayment provided for under this LBC.
 - (b). Other than as provided for in Paragraph 12(a), if the Owner or any Business ceases to do business or becomes the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, the Owner shall give the Governmental Unit immediate notice of the event, shall not expend any Loan funds without the express written authorization of the Governmental Unit and shall return all unspent Loan funds to the Governmental Unit or Commerce, upon demand and as directed and if permissible under applicable bankruptcy, dissolution or insolvency law.
 - (c). If the Owner fails to provide the Governmental Unit notice of the Owner or any Business ceasing to do business or becoming the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, it shall constitute a material default under this LBC. If there is such a cessation or such a proceeding, the Governmental Unit or Commerce may terminate the LBC upon written notice to the Owner. Upon such termination, the Owner shall not expend any Loan funds without the express written authorization of the Governmental Unit and shall return all unspent Loan funds to the Governmental Unit or Commerce upon demand and as directed and if permissible under applicable bankruptcy, dissolution or insolvency law.
 - d). Notwithstanding the foregoing and wherever referred to in this LBC, “ceases to do business” shall not include (1) ceasing operations to maintain, service or upgrade real or personal property of the Owner, (2) season shutdowns of operations as long as such cessation does not exceed a total of four (4) weeks in any calendar year (excluding time attributable to an event of force majeure as described below) and (3) under the

circumstances for the period of time described in Paragraph 22 below.

13. Additional Repayment Requirements and Remedies.

- (a). The repayment requirements and remedies addressed in this Paragraph 13 are in addition to those repayment requirements and other remedies set forth elsewhere in this LBC, including the requirements to repay unspent Loan funds. No remedy conferred or reserved by or to the State or the Governmental Unit is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy provided for in this LBC, or now or hereinafter existing at law, in equity, or by statute, and any such right or power may be exercised from time to time and as often as may be deemed expedient.
- (b). The Owner acknowledges that the Grant by the Rural Authority and the Loan by the Governmental Unit are predicated upon the creation and maintenance of the New Jobs and maintenance of the Baseline Number of jobs required by Paragraph 3(a) and that failure to create and/or maintain them will constitute a material default of this LBC.
 - i. If the Business fails to create and maintain such New Jobs, then the Owner shall repay to the Governmental Unit or Commerce, as directed, an amount equal to the product of (i) **\$10,000** (the amount of Loan funds divided by the number of New Jobs required to be created in Paragraph 3(a) and (ii) the number of New Jobs required to be created in Paragraph 3(a), minus the number of New Jobs actually created, above the Baseline Number reported, that have been in existence for six (6) consecutive months.
 - ii. Additionally, in the event that the Business fails to maintain its Baseline Number of jobs as required under Paragraph 3(a), the Business shall lose credit for any qualifying New Jobs under this LBC by the same number of jobs that the Baseline Number is short. For example, if the Baseline Number of jobs falls short by three (3) jobs as of the date the Business has created and maintained all required New Jobs, the number of New Jobs deemed created and maintained shall be reduced by three (3). The amount the Business must repay shall then be calculated in accordance with Paragraph 13(b)i.
 - iii. Either Commerce or the Governmental Unit shall notify the Owner in writing of the amount to be repaid and direct the Owner whether to repay such amount to the Governmental Unit for return to Commerce or repay the amount directly to Commerce. All such amounts shall be due immediately upon demand by the Governmental Unit or Commerce. If not paid within thirty (30) days following demand, the unpaid amount due hereunder and under the Promissory Note shall bear interest at the rate of 10% per annum after demand until paid. Upon default in such payment, the Governmental Unit or Commerce may employ an attorney to enforce their respective rights and remedies, and the Owner hereby agrees to pay the legal costs and reasonable attorneys' fees of the Governmental Unit and Commerce plus all other reasonable expenses incurred by such party in exercising any of its rights and remedies upon such defaults.

- (c). If there is a breach of any of the requirements, covenants or agreements in this LBC (including, without limitation, a failure to repay the amount required under Paragraph 13(b) within the time required), or if there are any representations or warranties which are untrue as to a material fact in this LBC or in relation to the LBC or the Project (including the performance thereof), the Owner agrees that the Governmental Unit or Commerce may require repayment from the Owner of an amount of Loan funds to be determined in their sole discretion but not to exceed the amount of Loan funds the Owner has already received under this LBC. Such requirements, covenants or agreements include but are not limited to Paragraphs 2, 3, 4, 9, 11 and 12 of this LBC.
14. No Waiver by Governmental Unit or the State. Failure of the Governmental Unit or the State (including, without limitation, the Rural Authority and Commerce) at any time to require performance of any term or provision of this LBC shall in no manner affect the rights of the Governmental Unit or the State at a later date to enforce the same or to enforce any future compliance with or performance of any of the terms or provisions hereof. No waiver of the Governmental Unit or the State of any condition or the breach of any term, provision or representation contained in this LBC, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of that or any other term, provision or representation.
15. Waiver of Objections to Timeliness of Legal Action. The Owner knowingly waives any objections it has or may have to timeliness of any legal action (including any administrative petition or civil action) by the Governmental Unit or the State (including Commerce) to enforce their rights under this LBC. This waiver includes any objections the Owner may possess based on the statutes of limitations or repose and the doctrines of estoppel or laches.
16. Special Provisions and Conditions.
- (a). Nondiscrimination. The Owner agrees that it will not, and will ensure that the Business will not, discriminate by reason of age, race, religion, color, sex, national origin or disability related to the activities of this LBC or the Project.
 - (b). Compliance with Laws. The Owner shall at all times, and shall cause any Business at all times to, observe and comply with all laws, regulations, codes, rules, ordinances and other requirements (together, "Laws") of the state, federal and local governments which may in any manner affect the performance of the LBC or the Project.
 - (c). Non-Assignability. The Owner shall not assign or transfer any interest in the LBC without the prior written consent of the Governmental Unit and Commerce; provided however, that claims for money due to the Owner from the Governmental Unit under this LBC may be assigned to any commercial bank or other financial institution without such approval.
 - (d). Personnel. The Owner represents that it and any Business have or will secure at their own expense all personnel required to monitor, carry out and perform the scope of services of this LBC and the Project. Such employees shall not be employees of the State (including, without limitation, the Rural Authority or Commerce) or the Governmental Unit. Such personnel shall be fully qualified and shall be authorized under state and local law to perform such services.

17. Notice. All notices required or permitted hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States Mail, certified, return receipt requested, postage prepaid, and addressed as follows:

If to the Governmental Unit:

Attn: _____

To the Owner:

Attn: _____

or addressed to such other address or to the attention of such other individual as either party above shall specify in a notice pursuant to this subsection.

18. Entire Agreement. This LBC supersedes all prior agreements between the Governmental Unit and the Owner with regard to the Loan and the Project and expresses their entire understanding with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to a writing signed by both Parties.
19. Execution. This LBC may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and all such counterparts, together, shall constitute one and the same LBC which shall be sufficiently evidenced by one of such original counterparts.
20. Construction. This LBC shall be construed and governed by the laws of the State of North Carolina.
21. Severability. Each provision of this LBC is intended to be severable and, if any provision of this LBC is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect or impair any other provision of this LBC, but this LBC shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

22. Force Majeure. If (a) during the Grant Term the real or personal property located on or constituting the Property suffers damage or destruction caused by acts of God, fires, floods, storms, insurrection, riots, acts of the public enemy, national catastrophe, or similar unexpected events, (b) such damage or destruction was not principally caused by the negligence, willful misconduct or violation of applicable law by the Owner, (c) the Owner uses reasonable efforts to repair, or to work around, such damage or destruction reasonably promptly, and (d) as a direct result of such damage or destruction the Owner cannot satisfy the requirements and obligations of Sections 3 of this Agreement as and when this Agreement requires, then the Owner will be entitled to an extension of time not to exceed sixty (60) days to satisfy the requirements and obligations of Section 3 of this Agreement; provided that the Governmental Unit in its sole discretion with respect to the obligations it is owed by the Owner, may elect to extend that sixty day period to give the Owner additional time to satisfy those requirements.

IN WITNESS WHEREOF, the parties hereto have executed this LBC as of the date first above written.

Governmental Unit Name: _____

Signature: _____ [SEAL]

Printed Name: _____

Title: _____

Owner Name: _____

Signature: _____ [SEAL]

Printed Name: _____

Title: _____

For VALUE RECEIVED and subject to the terms of and secured by the Rural Economic Development Loan Agreement and Legally Binding Commitment – Private-Owner Building Reuse Program, Reference Number **2022-095-3201-2587** (“LBC,” which is incorporated by reference herein), the undersigned borrower[s] (the “Owner”) jointly and severally promise[s] to pay to lender **City of Fayetteville** or its assigns (together, the “Governmental Unit”) or to the intended third-party beneficiary of this Promissory Note, the North Carolina Department of Commerce (“Commerce”), upon demand and as directed by either the Governmental Unit or Commerce, an amount of principal loan (“Loan”) funds under the LBC up to and including **\$300,000.00** Dollars but which amount shall not exceed the amount of Loan funds the Owner has actually received under the LBC, plus interest and attorney’s fees as addressed below. Unless otherwise specified herein, capitalized terms in this Promissory Note shall have the same meaning as those set forth in the LBC.

The Owner acknowledges and represents that: (i) the undersigned is or are the only person(s), entity or entities who or that have any ownership interests in the certain real property located at:

4101 Raeford St
Fayetteville, NC 28304

in **Cumberland** County, North Carolina (the “Property”); and (ii) the undersigned shall be jointly and severally liable for any and all debts secured by this Promissory Note.

The Owner further acknowledges that: (i) in order for the Owner to receive the Loan, the LBC requires the Owner to complete a “Project”; (ii) in order for the Owner to receive the Loan, what the LBC identifies as the “Business” must maintain certain jobs and create and maintain certain other jobs in working with the Owner to complete the Project; (iii) the Loan from the Governmental Unit to the Owner under the LBC consists entirely of a grant from the State of North Carolina to the Governmental Unit, subject to certain clawback provisions; (iv) Commerce is an intended third-party beneficiary to the LBC and to this Promissory Note; and (v) the LBC specifies those circumstances in which the Governmental Unit or Commerce can terminate the LBC and require the Owner to repay an amount of Loan funds according to a formula or else in an amount to be determined in the sole discretion of the Governmental Unit or Commerce but which amount shall not exceed the amount of Loan funds the Owner has actually received under the LBC.

Upon default, the Governmental Unit and/or Commerce may employ attorneys to enforce their rights and remedies under this Promissory Note and the LBC, and the Owner agrees to pay their reasonable attorneys’ fees, plus all other reasonable expenses they incur in exercising their rights and remedies upon default. The rights and remedies of the Governmental Unit and Commerce, as described in this Promissory Note and the LBC, shall be cumulative and may be pursued singly, successively or together against the Owner (including each of the undersigned), the Property, or any other funds, property or security held by the Owner for payment or security, in the sole discretion of the Governmental Unit and Commerce. The failure to exercise any such right or remedy shall not be a waiver or release of such rights or remedies or the right to exercise any of them at another time.

The Owner hereby waives protest, presentment, notice of dishonor and notice of acceleration and maturity and agrees to remain bound for the payment of principal, interest and all other sums due under this Promissory Note and the LBC, notwithstanding any change or changes by way of release, surrender, exchange, modification or substitution of any security for this Promissory Note, or by way of any extension or extensions of time for the payment of principal and interest; and the Owner waives all and every kind of notice of such change or changes and agrees that the same may be made without notice of or consent to any of them.

This Promissory Note may not be amended, changed or altered except in writing executed by the Owner, the Governmental Unit and Commerce.

If not repaid within 30 days following demand hereunder, the Loan funds demanded by the Governmental Unit or Commerce under this Promissory Note shall bear interest at the rate of 10% per annum after demand until repaid. If either the Governmental Unit or Commerce initially demands Loan repayment from the Owner ("First Demand") in an amount less than the Loan funds the Owner has actually received under the LBC but, failing to receive repayment and, in its discretion under the LBC, increases the Loan repayment demand ("Second Demand") to the full amount the Owner has received under the LBC, then such interest on the difference between the First and Second Demands shall begin to accrue as of the date of the Second Demand.

For example, if under the terms of the LBC, a Business engages in an improper expenditure of Loan funds, the Governmental Unit has the discretion to require in a First Demand the partial repayment of Loan funds received by the Owner. Interest will begin to accrue at 10% per annum on whatever portion of the sum is not repaid as of the 31st day after the First Demand. Further, if the Owner fails to repay the First Demand in full, the Governmental Unit retains the discretion under the LBC to terminate the LBC and issue a Second Demand for the full repayment by the Owner of all Loan funds. Interest will continue accruing at 10% per annum on the original principal amount still unpaid from the First Demand and, following the expiration of 30 days from the Second Demand, interest will begin to accrue at 10% per annum on the additional unpaid principal Loan amount in the Second Demand.

Payment shall be made in lawful money of the United States of America via United States Mail First Class, Federal Express or UPS to the attention of the person at the address or in person at the address of the Governmental Unit or Commerce as directed in writing.

This Note shall be governed by, and construed in accordance with, the laws of the State of North Carolina.

IN WITNESS WHEREOF, the undersigned has (have) caused these presents to be executed under seal, pursuant to authority duly given, the day and year first above written.

EVERY SIGNATORY BELOW EXPRESSLY REPRESENTS THAT ALL INDIVIDUALS OR ENTITIES WITH ANY OWNERSHIP INTERESTS IN THE PROPERTY HAVE EXECUTED THIS PROMISSORY NOTE.

Dated as of: _____ , 20 _____

If by Individual: _____

Signature: _____ [SEAL]

Printed Name: _____

Dated as of: _____ , 20 _____

If by Entity: _____

Signature: _____ [SEAL]

Printed Name: _____

Limited Waiver of Confidentiality
Unemployment Tax and Wage Records
BUILDING REUSE PROGRAM

EXHIBIT G
2022-095-3201-2587

Name of Taxpayer _____

Address: _____

City: _____ State: _____ Zip: _____ Phone: _____

NC Unemployment Insurance Acct #: _____ Fed Tax ID #: _____

I hereby waive any right to confidentiality, as found in N.C.G.S. 96-4 or otherwise, for the limited purpose of authorizing disclosure of certain information contained in the quarterly unemployment insurance tax records of the above-named taxpayer (hereinafter, "Company") filed with the Division of Employment Security ("DES") of the North Carolina Department of Commerce to the **City of Fayetteville** ("Governmental Unit") and to the employees of the Rural Economic Division of the North Carolina Department of Commerce ("Rural Division") and members of the North Carolina Rural Infrastructure Authority ("Rural Authority") for the limited purpose of evaluating the issuance of and, in the event of such issuance, administering and ensuring compliance with, a grant and loan pursuant to N.C.G.S. 143B-472.127 and .128.

I recognize that DES is authorized to provide this information to the public officials of the Governmental Unit, the Rural Division and the Rural Authority in the performance of their public duties and that the verification of employment information for the purpose of administering the grant and loan at issue is within the scope of the public duties of the Governmental Unit, the Rural Division and the Rural Authority. I hereby authorize DES to disclose information contained in the Company's quarterly unemployment insurance tax records (the NCUI-101 or successor form) to the Governmental Unit, the Rural Division and/or the Authority for these purposes.

I recognize that unemployment insurance tax information provided in the aggregate to DES and disclosed to the Governmental Unit, the Rural Division and/or the Authority, and the Company's aggregated tax and wage information provided to or otherwise in possession of the Governmental Unit, the Rural Division and/or the Authority, may be treated as public information. This waiver is not intended to release the Governmental Unit, the Rural Division and/or the Authority from any obligation they may have under North Carolina law to maintain the confidentiality of any and all information which could reveal or permit someone to ascertain the identity of any individual employee or that employee's line item unemployment insurance tax or other tax or wage information.

Signature Chief Financial Officer or Other Authorized Company Official

Print Name

Title

The Department of Commerce strongly encourages, but does not require, the Governmental Unit secure the funds loaned to the property owner, **4104 Raeford Road, LLC**, with a Deed of Trust on the property.

Please check the appropriate box below indicating the intention of the Governmental Unit:

- ☐ The Governmental Unit will secure the funds with a Deed of Trust listing **City of Fayetteville** as the beneficiary in the amount of **\$300,000.00**.
- ☐ The **City of Fayetteville** ("Governmental Unit") has elected NOT to secure with a deed of trust on the subject property the **\$300,000.00** in grant funds awarded by the North Carolina Department of Commerce ("Commerce") for a building reuse grant. Governmental Unit acknowledges and agrees that it is liable to the State for any grant funds that must be repaid under the Grant Agreement or Legally Binding Commitment, including (without limitation), any required repayments due to the property owner's failure to create and maintain jobs, which could include the full amount of the grant. Governmental Unit acknowledges that its liability to Commerce arises whether or not it is able to collect any repayment from the property owner under the Legally Binding Commitment, but still elects not to obtain a deed of trust on the subject property.

Please fill in the box below:

Governmental Unit Name:	<u>City of Fayetteville</u>
By (Signature):	_____
Printed Name:	_____
Title:	_____
Date:	_____



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-2733

Agenda Date: 6/13/2022

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 7.06

TO: Mayor and Members of City Council

THRU: Douglas J. Hewett, ICMA-CM, City Manager
Telly C. Whitfield, Ph.D., Assistant City Manager
Adam Lindsay, Assistant City Manager

FROM: Christopher Cauley, MPA, Economic and Community Development
Director
Rob Stone, PE, Construction Management Director
Kelly Olivera, Budget and Evaluation Director

DATE: June 13, 2022

RE:

Authorize the City Manager to Execute a Subrecipient Agreement with the North Carolina Office of Recovery and Resiliency (NCORR), Adopt Capital Project Ordinance Amendment 2022-64 to Appropriate \$1 Million of Funding From NCORR, and Authorize the City Manager to Execute a Contract with Muter Construction for Construction of the Homeless Day Resource Center

COUNCIL DISTRICT(S):

District 2

Relationship To Strategic Plan:

GOAL 2: The City of Fayetteville will have a Responsive City Government supporting a diverse and viable economy.

Objective 2.2: To invest in community places to ensure revitalization and increase quality of life

GOAL 4: The City of Fayetteville will be a highly desirable place to live, work and recreate.

Objective 4.6: To reduce poverty and homelessness

GOAL 6: The City of Fayetteville will continue to have a collaborative citizen and business engagement base.

Objective 6.3: To inform and educate about local government by enhancing public outreach and increasing community dialog, collaboration and empowerment.

Executive Summary:

City Council is asked to authorize the City Manager to execute a subrecipient agreement with NCORR, adopt Capital Project Ordinance Amendment (CPOA) 2022-64 to appropriate \$1 million of additional funding from NCORR, and authorize the City Manager to execute a contract with Muter Construction, who is the lowest responsive responsible bidder at \$4,961,500, for the construction of the Homeless Day Resource Center.

Background:

City Council has authorized a number of transformational and critical initiatives aimed at achieving the City's strategic goal to reduce poverty and homelessness. The Fayetteville Day Resource Center project includes the renovation of an existing 12,320 SF commercial building situated on 1.5 acres and located at 128 S. King Street near the intersection of Person Street and S. Eastern Boulevard. This facility will serve low-income and homeless families through providers tasked with stabilizing, improving, and accessing services that impact their safety, well-being, and housing. This facility will also serve as a post-emergency shelter after disaster declarations. To repurpose the existing facility, it is necessary to completely remodel the interior and exterior of the building. Additionally, the existing parking lot is in poor condition and must be replaced.

The low bidder for the project is Muter Construction with a bid of \$4,961,500 including bid allowances and selected alternates.

The Day Resource Center construction contract was advertised to the general public on April 14, 2022, consistent with North Carolina law, and a pre-bid meeting took place on-site on May 4, 2022. Two bids were received on May 17, 2022, as follows:

BIDDERS	TOTAL COST
Muter Construction (APPARENT LOW BIDDER)	\$4,961,500
M & E Contracting	\$4,975,795

The target is for construction to begin on the Day Resource Center in June 2022 and to be completed in May 2023.

The City received notification of a subrecipient award for \$1 million from NCORR. The current project appropriation is \$4,990,000, which will increase to \$5,990,000 after this appropriation. The funding sources for the project are grant awards from NCORR (\$4.99 million) and a state direct grant from the North Carolina Office of State Budget and Management (\$1 million).

An additional \$1 million of the first tranche of ARPA funding previously appropriated by the Council will be allocated for use for this project, but is not included in this appropriation.

Issues/Analysis:

Only two (2) bids were received for this project.

Budget Impact:

The current appropriation for this project includes funding from the Community Development Block Grant - Disaster Recovery via the North Carolina Office of Recovery and Resiliency (\$3.99 million) and the State of North Carolina through the State Capital Infrastructure Fund directed grant program (\$1 million).

Options:

Option 1 -

- Authorize the City Manager to execute the subrecipient agreement from NCORR,
- Adopt Capital Project Ordinance Amendment (CPOA) 2022-64 to appropriate \$1 million of funding from NCORR, and
- Authorize the City Manager to execute a construction contract with Muter Construction for the sum of \$4,961,500.

Option 2 -

- Do not authorize the City Manager to execute the subrecipient agreement from NCORR,
- Do not adopt Capital Project Ordinance Amendment (CPOA) 2022-64 to appropriate \$1 million of funding from NCORR, and
- Reject all bids for the construction of the Homeless Day Resource Center and provide further direction to staff.

Recommended Action:

Staff recommends City Council move to accept Option 1, as follows:

- Authorize the City Manager to execute a subrecipient agreement with NCORR,
- Adopt Capital Project Ordinance Amendment (CPOA) 2022-64 to appropriate the additional \$1 million of NCORR funds for the project, and
- Authorize the City Manager to execute a construction contract with Muter Construction for the sum of \$4,961,500.

Attachments:

- Subrecipient Agreement, Fayetteville Day Resource Center project
- Capital Project Ordinance Amendment 2022-64, Fayetteville Day Resource Center project
- Certified bid tabulation dated May 26, 2022, Fayetteville Day Resource Center

project

**CAPITAL PROJECT ORDINANCE AMENDMENT
CHANGE 2022-64 (CPO 2020-22)**

BE IT ORDAINED by the City Council of the City of Fayetteville, North Carolina, that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby amended:

Section 1. The project change authorized is to Capital Project Ordinance 2020-22, adopted November 12, 2019, as amended for the funding of the Infrastructure Program as funded by the Community Development Block Grant Disaster Recovery Program (CDBG-DR) as awarded by the U.S. Department of Housing and Urban Development, passed through the North Carolina Department of Public Safety, Office of Recovery and Resiliency (NCORR), and the North Carolina Office of State Budget and Management.

Section 2. The project director is hereby directed to proceed with the project within the terms of the various agreements executed and within the funds appropriated herein.

Section 3. The following revenues are anticipated to be available to the City to complete the project:

	Listed As	Amendment	Revised
CDBG-DR - HUD, passed through NCORR	\$ 3,990,000	\$ 1,000,000	\$ 4,990,000
NC Office of State Budget and Management	1,000,000	-	1,000,000
	<u>\$ 4,990,000</u>	<u>\$ 1,000,000</u>	<u>\$ 5,990,000</u>

Section 4. The following amounts are appropriated for the project:

Project Expenditures	<u>\$ 4,990,000</u>	<u>\$ 1,000,000</u>	<u>\$ 5,990,000</u>
----------------------	---------------------	---------------------	---------------------

Section 5. Copies of the capital project ordinance amendment shall be made available to the budget officer and the finance officer for direction in carrying out the projects.

Section 6. The City Manager is hereby authorized and directed to take such action as he may deem necessary or appropriate to execute this ordinance.

Adopted this 13th day of June, 2022.

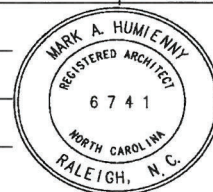


IBI GROUP
421 Fayetteville Street, Suite 1609
Raleigh NC 27601, USA
tel 919 851 4211
fax 919 851 2392
ibigroup.com

Fayetteville
Day Resource Center
IBI # 125585

BID TABULATION
IBI Group
2022-05-26

Bidder Name	Muter Construction	M & E Contracting	Jacobs Construction	
Contractor's License	73095	32417	NO BID	
Bid Security	Y	Y		
Acknowledgement of Addenda 1, 2, 3, 4, 5	Y	Y		
SDBE Contract Provisions Form	Y	Y		
SDBE Good Faith Effort Affidavits A, (B)	Y	Y		
Non-Collusion Affidavit	Y	Y		
Section 3 Forms 1,2, 3 & 4	Y	Y		
Special Provisions Form	Y	N		
Debarment Certification	Y	Y		
Total Base Bid	\$ 4,769,000.00	\$ 4,736,470.00	\$ -	
Alternate 1 - Canopy & Awnings	\$ 60,000.00	\$ 102,438.00	\$ -	
Alternate 2 - Demo Asphalt	\$ 25,000.00	\$ 31,777.00	\$ -	
Alternate 3 - Sprinkler Replace	\$ 45,000.00	\$ 73,099.00	\$ -	
Alternate 4 - Bollards	\$ 60,000.00	\$ 32,011.00	\$ -	
Alternate 5 - Preferred Brand Door Hardware	\$ 2,500.00	\$ 0.00	\$ -	
Total with Bid Alternates	\$ 4,961,500.00	\$ 4,975,795.00	\$ -	\$ -
Unit Prices				
Unit Price 1 - Excavation of Rubble/Debris	\$ 30.00	\$ 150.00	\$ -	
Unit Price 2 - Excavation of Unsuitable Soil	\$ 25.00	\$ 20.00	\$ -	
Unit Price 3 - Import Select Fill Material	\$ 30.00	\$ 25.00	\$ -	
Unit Price 4 - Import #57 Washed Stone	\$ 110.00	\$ 52.00	\$ -	
Unit Price 5 - Concrete Paving	\$ 120.00	\$ 1,252.00	\$ -	
Unit Price 6 - Asphalt Paving	\$ 55.00	\$ 30.00	\$ -	
Unit Price 7 - Dewatering	\$ 15.00	\$ 130.00	\$ -	
Unit Price 8 - French Drain	\$ 60.00	\$ 50.00	\$ -	
Unit Price 9 - Geotextile	\$ 0.50	\$ 1.00	\$ -	
Unit Price 10 - Import ABC Stone	\$ 100.00	\$ 85.71	\$ -	
Unit Price 11 - Moisture Control	\$ 4.50	\$ 4.00	\$ -	



I certify that the above is a true and accurate tabulation of the bids received and opened at 2:00 p.m. on May 26, 2022

IBI Group

Architect & Engineer

5/26/2022



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-2738

Agenda Date: 6/13/2022

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 7.07

TO: Mayor and Members of City Council

THRU: Adam Lindsay, Assistant City Manager

FROM: Rob Stone, PE, Construction Management and Special Projects
Director

Sheila Thomas-Ambat, PE, CCM, CFM, Public Services Director

Kelly Olivera, Budget and Evaluation Director

DATE: June 13, 2022

RE:

Adoption of Capital Project Ordinance Amendment 2022-63 to Appropriate
\$150,000 from PCH Development Co. for the Purchase of an Elevator for the Hay
Street Parking Deck

COUNCIL DISTRICT(S):

District 2

Relationship To Strategic Plan:

Goal V: Financially Sound City Providing Exemplary City Services

Executive Summary:

Council is asked to adopt Capital Project Ordinance Amendment (CPOA) 2022-63 to appropriate a \$150,000 payment from the PCH Development Co., LLC. The payment is for the purchase of an elevator for the Hay Street Parking Deck. This appropriation does not include any funding from the City.

Background:

The City has received a payment of \$150,000 from PCH Development Co. for the purchase of an elevator for the Hay Street Parking Deck. CPOA 2022-63 will appropriate the funds, and provide the expenditure budget needed for the purchase. All funds associated with the purchase of the elevator are to be provided by PCH Development

Co.

Issues/Analysis:

None

Budget Impact:

There is no impact to the General Fund. The appropriation consists of funds received from PCH Development, Co.

Options:

1. Adopt CPOA 2022-63 to appropriate the funds from PCH Development Co.
2. Do not adopt CPOA 2022-63 and provide further direction to staff.

Recommended Action:

Staff recommends that Council move to adopt Capital Project Ordinance Amendment 2022-63 as presented.

Attachments:

Capital Project Ordinance Amendment 2022-63

**CAPITAL PROJECT ORDINANCE AMENDMENT
CHANGE 2022-63 (CPO 2018-32)**

BE IT ORDAINED by the City Council of the City of Fayetteville, North Carolina, that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby amended:

Section 1. The project change authorized is to Capital Project Ordinance 2018-32, adopted December 11, 2017, as amended, for the funding of the construction of the Hay Street Parking Garage and Mixed Use Development, including associated ancillary project and financing costs.

Section 2. The project director is hereby directed to proceed with the project within the terms of the various agreements executed and within the funds appropriated herein.

Section 3. The following revenues are anticipated to be available to the City to complete the project:

	Listed As	Amendment	Revised
Limited Obligation Bond Proceeds	\$ 14,842,032	\$ -	\$ 14,842,032
Investment Income	189,063	-	189,063
PCH Development Co., Contribution through Kennon Craver, Attorney at Law	-	150,000	150,000
General Fund Transfer	2,900,000	-	2,900,000
	<u>\$ 17,931,095</u>	<u>\$ 150,000</u>	<u>\$ 18,081,095</u>

Section 4. The following amounts are appropriated for the project:

Project Expenditures	<u>\$ 17,931,095</u>	<u>\$ 150,000</u>	<u>\$ 18,081,095</u>
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Section 5. Copies of the capital project ordinance amendment shall be made available to the budget officer and the finance officer for direction in carrying out the projects.

Section 6. The City Manager is hereby authorized and directed to take such action as he may deem necessary or appropriate to execute this ordinance.

Adopted this 13th day of June, 2022.



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-2754

Agenda Date: 6/13/2022

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 7.08

TO: Mayor and Members of City Council

THRU: Telly C. Whitfield, PhD, Assistant City Manager

FROM: Randy Hume, Transit Director
Kelly Olivera, Budget and Evaluation Director

DATE: June 13, 2022

RE:

Adoption of Special Revenue Fund Project Ordinance 2022-12 to Appropriate
FTA Grant NC-2022-025 FTA for Section 5307 - American Rescue Plan Act
Funding

COUNCIL DISTRICT(S):

All

Relationship To Strategic Plan:

Goal IV: Desirable Place to Live, Work and Recreate

Objective 4.1: To maintain public transportation investments with high quality transit and airport services

Executive Summary:

The City has been awarded grant NC-2022-025 by the Federal Transit Administration (FTA) for transit operating assistance from urban formula funding made available by the American Rescue Plan Act (ARPA). Special Revenue Fund Project Ordinance (SRO) 2022-12 will appropriate \$247,421 of federal transit funding to pass through to Harnett County and Hoke County. As grant subrecipients to the City, Harnett will receive \$71,397 while Hoke County will receive \$176,024 in 100% FTA funding for operating assistance in FY 2023. A portion of FTA urban formula funds are allocated each year to other transit systems that provide service within the Fayetteville urbanized area. The FTA grant also provides \$4,163,122 to the City for FAST operations. These funds were appropriated the City's fiscal year (FY) 2022 operating budget.

It is also requested that City Council authorize the City Manager to execute any related grant subrecipient agreements related to the pass through of FTA funds.

Background:

The Fayetteville urbanized area receives annual apportionments for numerous FTA formula programs. The City is the designated recipient for urban transit funding for FTA funds apportioned to the Fayetteville area. In addition to Cumberland County, the urbanized area also includes portions of Hoke, Harnett and Robeson Counties. Systems that provide public transit services within our urbanized area are entitled to a share of the FTA funds. In accordance with FTA guidelines, FAST, FAMPO and the Community Transit Programs (CTP) in Cumberland, Harnett, and Hoke counties agreed to a formula for allocating the annual apportionments.

Since 2017, the allocations for the other systems were sub-allocated or split to NCDOT who then applied for and administered grants for CTP systems. NCDOT already administered and provided grant compliance oversight for other non-urban grants these systems received. As agreed, in 2020 and 2021 FAST split CARES and ARPA funds to NCDOT to be used on behalf of Harnett and Hoke systems. In late 2021, NCDOT notified transit systems around the state that they would no longer prepare applications, administer or oversee urban grants for these small systems. Cumberland, Harnett and Hoke Counties have requested to become subrecipients of the City/FAST for these funds.

The ARPA funds originally split to NCDOT have been returned to Fayetteville's account. The proposed SRO will set up the grant project so these FTA funds can be claimed as these counties incur eligible expenses, be drawn and passed through for reimbursement. Each county will also be required to enter into a grant subrecipient agreement with the City that outlines provisions, obligations and agreement to comply with FTA grant guidelines. It is requested that City Council authorize the City Manager to sign and execute these agreements as they are completed.

In addition to the funds that will be used by Harnett and Hoke Counties, FTA grant NC-2022-025 is also providing the City \$4,163,122 in 100% federal operating assistance for FAST. These funds were included in the FY2022 operating budget.

Issues/Analysis:

The City as the primary grant recipient is required to ensure subrecipients comply with applicable grant requirements for each related FTA program. Transit has developed grant oversight procedures and a grant checklist that are used to ensure that subrecipients adhere to all FTA requirements. The City is allowed to recover costs related to subrecipient oversight from FTA grants.

Budget Impact:

The APRA grant provides 100% FTA funding for operating assistance. No matching funds are required from the City or subrecipient counties.

Options:

- 1) Adopt Special Revenue Fund Project Ordinance 2022-12 and authorize the City Manager to execute the subrecipient grant agreements with Harnett County and Hoke County;
- 2) Do not adopt the SRO and provide further direction to staff

Recommended Action:

Staff recommends that Council move to adopt Special Revenue Fund Project Ordinance 2022-12 and authorize the City Manager to execute the subrecipient grant agreements with Harnett County and Hoke County

Attachments:

Special Revenue Project Ordinance 2022-12
FTA Grant NC-2022-025

SPECIAL REVENUE FUND PROJECT ORDINANCE
ORD 2022-12

BE IT ORDAINED by the City Council of the City of Fayetteville, North Carolina, that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following special revenue project ordinance is hereby adopted:

Section 1. The project authorized is for the funding of the 2022 subrecipient agreement for transit operating assistance from urban formula funding made available by the American Rescue Plan Act (ARPA), as funded by Federal Transit Administration Section 5307 Grant NC-2022-025.

Section 2. The project director is hereby directed to proceed with the project within the terms of the various contract agreements executed with the Federal and State governments and within the funds appropriated herein.

Section 3. The following revenues are anticipated to be available to the City to complete the project:

Federal Transit Administration	<u>\$ 247,421</u>
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Section 4. The following amounts are appropriated for the project:

Project Expenditures	<u>\$ 247,421</u>
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Section 5. Copies of this special revenue project ordinance shall be made available to the budget officer and the finance officer for direction in carrying out this project.

Section 6. The City Manager is hereby authorized and directed to take such action as he may deem necessary or appropriate to execute this ordinance.

Adopted this 13th day of June, 2022.

DOT

FTA

U.S. Department of Transportation

Federal Transit Administration

Award

Federal Award Identification Number (FAIN)	NC-2022-025-00
Temporary Application Number	1112-2021-3
Award Name	Sec. 5307 ARPA Funds for Operating; 2022; American Rescue Plan; Fayetteville, NC
Award Status	Active (Executed)
Award Budget Number	0

Period of Performance Start Date	5/24/2022	
Original Period of Performance End Date	3/30/2029	
Current Period of Performance End Date	3/30/2029	Revision #: 0

Part 1: Recipient Information

Name: FAYETTEVILLE, CITY OF

Recipient ID	Recipient OST Type	Recipient Alias	UEI	DUNS
1112	City	CITY OF FAYETTEVILLE		040031700

Location Type	Address	City	State	Zip
Headquarters	433 HAY ST	FAYETTEVILLE	NC	28301
Physical Address	467 HAY ST	FAYETTEVILLE	NC	28301
Mailing Address	433 HAY STREET	FAYETTEVILLE	NC	28301

Union Information

Union Name	NONE
Address 1	
Address 2	
City	

State	
Zipcode	00000
Contact Name	
Telephone	
Fax	00000
E-mail	
Website	

Part 2: Award Information

Title: Sec. 5307 ARPA Funds for Operating; 2022; American Rescue Plan; Fayetteville, NC

FAIN	Award Status	Award Type	Date Created	Last Updated Date	From TEAM?
NC-2022-025-00	Active (Executed)	Grant	9/9/2021	9/9/2021	No

Award Executive Summary

This grant requests the use of \$4,410,543 Section 5307 American Rescue Plan (ARP) funds apportioned in 2021 for transit operating expenses.

Purpose of the Award: These funds will ensure essential public transit services continue in spite of the impacts that have resulted from the COVID-19 pandemic.

Activities to be Performed: the APR funds will support day-to-day operating expenses for fixed route, complementary paratransit, and other demand response services provided in the Fayetteville urbanized area. These services are directly operated by Fayetteville Area System of Transit (FAST), Harnett County (Harnett Area Rural Transit System -HARTS) and Hoke County (Hoke Area Transit Service - HATS). Harnett County and Hoke County are subrecipients of Section 5307 urban funding for services provided within the Fayetteville urbanized area. Operating expenses include salaries and employee benefits, supplies including fuel, tires and parts, insurance as well other contracted services that support transit operations and transit operating facilities. No federal funding was previously received for these project activities or have been obligated in another grant application. No FEMA funds have been received for transit-related projects.

Expected Outcomes: Continued transit services as scheduled in safe and secure manner that are responsive to the needs of our communities.

Intended Beneficiaries: Residents and visitors within the Fayetteville area. Trips are provided for employment, education, medical appointments, shopping, recreation, etc. The majority of trips are provided to persons who have little or few choices to accomplish essential trips.

Subrecipient Activities: Subrecipients include Harnett County (\$71,397) and Hoke County (\$176,024). This funding will be used for Operating Assistance. The City of Fayetteville/FAST will provide oversight to ensure compliance with FTA grant provisions. Funds had been previously "split" or sub-allocated the North Carolina Department of Transportation (NCDOT).

The City of Fayetteville will follow all 3rd party procurement policies as defined in C4220.1F (Third Party Contracting Guidance). The City will ensure contractors procured will not be on the FTA Suspension and Debarment list.

A Program of Projects is attached.

ARP Apportionment Table 2 and Fayetteville urbanized area split letter are attached. The North Carolina Department of Transportation (NCDOT) will not apply on behalf of Harnett and Hoke Counties. These have elected to be subrecipients of the City.

The City of Fayetteville is the Designated Recipient for FTA Section 5307 funds for the Fayetteville, NC urbanized area.

FTA Certifications and Assurances for 2022 were reviewed and signed/pinned by the Fayetteville City Attorney, Karen M. McDonald and Transit Director, Randy Hume in TrAMS.

Frequency of Milestone Progress Reports (MPR)

Quarterly

Frequency of Federal Financial Reports (FFR)

Quarterly

Does this application include funds for research and/or development activities?

This award does not include research and development activities.

Pre-Award Authority

This award is using Pre-Award Authority.

Does this application include suballocation funds?

Recipient organization is the Designated Recipient and can apply for and receive these apportioned funds.

Will this Grant be using Lapsing Funds?

No, this Grant does not use Lapsing Funds.

Will indirect costs be applied to this application?

This award is applying an approved Indirect cost rate(s).

Indirect Rate Details: 9.45%

Requires E.O. 12372 Review

No, this application does not require E.O. 12372 Review.

Delinquent Federal Debt

No, my organization does not have delinquent federal debt.

Award Point of Contact Information

First Name	Last Name	Title	E-mail Address	Phone
		john.crocker@dot.gov	Community Planner	
		guanying.lei@dot.gov	General Engineer	
Randall	Hume	Transit Director	randyhume@fayettevillenc.gov	910-433-1011

Award Budget Control Totals

Funding Source	Section of Statute	CFDA Number	Amount
5307 - Urbanized Area Formula Grants (ARPA)	5307-9	20507	\$4,410,543
Local			\$0
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$4,410,543

Award Budget

Project Number	Budget Item	FTA Amount	Non-FTA Amount	Total Eligible Amount	Quantity
NC-2022-025-01-00	300-00 (300-A1) OPERATING ASSISTANCE	\$4,163,122.00	\$0.00	\$4,163,122.00	0
NC-2022-025-01-00	30.09.08 EMER RELIEF - OPERATING ASSIST - 100% Fed Share	\$4,163,122.00	\$0.00	\$4,163,122.00	0
NC-2022-025-02-00	300-00 (300-A2) OPERATING ASSISTANCE	\$71,397.00	\$0.00	\$71,397.00	0
NC-2022-025-02-00	30.09.08 EMER RELIEF - OPERATING ASSIST - 100% Fed Share	\$71,397.00	\$0.00	\$71,397.00	0
NC-2022-025-03-00	300-00 (300-A3) OPERATING ASSISTANCE	\$176,024.00	\$0.00	\$176,024.00	0
NC-2022-025-03-00	30.09.08 EMER RELIEF - OPERATING ASSIST -	\$176,024.00	\$0.00	\$176,024.00	0

100% Fed
Share

Discretionary Allocations

This application does not contain discretionary allocations.

Sources of Federal Financial Assistance

PO Number	Project Number	Scope Name	Scope Number	Scope Suffix	UZA Code	Area Name	Account Class Code	FPC	Description	Amendment Amount	Cumulative Amount
NC-90-X 777	NC-2022-025-01-00	OPERATING ASSISTANCE	300-00 (300)	A1	3796 30	Fayetteville, NC	2021.32.9 0.PV.1	04	Urbanized Area Formula Grants (ARPA)	\$4,163,122	\$4,163,122
NC-90-X 777	NC-2022-025-02-00	OPERATING ASSISTANCE	300-00 (300)	A2	3796 30	Fayetteville, NC	2021.32.9 0.PV.1	04	Urbanized Area Formula Grants (ARPA)	\$71,397	\$71,397
NC-90-X 777	NC-2022-025-03-00	OPERATING ASSISTANCE	300-00 (300)	A3	3796 30	Fayetteville, NC	2021.32.9 0.PV.1	04	Urbanized Area Formula Grants (ARPA)	\$176,024	\$176,024

Part 3: Project Information

Project Title: Fayetteville - Operating Assistance for FY22

Project Number	Temporary Project Number	Date Created	Start Date	End Date
NC-2022-025-01-00	1112-2021-3-P1	9/9/2021	7/1/2021	10/31/2022

Project Description

This project will use Section 5307 American Rescue Plan Act (ARPA) urbanized area apportionment for Operating Assistance reimbursement. This funding will reimburse FAST for expenditures incurred from July 1, 2021 through June 30, 2022. The City, as the applicant, will provide the services and projects described in this grant within the FAST service area. This project includes more than 1% for security related expenses. Based on 100% FTA funding of eligible expenses there is no local match required.

Eligible expenses will not include costs being reimbursed by other federal transit programs (Section 5307 annual or CARES).

Project Benefits

Allows FAST to continue transit services without major impact on the community. The project will ensure continuation of vital public transit services for area residents and visitors during the times impacted by the COVID-19 pandemic and continued health and safety actions. This includes extra measures that were required to for cleaning vehicles and facilities, implementation of social distancing measures, and personal protective equipment to help prevent the spread of the disease.

Additional Information

FAST service area residents (168,000) will continue to have access and the ability to utilize FAST's fixed route and complementary ADA paratransit services.

Location Description

FAST serves the Fayetteville, NC urban area.

Project Location (Urbanized Areas)

UZA Code	Area Name
370000	North Carolina
379630	Fayetteville, NC

Congressional District Information

State	District	Representative
North Carolina	8	Richard Hudson
North Carolina	9	Dan Bishop

Program Plan Information

STIP/TIP

Date: N/A

Description: N/A

UPWP

Date: N/A

Description: N/A

Long Range Plan

Date: N/A

Description: N/A

Project Control Totals

Funding Source	Section of Statute	CFDA Number	Amount
5307 - Urbanized Area Formula Grants (ARPA)	5307-9	20507	\$4,163,122
Local			\$0
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0

Total Eligible Cost	\$4,163,122
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Project Budget

Project Number	Budget Item	FTA Amount	Non-FTA Amount	Total Eligible Amount	Quantity
NC-2022-025-01-00	300-00 (300-A1) OPERATING ASSISTANCE	\$4,163,122.00	\$0.00	\$4,163,122.00	0
NC-2022-025-01-00	30.09.08 EMER RELIEF - OPERATING ASSIST - 100% Fed Share	\$4,163,122.00	\$0.00	\$4,163,122.00	0

Project Budget Activity Line Items

Budget Activity Line Item: 30.09.08 - EMER RELIEF - OPERATING ASSIST - 100% Fed Share				
Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
OPERATING ASSISTANCE (300-00)	30.09.08	EMER RELIEF - OPERATING ASSIST - 100% Fed Share	OPERATING ASSISTANCE	0

Extended Budget Description

Eligible operating expenses for the period July 1, 2021 through June 30, 2022. Operating expenditures include but are not limited to: wages and benefits for bus operators, maintenance and other support staff; maintenance parts and supplies; vehicle fuel; operating supplies; security services; and administrative support services. Operating assistance worksheet for FY 22 is attached.

This ALI includes security expenditures that exceed 1% of the project budget.

Will 3rd Party contractors be used to fulfill this activity line item?

Yes, 3rd Party Contractors will be used for this line item.

Funding Source	Section of Statute	CFDA Number	Amount
5307 - Urbanized Area Formula Grants (ARPA)	5307-9	20507	\$4,163,122
Local			\$0
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0

Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$4,163,122

Milestone Name	Est. Completion Date	Description
Initial Expenditure	7/1/2021	Begin operating expenses.
Complete Operation	6/30/2022	Complete operation expenditures.
Final Expenditure	10/31/2022	Final expenditure drawn.

Project Environmental Findings

Finding: Class II(c) - Categorical Exclusions (C-List)

Class Level Description

Class II(c) consists of projects that do not have a significant environmental impact on the human or natural environment and are therefore categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement. FTA requires a sufficient project description to support a CE determination. The project may require additional documentation to comply with other environmental laws.

Categorical Exclusion Description

Type 04: Planning and administrative activities which do not involve or lead directly to construction, such as: training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; engineering; and operating assistance to transit authorities to continue existing service or increase service to meet routine demand.

Date Description	Date
Class IIc CE Approved	

Scope Name / Code	Line Item Number	Line Item Name	Quantity	FTA Amount	Total Eligible Cost
OPERATING ASSISTANCE (300-00)	30.09.08	EMER RELIEF - OPERATING ASSIST - 100% Fed Share	0	\$4,163,122.00	\$4,163,122.00

Project Title: Harnett County Operating Expenses

Project Number	Temporary Project Number	Date Created	Start Date	End Date
NC-2022-025-02-00	1112-2021-3-P2	4/4/2022	7/1/2022	9/30/2023

Project Description

FTA operating assistance for the fiscal year ending June 30, 2023 in support and to maintain Harnett Area Rural Transit System (HARTS) demand response services provided within the Fayetteville urbanized area. Expenses include employee wages and benefits, vehicle fuel and maintenance, and facility maintenance. HARTS will also continue enhanced cleaning and sanitation protocols to ensure

vehicles and facilities are safe for customer and employee use. Harnett County will be a subrecipient to the City of Fayetteville. Eligible expenses will not include costs being reimbursed by other federal transit programs (Section 5311 or 5307 annual).

Project Benefits

Continue essential transit services as the economic impact of COVID-19 lingers resulting in lost or stagnant revenues and higher costs due to increased bus driver wage rates, fuel and other inflationary pressures in addition to the COVID related preventative practices.

Additional Information

Provide critical transit trips for employment, education, medical appointments, social services, shopping and other leisure activities.

Location Description

City of Fayetteville and urban areas of Harnett County.

Project Location (Urbanized Areas)

UZA Code	Area Name
370000	North Carolina
379630	Fayetteville, NC

Congressional District Information

State	District	Representative
North Carolina	8	Richard Hudson

Program Plan Information

STIP/TIP

Date: N/A

Description: N/A

UPWP

Date: N/A

Description: N/A

Long Range Plan

Date: N/A

Description: N/A

Project Control Totals

Funding Source	Section of Statute	CFDA Number	Amount
5307 - Urbanized Area Formula Grants (ARPA)	5307-9	20507	\$71,397
Local			\$0

Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$71,397

Project Budget

Project Number	Budget Item	FTA Amount	Non-FTA Amount	Total Eligible Amount	Quantity
NC-2022-025-02-00	300-00 (300-A2) OPERATING ASSISTANCE	\$71,397.00	\$0.00	\$71,397.00	0
NC-2022-025-02-00	30.09.08 EMER RELIEF - OPERATING ASSIST - 100% Fed Share	\$71,397.00	\$0.00	\$71,397.00	0

Project Budget Activity Line Items

Budget Activity Line Item: 30.09.08 - EMER RELIEF - OPERATING ASSIST - 100% Fed Share

Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
OPERATING ASSISTANCE (300-00)	30.09.08	EMER RELIEF - OPERATING ASSIST - 100% Fed Share	OPERATING ASSISTANCE	0

Extended Budget Description

Eligible operating expenses for the period July 1, 2022 through June 30, 2023. Operating expenditures include but are not limited to wages and benefits for bus operators and other operating and transit support personnel, vehicle fuel, operating supplies, security services, and administrative support services. An operating assistance worksheet for Harnett County is attached.

Will 3rd Party contractors be used to fulfill this activity line item?

No, 3rd Party Contractors will not be used for this line item.

Funding Source	Section of Statute	CFDA Number	Amount
5307 - Urbanized Area Formula Grants (ARPA)	5307-9	20507	\$71,397
Local			\$0

Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$71,397

Milestone Name	Est. Completion Date	Description
Initial Expenditure	7/1/2022	Begin operating expenses
Complete Operations	6/30/2023	Complete operation expenditures.
Final Expenditure	9/30/2023	Final expenditure drawn

Project Environmental Findings

Finding: Class II(c) - Categorical Exclusions (C-List)

Class Level Description

Class II(c) consists of projects that do not have a significant environmental impact on the human or natural environment and are therefore categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement. FTA requires a sufficient project description to support a CE determination. The project may require additional documentation to comply with other environmental laws.

Categorical Exclusion Description

Type 04: Planning and administrative activities which do not involve or lead directly to construction, such as: training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; engineering; and operating assistance to transit authorities to continue existing service or increase service to meet routine demand.

Date Description	Date
Class IIc CE Approved	

Scope Name / Code	Line Item Number	Line Item Name	Quantity	FTA Amount	Total Eligible Cost
OPERATING ASSISTANCE (300-00)	30.09.08	EMER RELIEF - OPERATING ASSIST - 100% Fed Share	0	\$71,397.00	\$71,397.00

Project Title: Hoke County Operating Expenses

Project Number	Temporary Project Number	Date Created	Start Date	End Date
NC-2022-025-03-00	1112-2021-3-P3	4/5/2022	7/1/2022	9/30/2023

Project Description

FTA operating assistance for the fiscal year ending June 30, 2023 in support and to maintain Hoke Area Transit Service (HATS) demand response and deviated fixed route services provided within the Fayetteville urbanized area. Expenses include employee wages and benefits, vehicle fuel and maintenance, and facility maintenance. HATS will also continue enhanced cleaning and sanitation protocols to ensure vehicles and facilities are safe for customer and employee use. Hoke County will be a subrecipient to the City of Fayetteville. Eligible expenses will not include costs being reimbursed by other federal transit programs (Section 5311 or 5307 annual).

Project Benefits

Continue essential transit services as the economic impact of COVID-19 lingers resulting in lost or stagnant revenues and higher costs due to increased bus driver wage rates, fuel and other inflationary pressures in addition to the COVID related preventative practices.

Additional Information

Provide critical transit trips for employment, education, medical appointments, social services, shopping and other leisure activities.

Location Description

City of Fayetteville, City of Raeford and urban areas of Hoke County

Project Location (Urbanized Areas)

UZA Code	Area Name
370000	North Carolina
379630	Fayetteville, NC

Congressional District Information

State	District	Representative
North Carolina	8	Richard Hudson
North Carolina	9	Dan Bishop

Program Plan Information**STIP/TIP**

Date: N/A

Description: N/A

UPWP

Date: N/A

Description: N/A

Long Range Plan

Date: N/A

Description: N/A

Project Control Totals

Funding Source	Section of Statute	CFDA Number	Amount
5307 - Urbanized Area Formula Grants (ARPA)	5307-9	20507	\$176,024
Local			\$0
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$176,024

Project Budget

Project Number	Budget Item	FTA Amount	Non-FTA Amount	Total Eligible Amount	Quantity
NC-2022-025-03-00	300-00 (300-A3) OPERATING ASSISTANCE	\$176,024.00	\$0.00	\$176,024.00	0
NC-2022-025-03-00	30.09.08 EMER RELIEF - OPERATING ASSIST - 100% Fed Share	\$176,024.00	\$0.00	\$176,024.00	0

Project Budget Activity Line Items

Budget Activity Line Item: 30.09.08 - EMER RELIEF - OPERATING ASSIST - 100% Fed Share				
Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
OPERATING ASSISTANCE (300-00)	30.09.08	EMER RELIEF - OPERATING ASSIST - 100% Fed Share	OPERATING ASSISTANCE	0

Extended Budget Description

Eligible operating expenses for the period July 1, 2022 through June 30, 2023. Operating expenditures include but are not limited to wages and benefits for bus operators and other operating and transit support personnel, vehicle fuel, operating supplies, security services, and administrative support services. An operating assistance worksheet for Hoke County is attached.

Will 3rd Party contractors be used to fulfill this activity line item?

Yes, 3rd Party Contractors will be used for this line item.

Funding Source	Section of Statute	CFDA Number	Amount
5307 - Urbanized Area Formula Grants (ARPA)	5307-9	20507	\$176,024
Local			\$0
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$176,024

Milestone Name	Est. Completion Date	Description
Initial Expenditure	7/1/2022	Begin operating expenses
Complete Operations	6/30/2023	Complete operation expenditures
Final Expenditure	9/30/2023	Final expenditure drawn

Project Environmental Findings

Finding: Class II(c) - Categorical Exclusions (C-List)

Class Level Description

Class II(c) consists of projects that do not have a significant environmental impact on the human or natural environment and are therefore categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement. FTA requires a sufficient project description to support a CE determination. The project may require additional documentation to comply with other environmental laws.

Categorical Exclusion Description

Type 04: Planning and administrative activities which do not involve or lead directly to construction, such as: training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; engineering; and operating assistance to transit authorities to continue existing service or increase service to meet routine demand.

Date Description	Date
Class IIc CE Approved	

Scope Name / Code	Line Item Number	Line Item Name	Quantity	FTA Amount	Total Eligible Cost
OPERATING ASSISTANCE (300-00)	30.09.08	EMER RELIEF - OPERATING ASSIST - 100% Fed Share	0	\$176,024.00	\$176,024.00

Part 4: Fleet Details

No fleet data exists for this application.

Part 5: FTA Review Comments

Application Review Comments

Comment By Boyd Melton

Comment Type Application Details

Date 5/17/2022

Comment NOTE - As PAA is selected a task will be generated in TrAMs for an initial FFR after award and prior to grant execution.

Part 6: Agreement

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION**

**GRANT AGREEMENT
(FTA G-29, October 1, 2021)**

On the date the authorized U.S. Department of Transportation, Federal Transit Administration (FTA) official signs this Grant Agreement, FTA has obligated and awarded federal assistance as provided below. Upon execution of this Grant Agreement by the Recipient named below, the Recipient affirms this FTA Award, enters into this Grant Agreement with FTA, and binds its compliance with the terms of this Grant Agreement.

The following documents are incorporated by reference and made part of this Grant Agreement:

- (1) "Federal Transit Administration Master Agreement," FTA MA(29), <http://www.transit.dot.gov>,
- (2) The Certifications and Assurances applicable to the FTA Award that the Recipient has selected and provided to FTA, and
- (3) Any Award notification containing special conditions or requirements, if issued.

WHEN THE TERM "FTA AWARD" OR "AWARD" IS USED, EITHER IN THIS GRANT AGREEMENT OR THE APPLICABLE MASTER AGREEMENT, "AWARD" ALSO INCLUDES ALL TERMS AND CONDITIONS SET FORTH IN THIS GRANT AGREEMENT.

FTA OR THE FEDERAL GOVERNMENT MAY WITHDRAW ITS OBLIGATION TO PROVIDE FEDERAL ASSISTANCE IF THE RECIPIENT DOES NOT EXECUTE THIS GRANT AGREEMENT WITHIN 90 DAYS FOLLOWING FTA's AWARD DATE SET FORTH HEREIN.

FTA AWARD

Federal Transit Administration (FTA) hereby awards a Federal Grant as follows:

Recipient Information

Recipient Name: FAYETTEVILLE, CITY OF

Recipient ID: 1112

UEI:

DUNS: 040031700

Award Information

Federal Award Identification Number: NC-2022-025-00

Award Name: Sec. 5307 ARPA Funds for Operating; 2022; American Rescue Plan; Fayetteville, NC

Award Start Date: 5/24/2022

Original Award End Date: 3/30/2029

Current Award End Date: 3/30/2029

Award Executive Summary: This grant requests the use of \$4,410,543 Section 5307 American Rescue Plan (ARP) funds apportioned in 2021 for transit operating expenses.

Purpose of the Award: These funds will ensure essential public transit services continue in spite of the impacts that have resulted from the COVID-19 pandemic.

Activities to be Performed: the APR funds will support day-to-day operating expenses for fixed route, complementary paratransit, and other demand response services provided in the Fayetteville urbanized area. These services are directly operated by Fayetteville Area System of Transit (FAST), Harnett County (Harnett Area Rural Transit System -HARTS) and Hoke County (Hoke Area Transit Service - HATS). Harnett County and Hoke County are subrecipients of Section 5307 urban funding for services provided within the Fayetteville urbanized area. Operating expenses include salaries and employee benefits, supplies including fuel, tires and parts, insurance as well other contracted services that support transit operations and transit operating facilities. No federal funding was previously received for these project activities or have been obligated in another grant application. No FEMA funds have been received for transit-related projects.

Expected Outcomes: Continued transit services as scheduled in safe and secure manner that are responsive to the needs of our communities.

Intended Beneficiaries: Residents and visitors within the Fayetteville area. Trips are provided for employment, education, medical appointments, shopping, recreation, etc. The majority of trips are provided to persons who have little or few choices to accomplish essential trips.

Subrecipient Activities: Subrecipients include Harnett County (\$71,397) and Hoke County (\$176,024). This funding will be used for Operating Assistance. The City of Fayetteville/FAST will provide oversight to ensure compliance with FTA grant provisions. Funds had been previously "split" or sub-allocated the North Carolina Department of Transportation (NCDOT).

The City of Fayetteville will follow all 3rd party procurement policies as defined in C4220.1F (Third Party Contracting Guidance). The City will ensure contractors procured will not be on the FTA Suspension and Debarment list.

A Program of Projects is attached.

ARP Apportionment Table 2 and Fayetteville urbanized area split letter are attached. The North Carolina Department of Transportation (NCDOT) will not apply on behalf of Harnett and Hoke Counties. These have elected to be subrecipients of the City.

The City of Fayetteville is the Designated Recipient for FTA Section 5307 funds for the Fayetteville, NC urbanized area.

FTA Certifications and Assurances for 2022 were reviewed and signed/pinned by the Fayetteville City Attorney, Karen M. McDonald and Transit Director, Randy Hume in TrAMS.

Research and Development: This award does not include research and development activities.

Indirect Costs: This award is applying an approved Indirect cost rate(s).

Suballocation Funds: Recipient organization is the Designated Recipient and can apply for and receive these apportioned funds.

Pre-Award Authority: This award is using Pre-Award Authority.

Award Budget

Total Award Budget: \$4,410,543.00

Amount of Federal Assistance Obligated for This FTA Action (in U.S. Dollars): \$4,410,543.00

Amount of Non-Federal Funds Committed to This FTA Action (in U.S. Dollars): \$0.00

Total FTA Amount Awarded and Obligated (in U.S. Dollars): \$4,410,543.00

Total Non-Federal Funds Committed to the Overall Award (in U.S. Dollars): \$0.00

Award Budget Control Totals

(The Budget includes the individual Project Budgets (Scopes and Activity Line Items) or as attached)

Funding Source	Section of Statute	CFDA Number	Amount
5307 - Urbanized Area Formula Grants (ARPA)	5307-9	20507	\$4,410,543
Local			\$0
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$4,410,543

(The Transportation Development Credits are not added to the amount of the Total Award Budget.)

U.S. Department of Labor Certification of Public Transportation Employee Protective Arrangements:

Review Decision: DOL Concurs - Certified
Original Certification Date: 5/20/2022

Special Conditions

There are no special conditions.

FINDINGS AND DETERMINATIONS

By signing this Award on behalf of FTA, I am making all the determinations and findings required by federal law and regulations before this Award may be made.

FTA AWARD OF THE GRANT AGREEMENT

Awarded By:
Yvette Taylor
Regional Administrator
FEDERAL TRANSIT ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION
Contact Info: yvette.taylor@dot.gov
Award Date: 5/24/2022

EXECUTION OF THE GRANT AGREEMENT

Upon full execution of this Grant Agreement by the Recipient, the Effective Date will be the date FTA or the Federal Government awarded Federal assistance for this Grant Agreement.

By executing this Grant Agreement, the Recipient intends to enter into a legally binding agreement in which the Recipient:

- (1) Affirms this FTA Award,
- (2) Adopts and ratifies all of the following information it has submitted to FTA:
 - (a) Statements,
 - (b) Representations,
 - (c) Warranties,
 - (d) Covenants, and
 - (e) Materials,
- (3) Consents to comply with the requirements of this FTA Award, and
- (4) Agrees to all terms and conditions set forth in this Grant Agreement.

Executed By:
Randall Hume
Transit Director
FAYETTEVILLE, CITY OF
5/25/2022



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-2755

Agenda Date: 6/13/2022

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 7.09

TO: Mayor and Members of City Council

THRU: Telly C. Whitfield, Phd, Assistant City Manager

FROM: Randy Hume, Transit Director
Kelly Olivera, Budget and Evaluation Director

DATE: June 13, 2022

RE:

Adoption of Special Revenue Fund Project Ordinance 2022-13 to Appropriate Grant NC-2022-026 for FTA Section 5310 Fayetteville Urban Area Elderly and Disabled Program

COUNCIL DISTRICT(S):

All

Relationship To Strategic Plan:

Goal 4: Desirable Place to Live, Work and Recreate

Objective 4.1: To develop and maintain public transportation investments with high quality transit and airport services

Executive Summary:

The Federal Transit Administration (FTA) has awarded \$318,000 of grant funding to the City under its Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities Program. The FTA funding provides \$300,000 to the Mid-Carolina Council of Governments (MCCOG) as a subrecipient to the City. This funding which will be passed through to the Cumberland County's Community Transportation Program (CTP). The City also receives \$18,000 in grant funding to reimburse The City/FAST for its subrecipient oversight efforts.

Special Revenue Fund Project Ordinance (SRO) 2022-13 will appropriate \$318,000 of federal funding. The FTA funding covers 100% of the project cost so no local matching funds are required from either Cumberland County or the City.

City Council is also asked to authorize the City Manager to execute a subrecipient grant agreement with MCCOG that is required to pass the FTA grant funds through to MCCOG and Cumberland County.

Background:

FTA has apportioned funds to the Fayetteville urbanized area under its Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities Program. Prior to 2012, Section 5310 funding was allocated solely to the North Carolina Department of Transportation (NCDOT). In accordance with our approved Program Management Plan the Fayetteville Area Metropolitan Planning Organization (FAMPO) selects projects each year for funding. Once FAMPO selects the projects, the City prepares and submits the Section 5310 grant application to FTA. Projects must be over and above ADA requirements, therefore the City's FASTTRAC! service is not eligible to use these funds.

The Cumberland County/MCCOG continuation project was the only project selected by FAMPO. Cumberland County will use this funding to continue through FY 2023 to provide non-medical transportation (work, school, shopping) trips for elderly and disabled residents of the urban areas of Cumberland County not served by Fayetteville Area System of Transit (FAST). This will include services to the Vision Resource Center on Cedar Creek Road. MCCOG/Cumberland County will administer the project.

Due to provisions included in the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA) grantees are entitled to use unobligated apportionments of FTA Section 5310 funds through 2021 for 100% of project costs. In addition, the City as grantee is also allowed to receive 100% reimbursement for its program oversight costs.

Prior to drawing or disbursing funds to MCCOG from this grant, staff will need to execute a grant subrecipient agreement to ensure compliance with all FTA grant provisions.

Issues/Analysis:

The City as the primary grant recipient is required to ensure subrecipients comply with applicable FTA grant requirements for Section 5310 funding. Transit has developed grant oversight procedures and a grant checklist that are used to ensure that subrecipients adhere to all FTA requirements.

Budget Impact:

The grant provides 100% federal funding so no matching funds are required.

Options:

1) Adopt Special Revenue Fund Project Ordinance 2022-13 and authorize the City Manager to execute the subrecipient grant agreement with Mid-Carolina Council of Governments;

2) Do not adopt the SRO and provide further direction to staff.

Recommended Action:

Staff recommends that Council adopt Special Revenue Fund Project Ordinance 2022-13 and authorize the City Manager to execute the subrecipient grant agreement with Mid-Carolina Council of Governments.

Attachments:

Special Revenue Project Ordinance 2022-13
FTA Grant NC-22-026

SPECIAL REVENUE FUND PROJECT ORDINANCE
ORD 2022-13

BE IT ORDAINED by the City Council of the City of Fayetteville, North Carolina, that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following special revenue project ordinance is hereby adopted:

Section 1. The project authorized is for the funding of the 2022 subrecipient agreement for Enhanced Mobility for Seniors and Individuals with Disabilities Projects, as funded by Federal Transit Administration Section 5310 Grant NC-2022-026-00.

Section 2. The project director is hereby directed to proceed with the project within the terms of the various contract agreements executed with the Federal and State governments and within the funds appropriated herein.

Section 3. The following revenues are anticipated to be available to the City to complete the project:

Federal Transit Administration	\$ <u>318,000</u>
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Section 4. The following amounts are appropriated for the project:

Project Expenditures	\$ <u>318,000</u>
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Section 5. Copies of this special revenue project ordinance shall be made available to the budget officer and the finance officer for direction in carrying out this project.

Section 6. The City Manager is hereby authorized and directed to take such action as he may deem necessary or appropriate to execute this ordinance.

Adopted this 13th day of June, 2022.

DOT

FTA

U.S. Department of Transportation

Federal Transit Administration

Award

Federal Award Identification Number (FAIN)	NC-2022-026-00
Temporary Application Number	1112-2022-1
Award Name	FY23 5310 Funding for Seniors and Individuals with Disabilities; Fayetteville, NC
Award Status	Active (Executed)
Award Budget Number	0

Period of Performance Start Date	5/24/2022	
Original Period of Performance End Date	3/30/2029	
Current Period of Performance End Date	3/30/2029	Revision #: 0

Part 1: Recipient Information

Name: CITY OF FAYETTEVILLE

Recipient ID	Recipient OST Type	Recipient Alias	UEI	DUNS
1112	City	CITY OF FAYETTEVILLE	MGRJM6AME6T6	040031700

Location Type	Address	City	State	Zip
Headquarters	433 HAY ST	FAYETTEVILLE	NC	28301
Physical Address	467 HAY ST	FAYETTEVILLE	NC	28301
Mailing Address	433 HAY STREET	FAYETTEVILLE	NC	28301

Union Information

Union Name	NONE
Address 1	
Address 2	
City	

State	
Zipcode	00000
Contact Name	
Telephone	
Fax	00000
E-mail	
Website	

Part 2: Award Information

Title: FY23 5310 Funding for Seniors and Individuals with Disabilities; Fayetteville, NC

FAIN	Award Status	Award Type	Date Created	Last Updated Date	From TEAM?
NC-2022-026-00	Active (Executed)	Grant	5/12/2022	5/12/2022	No

Award Executive Summary

Purpose: This grant requests the use of \$318,000 Section 5310 funds apportioned in 2020 (potentially lapsing - \$216,474), and 2021 (\$101,256). Section 5310 Enhanced Mobility for Senior and Individuals with Disabilities grant funding will be used for: 1) purchase of service from a privately owned transportation provider (capital expense) for non-medical transportation (work, school, shopping) for elderly and disabled residents in urban areas of Cumberland County not served by Fayetteville Area System of Transit (FAST); and 2) the City/FAST's administrative costs to provide oversight of subrecipient activities

Activities: Purchase of service (\$300,000) from a privately owned transportation provider (capital expense) will provide non-medical transportation (work, school, shopping) for elderly and disabled residents of urban areas of Cumberland County not served by Fayetteville Area System of Transit (FAST) for FY22-23. This project is a joint-venture between the Mid-Carolina Council of Governments, a public non-profit organization and designated Areawide Aging Agency, and the Cumberland County Community Transportation Program (CTP). The 2021 Cumberland County Coordinated Human Services Public Transportation Plan (attached) addresses a high priority need for more non-medical services for the elderly and disabled. These services will be provided to elderly and disabled populations who live in the urbanized area and not served by the City of Fayetteville's FASTTRAC! complementary paratransit or fixed route services. As provided by CRRSSA these services will use 100% FTA Section 5310 funding. The traditional project will comprises 94.3% of the project budget. A Program of Projects is attached.

This project was selected by the Fayetteville Area Metropolitan Planning Organization (FAMPO) in accordance with the approved Program Management Plan. The Section 5310 Program Management Plan (PMP) was approved on August 11, 2015.

Expected Outcomes: This grant project continues to support and expand needed services within the Fayetteville region that benefit seniors and persons with disabilities.

Intended Beneficiaries: Cumberland County 2020 census data indicates 12.2% of its population is 65 years of age or older with another 12.8% are less than 65 years and have a disability.

Subrecipient Activities: Subrecipient will be the Mid-Carolina Council of Governments (MCCOG) and supports purchase of service from private providers by the Cumberland County Community

Transportation Program. The grant also includes \$18,000 for the City of Fayetteville-Transit for grant administration and subrecipient oversight activities.

Frequency of Milestone Progress Reports (MPR)

Annual

Frequency of Federal Financial Reports (FFR)

Annual

Does this application include funds for research and/or development activities?

This award does not include research and development activities.

Pre-Award Authority

This award is using Pre-Award Authority.

Does this application include suballocation funds?

Recipient organization is the Designated Recipient and can apply for and receive these apportioned funds.

Will this Grant be using Lapsing Funds?

Yes, this Grant will use Lapsing Funds.

Will indirect costs be applied to this application?

This award does not include an indirect cost rate.

Indirect Rate Details: N/A

Requires E.O. 12372 Review

No, this application does not require E.O. 12372 Review.

Delinquent Federal Debt

No, my organization does not have delinquent federal debt.

Award Point of Contact Information

First Name	Last Name	Title	E-mail Address	Phone
		john.crocker@dot.gov	Community Planner	
		guanying.lei@dot.gov	General Engineer	
Randall	Hume	Transit Director	randyhume@fayettevillenc.gov	910-433-1011

Award Budget Control Totals

Funding Source	Section of Statute	CFDA Number	Amount
5310 - Mobility of Sr. & Indv. w/ Disabilities Formula at 100% share	5310-1C	20513	\$300,000
5310 - Mobility of Sr. & Indv. w/ Disabilities Formula	5310-1A	20513	\$18,000

Local			\$0
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$318,000

Award Budget

Project Number	Budget Item	FTA Amount	Non-FTA Amount	Total Eligible Amount	Quantity
NC-2022-026-01-00	117-00 (117-A1) OTHER CAPITAL ITEMS (BUS)	\$300,000.00	\$0.00	\$300,000.00	0
NC-2022-026-01-00	11.71.13 3RD PARTY CONTRACTED SERVICES (5310 ONLY)	\$300,000.00	\$0.00	\$300,000.00	0
NC-2022-026-01-00	610-00 (610-A2) STATE / PROGRAMS ADMINISTRATION	\$18,000.00	\$0.00	\$18,000.00	0
NC-2022-026-01-00	11.80.00 STATE OR PROGRAM ADMINISTRATION	\$18,000.00	\$0.00	\$18,000.00	0

Discretionary Allocations

This application does not contain discretionary allocations.

Sources of Federal Financial Assistance

PO Number	Project Number	Scope Name	Scope Number	Scope Suffix	UZA Code	Area Name	Account Class Code	FPC	Description	Amendment Amount	Cumulative Amount
NC-16-X 073	NC-2022-026-01-00	OTHER CAPITAL ITEMS (BUS)	117-00 (117)	A1	3796 30	Fayetteville, NC	2020.25.1 6.L1.2	00	Seniors / Disabled Sec 5310 - >200K Pop	\$216,474	\$216,474
NC-16-X 073	NC-2022-026-01-00	OTHER CAPITAL ITEMS (BUS)	117-00 (117)	A1	3796 30	Fayetteville, NC	2021.25.1 6.L1.2	00	Seniors / Disabled Sec 5310 - >200K Pop	\$83,526	\$83,526

NC-16-X 073	NC-2022 -026-01- 00	STATE / PROGR AMS AD MINISTR ATION	610-00 (610)	A2	3796 30	Fayett eville, NC	2021.25.1 6.DL.2	00	Enh Mob Seni ors/Disabl - >2 00K	\$18,000	\$18,000
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Part 3: Project Information

Project Title: Direct purchase of service for non-medical transportation

Project Number	Temporary Project Number	Date Created	Start Date	End Date
NC-2022-026-01-00	1112-2022-1-P1	5/12/2022	6/1/2022	11/25/2023

Project Description

This project includes the direct purchase of service from a privately owned transportation provider (capital expense) for non-medical transportation (work, school, shopping) for elderly and disabled residents of urban areas of Cumberland County for fiscal year 2022-23 . These are residents who are not served by Fayetteville Area System of Transit (FAST) (i.e., outside FAST service area and ADA paratransit zone).

Project Benefits

The MCCOG/Cumberland Community Transportation Program (CTP) project will provide opportunities to those eligible persons who require access to employment and other destinations. The program is supports improved mobility and is consistent the CTP's "Connecting Communities Plan".

Additional Information

Services will be provided in the urban areas Cumberland County, North Carolina, including portions of the City of Fayetteville not within 3/4 mile of fixed route bus service.

Location Description

Urbanized areas Cumberland County, NC including City of Fayetteville.

Project Location (Urbanized Areas)

UZA Code	Area Name
370000	North Carolina
379630	Fayetteville, NC

Congressional District Information

State	District	Representative
North Carolina	8	Richard Hudson
North Carolina	9	Dan Bishop

Program Plan Information

STIP/TIP

Date: 6/29/2020

Description: North Carolina STIP# TQ-6514 (page 14)

UPWP

Date: Not Provided

Description: N/A

Long Range Plan

Date: 4/27/2021

Description: FAMPO Coordinated Public Transit Human Services Transportation Plan Update Draft

Project Control Totals

Funding Source	Section of Statute	CFDA Number	Amount
5310 - Mobility of Sr. & Indv. w/ Disabilities Formula at 100% share	5310-1C	20513	\$300,000
5310 - Mobility of Sr. & Indv. w/ Disabilities Formula	5310-1A	20513	\$18,000
Local			\$0
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$318,000

Project Budget

Project Number	Budget Item	FTA Amount	Non-FTA Amount	Total Eligible Amount	Quantity
NC-2022-026-01-00	117-00 (117-A1) OTHER CAPITAL ITEMS (BUS)	\$300,000.00	\$0.00	\$300,000.00	0
NC-2022-026-01-00	11.71.13 3RD PARTY CONTRACTED SERVICES (5310 ONLY)	\$300,000.00	\$0.00	\$300,000.00	0
NC-2022-026-01-00	610-00 (610-A2) STATE / PROGRAMS ADMINISTRATION	\$18,000.00	\$0.00	\$18,000.00	0

NC-2022-026-01-00	11.80.00	STATE OR PROGRAM ADMINISTRATION	\$18,000.00	\$0.00	\$18,000.00	0
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Project Budget Activity Line Items

Budget Activity Line Item: 11.80.00 - STATE OR PROGRAM ADMINISTRATION

Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
STATE / PROGRAMS ADMINISTRATION (610-00)	11.80.00	STATE OR PROGRAM ADMINISTRATION	STATE / PROGRAM ADMINISTRATION	0

Extended Budget Description

Program oversight of sub-recipients provided by City of Fayetteville as allowed. Includes executing subrecipient agreements, registering with FSRS, review of progress reports, compliance activities (including civil rights and procurement), review and processing of invoices for payment and drawdown..

Will 3rd Party contractors be used to fulfill this activity line item?

No, 3rd Party Contractors will not be used for this line item.

Funding Source	Section of Statute	CFDA Number	Amount
5310 - Mobility of Sr. & Indv. w/ Disabilities Formula	5310-1A	20513	\$18,000
Local			\$0
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$18,000

Milestone Name	Est. Completion Date	Description
Begin oversight	6/27/2022	Complete initial compliance checklist and begin subrecipient oversight
Complete oversight activities	11/25/2023	Final compliance review and payout

Budget Activity Line Item: 11.71.13 - 3RD PARTY CONTRACTED SERVICES (5310 ONLY)

Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
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OTHER CAPITAL 11.71.13 3RD PARTY CONTRACTED 3RD PARTY
ITEMS (BUS) (117-00) SERVICES (5310 ONLY) CONTRACTS 0

Extended Budget Description

Direct purchase of service from privately contracted van provider for non-medical (work, education, shopping, and other trip purposes for elderly and disabled residents of Cumberland County. NC where an unmet need or gaps exists. For services provided from approximately July 1, 2022 through June 30, 2023.

STIP# TQ-6514

Will 3rd Party contractors be used to fulfill this activity line item?

Yes, 3rd Party Contractors will be used for this line item.

Funding Source	Section of Statute	CFDA Number	Amount
5310 - Mobility of Sr. & Indv. w/ Disabilities Formula at 100% share	5310-1C	20513	\$300,000
Local			\$0
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$300,000

Milestone Name	Est. Completion Date	Description
Contract for Services	6/1/2022	Execute contracts with private providers
Begin Services	7/1/2022	Start Section 5310 services
Complete Services	6/30/2023	Complete contract term
Final payment	9/15/2023	Final invoice review and payment

Project Environmental Findings

Finding: Class II(c) - Categorical Exclusions (C-List)

Class Level Description

Class II(c) consists of projects that do not have a significant environmental impact on the human or natural environment and are therefore categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement. FTA requires a sufficient project description to support a CE determination. The project may require additional documentation to comply with other environmental laws.

Categorical Exclusion Description

Type 04: Planning and administrative activities which do not involve or lead directly to construction, such as: training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; engineering; and operating assistance to transit authorities to continue existing service or increase service to meet routine demand.

Date Description	Date
Class IIc CE Approved	

Scope Name / Code	Line Item Number	Line Item Name	Quantity	FTA Amount	Total Eligible Cost
OTHER CAPITAL ITEMS (BUS) (117-00)	11.71.13	3RD PARTY CONTRACTED SERVICES (5310 ONLY)	0	\$300,000.00	\$300,000.00

Finding: Class II(c) - Categorical Exclusions (C-List)

Class Level Description

Class II(c) consists of projects that do not have a significant environmental impact on the human or natural environment and are therefore categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement. FTA requires a sufficient project description to support a CE determination. The project may require additional documentation to comply with other environmental laws.

Categorical Exclusion Description

Type 04: Planning and administrative activities which do not involve or lead directly to construction, such as: training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; engineering; and operating assistance to transit authorities to continue existing service or increase service to meet routine demand.

Date Description	Date
Class IIc CE Approved	

Scope Name / Code	Line Item Number	Line Item Name	Quantity	FTA Amount	Total Eligible Cost
STATE / PROGRAMS ADMINISTRATION (610-00)	11.80.00	STATE OR PROGRAM ADMINISTRATION	0	\$18,000.00	\$18,000.00

Part 4: Fleet Details

No fleet data exists for this application.

Part 5: FTA Review Comments

Application Review Comments

Comment By Boyd Melton

Comment Type	Application Details
Date	5/18/2022
Comment	NOTE - As PAA is selected a task will be generated by TrAMs for an initial FFR after award and prior to grant execution.

Part 6: Agreement

UNITED STATES OF AMERICA DEPARTMENT OF TRANSPORTATION FEDERAL TRANSIT ADMINISTRATION

GRANT AGREEMENT (FTA G-29, October 1, 2021)

On the date the authorized U.S. Department of Transportation, Federal Transit Administration (FTA) official signs this Grant Agreement, FTA has obligated and awarded federal assistance as provided below. Upon execution of this Grant Agreement by the Recipient named below, the Recipient affirms this FTA Award, enters into this Grant Agreement with FTA, and binds its compliance with the terms of this Grant Agreement.

The following documents are incorporated by reference and made part of this Grant Agreement:

- (1) "Federal Transit Administration Master Agreement," FTA MA(29), <http://www.transit.dot.gov>,
- (2) The Certifications and Assurances applicable to the FTA Award that the Recipient has selected and provided to FTA, and
- (3) Any Award notification containing special conditions or requirements, if issued.

WHEN THE TERM "FTA AWARD" OR "AWARD" IS USED, EITHER IN THIS GRANT AGREEMENT OR THE APPLICABLE MASTER AGREEMENT, "AWARD" ALSO INCLUDES ALL TERMS AND CONDITIONS SET FORTH IN THIS GRANT AGREEMENT.

FTA OR THE FEDERAL GOVERNMENT MAY WITHDRAW ITS OBLIGATION TO PROVIDE FEDERAL ASSISTANCE IF THE RECIPIENT DOES NOT EXECUTE THIS GRANT AGREEMENT WITHIN 90 DAYS FOLLOWING FTA's AWARD DATE SET FORTH HEREIN.

FTA AWARD

Federal Transit Administration (FTA) hereby awards a Federal Grant as follows:

Recipient Information

Recipient Name: CITY OF FAYETTEVILLE

Recipient ID: 1112

UEI: MGRJM6AME6T6

DUNS: 040031700

Award Information

Federal Award Identification Number: NC-2022-026-00

Award Name: FY23 5310 Funding for Seniors and Individuals with Disabilities; Fayetteville, NC

Award Start Date: 5/24/2022

Original Award End Date: 3/30/2029

Current Award End Date: 3/30/2029

Award Executive Summary: Purpose: This grant requests the use of \$318,000 Section 5310 funds apportioned in 2020 (potentially lapsing - \$216,474), and 2021 (\$101,256). Section 5310 Enhanced Mobility for Senior and Individuals with Disabilities grant funding will be used for: 1) purchase of service from a privately owned transportation provider (capital expense) for non-medical transportation (work, school, shopping) for elderly and disabled residents in urban areas of Cumberland County not served by Fayetteville Area System of Transit (FAST); and 2) the City/FAST's administrative costs to provide oversight of subrecipient activities

Activities: Purchase of service (\$300,000) from a privately owned transportation provider (capital expense) will provide non-medical transportation (work, school, shopping) for elderly and disabled residents of urban areas of Cumberland County not served by Fayetteville Area System of Transit (FAST) for FY22-23. This project is a joint-venture between the Mid-Carolina Council of Governments, a public non-profit organization and designated Area-wide Aging Agency, and the Cumberland County Community Transportation Program (CTP). The 2021 Cumberland County Coordinated Human Services Public Transportation Plan (attached) addresses a high priority need for more non-medical services for the elderly and disabled. These services will be provided to elderly and disabled populations who live in the urbanized area and not served by the City of Fayetteville's FASTTRAC! complementary paratransit or fixed route services. As provided by CRRSSA these services will use 100% FTA Section 5310 funding. The traditional project will comprises 94.3% of the project budget. A Program of Projects is attached.

This project was selected by the Fayetteville Area Metropolitan Planning Organization (FAMPO) in accordance with the approved Program Management Plan. The Section 5310 Program Management Plan (PMP) was approved on August 11, 2015.

Expected Outcomes: This grant project continues to support and expand needed services within the Fayetteville region that benefit seniors and persons with disabilities.

Intended Beneficiaries: Cumberland County 2020 census data indicates 12.2% of its population is 65 years of age or older with another 12.8% are less than 65 years and have a disability.

Subrecipient Activities: Subrecipient will be the Mid-Carolina Council of Governments (MCCOG) and supports purchase of service from private providers by the Cumberland County Community Transportation Program. The grant also includes \$18,000 for the City of Fayetteville-Transit for grant administration and subrecipient oversight activities.

Research and Development: This award does not include research and development activities.

Indirect Costs: This award does not include an indirect cost rate.

Suballocation Funds: Recipient organization is the Designated Recipient and can apply for and receive these apportioned funds.

Pre-Award Authority: This award is using Pre-Award Authority.

Award Budget

Total Award Budget: \$318,000.00

Amount of Federal Assistance Obligated for This FTA Action (in U.S. Dollars): \$318,000.00

Amount of Non-Federal Funds Committed to This FTA Action (in U.S. Dollars): \$0.00

Total FTA Amount Awarded and Obligated (in U.S. Dollars): \$318,000.00

Total Non-Federal Funds Committed to the Overall Award (in U.S. Dollars): \$0.00

Award Budget Control Totals

(The Budget includes the individual Project Budgets (Scopes and Activity Line Items) or as attached)

Funding Source	Section of Statute	CFDA Number	Amount
5310 - Mobility of Sr. & Indv. w/ Disabilities Formula at 100% share	5310-1C	20513	\$300,000
5310 - Mobility of Sr. & Indv. w/ Disabilities Formula	5310-1A	20513	\$18,000
Local			\$0
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$318,000

(The Transportation Development Credits are not added to the amount of the Total Award Budget.)

U.S. Department of Labor Certification of Public Transportation Employee Protective Arrangements:

Original Certification Date:

Special Conditions

There are no special conditions.

FINDINGS AND DETERMINATIONS

By signing this Award on behalf of FTA, I am making all the determinations and findings required by federal law and regulations before this Award may be made.

FTA AWARD OF THE GRANT AGREEMENT

Awarded By:
Yvette Taylor
Regional Administrator
FEDERAL TRANSIT ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION
Contact Info: yvette.taylor@dot.gov
Award Date: 5/24/2022

EXECUTION OF THE GRANT AGREEMENT

Upon full execution of this Grant Agreement by the Recipient, the Effective Date will be the date FTA or the Federal Government awarded Federal assistance for this Grant Agreement.

By executing this Grant Agreement, the Recipient intends to enter into a legally binding agreement in which the Recipient:

- (1) Affirms this FTA Award,
- (2) Adopts and ratifies all of the following information it has submitted to FTA:
 - (a) Statements,
 - (b) Representations,
 - (c) Warranties,
 - (d) Covenants, and
 - (e) Materials,
- (3) Consents to comply with the requirements of this FTA Award, and
- (4) Agrees to all terms and conditions set forth in this Grant Agreement.

Executed By:
Randall Hume
Transit Director
CITY OF FAYETTEVILLE
5/25/2022



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-2771

Agenda Date: 6/13/2022

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 7.010

TO: Mayor and Members of City Council

THRU: Jay C. Toland, Assistant City Manager/Chief Financial Officer

FROM: Jody Picarella, Assistant Chief Finance Officer-Administration

DATE: June 13, 2022

RE:

Approval of the FY2022 Audit Contract and Annual Communications from the Independent Auditors Regarding the FY2022 Audit

COUNCIL DISTRICT(S):

All

Relationship To Strategic Plan:

GOAL V: Financially Sound City Providing Exemplary City Services

Objective A: Ensure strong financial management with fiduciary accountability and plan for future resource sustainability by aligning resources with City priorities.

Executive Summary:

The City and PWC are required by North Carolina state statutes and granting agencies to have an annual audit and the Local Government Commission requires annual contracts.

Background:

The City's Finance-Purchasing Division prepared and advertised a request for proposals (RFP) for the selection of the independent auditor on February 10, 2021. Two proposals were received on March 2, 2021. The RFP is for three annual audits for the fiscal years ending June 30, 2021, June 30, 2022, and June 30, 2023. The Audit Committee recommended PBMares, LLP and City Council approved PBMares, LLP as well.

Issues/Analysis:

PBMares will need to begin preliminary fieldwork in the fourth quarter of fiscal year ending

2022 to meet the deadline set by the Local Government Commission to have the audit completed.

Although the City requested pricing for a 3-year period, the Local Government Commission requires annual contracts.

Budget Impact:

\$92,625 for FY2022

Options:

Approve the audit contract or provide staff with further direction.

Recommended Action:

Staff recommend the approval of the audit contract as presented.

Attachments:

PBMares, LLC FY2022 Arrangement Letter

PBMares, LLC FY2022 Contract

PBMares, LLC FY2022 SAS Letter (GAS)

PBMares, LLC FY2022 SAS Letter (Single Audit)

The	Governing Board
of	City Council
and	Primary Government Unit
	City of Fayetteville
	Discretely Presented Component Unit (DPCU) (if applicable)

Primary Government Unit, together with DPCU (if applicable), hereinafter referred to as Governmental Unit(s)

and	Auditor Name
	PBMares, LLP
	Auditor Address
	3621 John Platt Drive, Morehead City, NC 28557

Hereinafter referred to as Auditor

for	Fiscal Year Ending	Audit Report Due Date
	06/30/22	10/31/22

Must be within four months of FYE

hereby agree as follows:

1. The Auditor shall audit all statements and disclosures required by U.S. generally accepted auditing standards (GAAS) and additional required legal statements and disclosures of all funds and/or divisions of the Governmental Unit(s). The non-major combining, and individual fund statements and schedules shall be subjected to the auditing procedures applied in the audit of the basic financial statements and an opinion shall be rendered in relation to (as applicable) the governmental activities, the business- type activities, the aggregate DPCUs, each major governmental and enterprise fund, and the aggregate remaining fund information (non-major government and enterprise funds, the internal service fund type, and the fiduciary fund types). The basic financial statements shall include budgetary comparison information in a budgetary comparison statement, rather than as RSI, for the General Fund and any annually budgeted Special Revenue funds.
2. At a minimum, the Auditor shall conduct the audit and render the report in accordance with GAAS. The Auditor shall perform the audit in accordance with *Government Auditing Standards* if the Governmental Unit expended \$100,000 or more in combined Federal and State financial assistance during the reporting period. The auditor shall perform a Single Audit if required by Title 2 US Code of Federal Regulations Part 200 *Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) or the State Single Audit Implementation Act. This audit and all associated audit documentation may be subject to review by Federal and State agencies in accordance with Federal and State laws, including the staffs of the Office of State Auditor (OSA) and the Local Government Commission (LGC). If the audit requires a federal single audit in accordance with the Uniform Guidance (§200.501), it is recommended that the Auditor and Governmental Unit(s) jointly agree, in advance of the execution of this contract, which party is responsible for submission of the audit and the accompanying data collection form to the Federal Audit Clearinghouse as required under the Uniform Guidance (§200.512).

If the audit and Auditor communication are found in this review to be substandard, the results of the review may be forwarded to the North Carolina State Board of CPA Examiners (NC State Board).

3. If an entity is determined to be a component of another government as defined by the group audit standards, the entity's auditor shall make a good faith effort to comply in a timely manner with the requests of the group auditor in accordance with AU-6 §600.41 - §600.42.
4. This contract contemplates an unmodified opinion being rendered. If during the process of conducting the audit, the Auditor determines that it will not be possible to render an unmodified opinion on the financial statements of the unit, the Auditor shall contact the LGC Staff to discuss the circumstances leading to that conclusion as soon as is practical and before the final report is issued. The audit shall include such tests of the accounting records and such other auditing procedures as are considered by the Auditor to be necessary in the circumstances. Any limitations or restrictions in scope which would lead to a qualification should be fully explained in an attachment to this contract.
5. If this audit engagement is subject to the standards for audit as defined in *Government Auditing Standards*, 2018 revision, issued by the Comptroller General of the United States, then by accepting this engagement, the Auditor warrants that he/she has met the requirements for a peer review and continuing education as specified in *Government Auditing Standards*. The Auditor agrees to provide a copy of the most recent peer review report to the Governmental Unit(s) and the Secretary of the LGC prior to the execution of an audit contract. Subsequent submissions of the report are required only upon report expiration or upon auditor's receipt of an updated peer review report. If the audit firm received a peer review rating other than pass, the Auditor shall not contract with the Governmental Unit(s) without first contacting the Secretary of the LGC for a peer review analysis that may result in additional contractual requirements.
- If the audit engagement is not subject to *Government Accounting Standards* or if financial statements are not prepared in accordance with U.S. generally accepted accounting principles (GAAP) and fail to include all disclosures required by GAAP, the Auditor shall provide an explanation as to why in an attachment to this contract or in an amendment.
6. It is agreed that time is of the essence in this contract. All audits are to be performed and the report of audit submitted to LGC Staff within four months of fiscal year end. If it becomes necessary to amend the audit fee or the date that the audit report will be submitted to the LGC, an amended contract along with a written explanation of the change shall be submitted to the Secretary of the LGC for approval.
7. It is agreed that GAAS include a review of the Governmental Unit's (Units') systems of internal control and accounting as same relate to accountability of funds and adherence to budget and law requirements applicable thereto; that the Auditor shall make a written report, which may or may not be a part of the written report of audit, to the Governing Board setting forth his/her findings, together with his recommendations for improvement. That written report shall include all matters defined as "significant deficiencies and material weaknesses" in AU-C 265 of the *AICPA Professional Standards (Clarified)*. The Auditor shall file a copy of that report with the Secretary of the LGC.
8. All local government and public authority contracts for audit or audit-related work require the approval of the Secretary of the LGC. This includes annual or special audits, agreed upon procedures related to internal controls, bookkeeping or other assistance necessary to prepare the Governmental Unit's (Units') records for audit, financial statement preparation, any finance-related investigations, or any other audit-related work in the State of North Carolina. Approval is not required on contracts and invoices for system improvements and similar services of a non-auditing nature.
9. Invoices for services rendered under these contracts shall not be paid by the Governmental Unit(s) until the invoice has been approved by the Secretary of the LGC. (This also includes any progress billings.)(G.S. 159-34 and 115C-447) All invoices for Audit work shall be submitted in PDF format to the Secretary of the LGC for approval. The invoice marked 'approved' with approval date shall be returned to

the Auditor to present to the Governmental Unit(s) for payment. This paragraph is not applicable to contracts for audits of hospitals.

10. In consideration of the satisfactory performance of the provisions of this contract, the Governmental Unit(s) shall pay to the Auditor, upon approval by the Secretary of the LGC if required, the fee, which includes any costs the Auditor may incur from work paper or peer reviews or any other quality assurance program required by third parties (federal and state grantor and oversight agencies or other organizations) as required under the Federal and State Single Audit Acts. This does not include fees for any pre-issuance reviews that may be required by the NC Association of CPAs (NCACPA) Peer Review Committee or NC State Board of CPA Examiners (see Item 13).

11. If the Governmental Unit(s) has/have outstanding revenue bonds, the Auditor shall submit to LGC Staff, either in the notes to the audited financial statements or as a separate report, a calculation demonstrating compliance with the revenue bond rate covenant. Additionally, the Auditor shall submit to LGC Staff simultaneously with the Governmental Unit's (Units') audited financial statements any other bond compliance statements or additional reports required by the authorizing bond documents, unless otherwise specified in the bond documents.

12. After completing the audit, the Auditor shall submit to the Governing Board a written report of audit. This report shall include, but not be limited to, the following information: (a) Management's Discussion and Analysis, (b) the financial statements and notes of the Governmental Unit(s) and all of its component units prepared in accordance with GAAP, (c) supplementary information requested by the Governmental Unit(s) or required for full disclosure under the law, and (d) the Auditor's opinion on the material presented. The Auditor shall furnish the required number of copies of the report of audit to the Governing Board upon completion.

13. If the audit firm is required by the NC State Board, the NCACPA Peer Review Committee, or the Secretary of the LGC to have a pre-issuance review of its audit work, there shall be a statement in the engagement letter indicating the pre-issuance review requirement. There also shall be a statement that the Governmental Unit(s) shall not be billed for the pre-issuance review. The pre-issuance review shall be performed prior to the completed audit being submitted to LGC Staff. The pre-issuance review report shall accompany the audit report upon submission to LGC Staff.

14. The Auditor shall submit the report of audit in PDF format to LGC Staff. For audits of units other than hospitals, the audit report should be submitted when (or prior to) submitting the final invoice for services rendered. The report of audit, as filed with the Secretary of the LGC, becomes a matter of public record for inspection, review and copy in the offices of the LGC by any interested parties. Any subsequent revisions to these reports shall be sent to the Secretary of the LGC. These audited financial statements, excluding the Auditors' opinion, may be used in the preparation of official statements for debt offerings by municipal bond rating services to fulfill secondary market disclosure requirements of the Securities and Exchange Commission and for other lawful purposes of the Governmental Unit(s) without requiring consent of the Auditor. If the LGC Staff determines that corrections need to be made to the Governmental Unit's (Units') financial statements, those corrections shall be provided within three business days of notification unless another deadline is agreed to by LGC Staff.

15. Should circumstances disclosed by the audit call for a more detailed investigation by the Auditor than necessary under ordinary circumstances, the Auditor shall inform the Governing Board in writing of the need for such additional investigation and the additional compensation required therefore. Upon approval by the

Secretary of the LGC, this contract may be modified or amended to include the increased time, compensation, or both as may be agreed upon by the Governing Board and the Auditor.

16. If an approved contract needs to be modified or amended for any reason, the change shall be made in writing and pre-audited if the change includes a change in audit fee (pre-audit requirement does not apply to hospitals). This amended contract shall be completed in full, including a written explanation of the change, signed and dated by all original parties to the contract. It shall then be submitted to the Secretary of the LGC for approval. No change to the audit contract shall be effective unless approved by the Secretary of the LGC, the Governing Board, and the Auditor.

17. A copy of the engagement letter, issued by the Auditor and signed by both the Auditor and the Governmental Unit(s), shall be attached to this contract, and except for fees, work, and terms not related to audit services, shall be incorporated by reference as if fully set forth herein as part of this contract. In case of conflict between the terms of the engagement letter and the terms of this contract, the terms of this contract shall take precedence. Engagement letter terms that conflict with the contract are deemed to be void unless the conflicting terms of this contract are specifically deleted in Item 30 of this contract. Engagement letters containing indemnification clauses shall not be accepted by LGC Staff.

18. Special provisions should be limited. Please list any special provisions in an attachment.

19. A separate contract should not be made for each division to be audited or report to be submitted. If a DPCU is subject to the audit requirements detailed in the Local Government Budget and Fiscal Control Act and a separate audit report is issued, a separate audit contract is required. If a separate report is not to be issued and the DPCU is included in the primary government audit, the DPCU shall be named along with the primary government on this audit contract. DPCU Board approval date, signatures from the DPCU Board chairman and finance officer also shall be included on this contract.

20. The contract shall be executed, pre-audited (pre-audit requirement does not apply to hospitals), and physically signed by all parties including Governmental Unit(s) and the Auditor, then submitted in PDF format to the Secretary of the LGC.

21. The contract is not valid until it is approved by the Secretary of the LGC. The staff of the LGC shall notify the Governmental Unit and Auditor of contract approval by email. The audit should not be started before the contract is approved.

22. Retention of Client Records: Auditors are subject to the NC State Board of CPA Examiners' Retention of Client Records Rule 21 NCAC 08N .0305 as it relates to the provision of audit and other attest services, as well as non-attest services. Clients and former clients should be familiar with the requirements of this rule prior to requesting the return of records.

23. This contract may be terminated at any time by mutual consent and agreement of the Governmental Unit(s) and the Auditor, provided that (a) the consent to terminate is in writing and signed by both parties, (b) the parties have agreed on the fee amount which shall be paid to the Auditor (if applicable), and (c) no termination shall be effective until approved in writing by the Secretary of the LGC.

24. The Governmental Unit's (Units') failure or forbearance to enforce, or waiver of, any right or an event of breach or default on one occasion or instance shall not constitute the waiver of such right, breach or default on any subsequent occasion or instance.

25. There are no other agreements between the parties hereto and no other agreements relative hereto that shall be enforceable unless entered into in accordance with the procedure set out herein and approved by the Secretary of the LGC.

26. E-Verify. Auditor shall comply with the requirements of NCGS Chapter 64 Article 2. Further, if Auditor utilizes any subcontractor(s), Auditor shall require such subcontractor(s) to comply with the requirements of NCGS Chapter 64, Article 2.

27. **Applicable to audits with fiscal year ends of June 30, 2020 and later.** For all non-attest services, the Auditor shall adhere to the independence rules of the AICPA Professional Code of Conduct and Governmental Auditing Standards, 2018 Revision (as applicable). Financial statement preparation assistance shall be deemed a "significant threat" requiring the Auditor to apply safeguards sufficient to reduce the threat to an acceptable level. If the Auditor cannot reduce the threats to an acceptable level, the Auditor cannot complete the audit. If the Auditor is able to reduce the threats to an acceptable level, the documentation of this determination, including the safeguards applied, must be included in the audit workpapers.

All non-attest service(s) being performed by the Auditor that are necessary to perform the audit must be identified and included in this contract. The Governmental Unit shall designate an individual with the suitable skills, knowledge, and/or experience (SKE) necessary to oversee the services and accept responsibility for the results of the services performed. If the Auditor is able to identify an individual with the appropriate SKE, s/he must document and include in the audit workpapers how he/she reached that conclusion. If the Auditor determines that an individual with the appropriate SKE cannot be identified, the Auditor cannot perform both the non-attest service(s) and the audit. See "Fees for Audit Services" page of this contract to disclose the person identified as having the appropriate SKE for the Governmental Unit.

28. **Applicable to audits with fiscal year ends of June 30, 2021 and later.** The auditor shall present the audited financial statements including any compliance reports to the government unit's governing body or audit committee in an official meeting in open session as soon as the audited financial statements are available but not later than 45 days after the submission of the audit report to the Secretary. The auditor's presentation to the government unit's governing body or audit committee shall include:

- a) the description of each finding, including all material weaknesses and significant deficiencies, as found by the auditor, and any other issues related to the internal controls or fiscal health of the government unit as disclosed in the management letter, the Single Audit or Yellow Book reports, or any other communications from the auditor regarding internal controls as required by current auditing standards set by the Accounting Standards Board or its successor;
- b) the status of the prior year audit findings;
- c) the values of Financial Performance Indicators based on information presented in the audited financial statements; and
- d) notification to the governing body that the governing body shall develop a "Response to the Auditor's Findings, Recommendations, and Fiscal Matters," if required under 20 NCAC 03 .0508.

29. Information based on the audited financial statements shall be submitted to the Secretary for the purpose of identifying Financial Performance Indicators and Financial Performance Indicators of Concern. See 20 NCAC 03 .0502(c)(6).

30. All of the above paragraphs are understood and shall apply to this contract, except the following numbered paragraphs shall be deleted (See Item 17 for clarification).

31. The process for submitting contracts, audit reports and invoices is subject to change. Auditors and units should use the submission process and instructions in effect at the time of submission. Refer to the N.C. Department of State Treasurer website at <https://www.nctreasurer.com/state-and-local-government-finance-division/local-government-commission/submitting-your-audit>

32. All communications regarding audit contract requests for modification or official approvals will be sent to the email addresses provided on the signature pages that follow.

33. Modifications to the language and terms contained in this contract form (LGC-205) are not allowed.

FEES FOR AUDIT SERVICES

1. For all non-attest services, the Auditor shall adhere to the independence rules of the AICPA Professional Code of Conduct (as applicable) and *Governmental Auditing Standards, 2018 Revision*. Refer to Item 27 of this contract for specific requirements. The following information must be provided by the Auditor; contracts presented to the LGC without this information will not be approved.

Financial statements were prepared by: ☐ Auditor ☐ Governmental Unit ☐ Third Party

If applicable: Individual at Governmental Unit designated to have the suitable skills, knowledge, and/or experience (SKE) necessary to oversee the non-attest services and accept responsibility for the results of these services:

Name:

Title and Unit / Company:

Email Address:

Jay Toland

Chief Financial Officer

JayToland@FayettevilleNC.gov

OR Not Applicable ☐ (Identification of SKE Individual not applicable for GAAS-only audit or audits with FYEs prior to June 30, 2020.)

2. Fees may not be included in this contract for work performed on Annual Financial Information Reports (AFIRs), Form 990s, or other services not associated with audit fees and costs. Such fees may be included in the engagement letter but may not be included in this contract or in any invoices requiring approval of the LGC. See Items 8 and 13 for details on other allowable and excluded fees.

3. Prior to the submission of the completed audited financial report and applicable compliance reports subject to this contract, or to an amendment to this contract (if required) the Auditor may submit interim invoices for approval for services rendered under this contract to the Secretary of the LGC, not to exceed 75% of the billings for the unit's last annual audit that was submitted to the Secretary of the LGC. Should the 75% cap provided below conflict with the cap calculated by LGC Staff based on the billings on file with the LGC, the LGC calculation prevails. All invoices for services rendered in an audit engagement as defined in 20 NCAC .0503 shall be submitted to the Commission for approval before any payment is made. Payment before approval is a violation of law. (This paragraph not applicable to contracts and invoices associated with audits of hospitals).


PRIMARY GOVERNMENT FEES

Primary Government Unit	City of Fayetteville
Audit Fee	\$ 86,625
Additional Fees Not Included in Audit Fee:	
Fee per Major Program	\$ 5,000 after 4 programs
Writing Financial Statements	\$ 6,000
All Other Non-Attest Services	\$ 145 per hour
75% Cap for Interim Invoice Approval (not applicable to hospital contracts)	\$ 64,968.75

DPCU FEES (if applicable)

Discretely Presented Component Unit	
Audit Fee	\$
Additional Fees Not Included in Audit Fee:	
Fee per Major Program	\$
Writing Financial Statements	\$
All Other Non-Attest Services	\$
75% Cap for Interim Invoice Approval (not applicable to hospital contracts)	\$

SIGNATURE PAGE**AUDIT FIRM**

Audit Firm* PBMares, LLP	
Authorized Firm Representative (typed or printed)* Robert E. Bittner III	Signature* 
Date* 04/19/22	Email Address* rebittner@pbmares.com

GOVERNMENTAL UNIT

Governmental Unit* City of Fayetteville	
Date Primary Government Unit Governing Board Approved Audit Contract* (G.S.159-34(a) or G.S.115C-447(a))	
Mayor/Chairperson (typed or printed)* Mitch Colvin	Signature*
Date	Email Address

Chair of Audit Committee (typed or printed, or "NA")	Signature
Date	Email Address

GOVERNMENTAL UNIT – PRE-AUDIT CERTIFICATE

Required by G.S. 159-28(a1) or G.S. 115C-441(a1).
Not applicable to hospital contracts.

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

Primary Governmental Unit Finance Officer* (typed or printed) Jay Toland	Signature*
Date of Pre-Audit Certificate*	Email Address* JayToland@FayettevilleNC.gov

SIGNATURE PAGE – DPCU
(complete only if applicable)

DISCRETELY PRESENTED COMPONENT UNIT

DPCU*	
Date DPCU Governing Board Approved Audit Contract* (Ref: G.S. 159-34(a) or G.S. 115C-447(a))	
DPCU Chairperson (typed or printed)*	Signature*
Date*	Email Address*

Chair of Audit Committee (typed or printed, or "NA")	Signature
Date	Email Address

DPCU – PRE-AUDIT CERTIFICATE

Required by G.S. 159-28(a1) or G.S. 115C-441(a1).
 Not applicable to hospital contracts.

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

DPCU Finance Officer (typed or printed)*	Signature*
Date of Pre-Audit Certificate*	Email Address*

Remember to print this form, and obtain all
 required signatures prior to submission.

PRINT



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-2760

Agenda Date: 6/13/2022

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 7.011

TO: Mayor and Members of City Council

THRU: Adam Lindsay, Assistant City Manager

FROM: Sheila Thomas-Ambat, PE, Public Services Director

DATE: June 13, 2022

RE:

Addition of Certain Streets to the City of Fayetteville System

COUNCIL DISTRICT(S):

All

Relationship To Strategic Plan:

Goal I: Safe and Secure Community

Goal II: High Quality Built Environment

Executive Summary:

The Fayetteville street system includes 748.26 center line miles and is one of the City's largest assets impacting every citizen, employee, emergency service personnel, commuter, and visitor. As new development progresses, new streets are built in accordance with the City's standards and can be designated for private or public ownership and maintenance. When streets are constructed to City standards it requires a Council action to add the streets to the City's system. Streets added to our system qualify for Powell Bill Program allocations, which is a North Carolina funding program for the building and maintenance of major city streets.

Staff has identified eight (8) recently constructed streets for subdivisions throughout the City that are now acceptable for addition to the City of Fayetteville system of streets. These streets and drainage systems within the street rights-of-way have been inspected by staff and are now acceptable for addition to the City of Fayetteville system of streets. The 1.33-mile addition will bring the City's street system total to 749.59 miles.

Background:

Per City Council Policy 160.06 streets that have been designed and constructed in accordance with City standards can only be added to the City's system of streets through a City Council action after the streets have been constructed and recorded. Right-of-ways are dedicated for the streets and the developer identifies early in the development process if intended for private or public ownership and maintenance. As streets are satisfactorily completed, staff provides recommendation to Council for official addition to the City's system of streets.

Issues/Analysis:

Addition of these streets to the City's system of streets does not constitute the acceptance of maintenance responsibilities for drainage systems outside of street rights-of-way.

These streets and drainage systems located within the street rights-of-way need to be officially accepted and added to City of Fayetteville system of streets for the City to begin providing maintenance services and be included in our 2022 Powell Bill appropriation.

Budget Impact:

Street maintenance cost will increase while the funds received from Powell Bill increase as well. As these road segments are newly constructed, significant maintenance cost is not expected for several years.

Options:

Approve the attached list of streets and associated infrastructure for inclusion in the City of Fayetteville system of streets.

Do not approve the attached list of streets and associated infrastructure for inclusion in the City of Fayetteville system of streets.

Modify the list of streets and associated infrastructure, then approve

Recommended Action:

Staff recommends that Council accept the attached list of streets and drainage systems located within the street rights-of-way for inclusion in the City's system of streets.

Attachments:

Street acceptance June 2022

NEW STREETS FOR
COUNCIL APPROVAL
JUNE 2022

STREET NAME	FROM	TO	LENGTH TO BE ACCEPTED	SUBDIVISION
QUIET PINE RD	NW CORNER LOT 31	CUL DE SAC	0.26	LITTLE RIVER FARMS PH 2 (PB 147 PG 144)
SILVER MAPLE DR	QUIET PINE RD	WOODLINE DR	0.13	
WATERLEAF DR	COFFEE TREE DR	SILVER MAPLE DR	0.20	
COFFEE TREE DR	QUIET PINE RD	WOODLINE DR	0.11	
WOODLINE DR	SE CORNER LOT 118	NE CORNER LOT 107	0.18	
BLUFFSIDE DR	SW CORNER LOT 14	END MAINT	0.24	THE COMMONS AT RIVER BLUFF (PB 147 PG 148)
RIVER LANDING DR	SW CORNER LOT 5	BLUFFSIDE DR	0.03	
W SUMMERCHASE DR	SE CORNER LOT 53	CUL DE SAC	0.18	FAIRFIELD FARMS SECT 6 PT 2 (PB 148 PG 72)

Beginning Mileage 748.26
Mileage Added 1.33
New Mileage 749.59



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-2764

Agenda Date: 6/13/2022

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 7.012

TO: Mayor and Members of City Council

THRU: Adam Lindsay, Assistant City Manager

FROM: Sheila Thomas-Ambat, PE, CCM, CFM, Director of Public Services
Lee Jernigan, PE, Assistant Public Services Director

DATE: June 13, 2022

RE:

Approval of Municipal Certificates with NCDOT for speed limit reduction to 45 mph on Cliffdale Road between Raeford Road and Reilly Road

COUNCIL DISTRICT(S):

7, 8

Relationship To Strategic Plan:

Goal IV: Desirable place to live, work and recreate

Executive Summary:

NCDOT conducted a review of speed limit along Cliffdale Road (State Road 1400) at the request of CM Yvonne Kinston. After review, NCDOT is recommending the speed limit be reduced from 50 mph to 45 mph along the length of Cliffdale Road from Raeford Road to Reilly Road. Based on this, NCDOT is requesting City Council concur with repeal of the existing 50 mph speed limit ordinance, and enacting an ordinance for the proposed 45 mph speed limit.

Background:

City staff requested NCDOT review the speed limit along Cliffdale Road in response to a request they received from CM Kinston. After review, NCDOT is recommending the speed limit be reduced to 45 mph between Raeford Road and Reilly Road.

Issues/Analysis:

NCDOT is requesting City Council repeal the municipal certificate for the existing 50 mph speed limit, and enact a certificate for the proposed 45 mph municipal speed limit. Should Council reject the certificate, the existing 50 mph speed limit will remain.

Budget Impact:

There is no budget impact to the City for this item.

Options:

- Approve the repeal of the 50 mph speed limit certificate and enact the 45 mph speed certificate
- Reject the repeal of the 50 mph municipal speed limit certificate and request additional information

Recommended Action:

Staff recommends Council move to repeal the 50 mph speed limit certificate and enact the 45 mph speed certificate.

Attachments:

Cliffdale Road municipal certificates, map

**Certification of Municipal Declaration
To Enact Speed Limits and Request for Concurrence**

Concurring State Ordinance Number: 1081956

Division: 6 **County:** CUMBERLAND

Municipality: FAYETTEVILLE

Type: Municipal Speed Zones

Road: SR 1400

Car: 45 MPH

Truck: 45 MPH

Description: Between US 401 (Raeford Road) and SR 1403 (Reilly Road).

Municipal Certification

I, _____, Clerk of _____, do hereby certify that the municipal governing body, pursuant to the authority granted by G.S. 20-141(f), determined upon the basis of an engineering and traffic investigation and duly declared, on the _____ day of _____, 20_____, the speed limits as set forth above on the designated portion of the State Highway System, which shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

The said municipal declaration is recorded as follows:

Minute Book: _____ Page: _____ Ordinance Number: _____

In witness whereof, I have hereunto set my
hand and the municipal seal this _____ day
of _____, 20_____.

(signature)

(municipal seal)

Department of Transportation Approval

Division: _____ **Title:** _____ **Date:** _____

Region: _____ **Title:** _____ **Date:** _____

**Certification of Municipal Declaration
To Repeal Speed Limits and Request for Concurrence**

Concurring State Ordinance Number: 1056635

Division: 6 **County:** CUMBERLAND

Municipality: FAYETTEVILLE

Type: Municipal Speed Zones

Road: SR 1400

Car: 50 MPH

Truck: 50 MPH

Description: From US 401 (Raeford Road) to SR 1403.

Municipal Certification

I, _____, Clerk of _____, do hereby certify that the municipal governing body, pursuant to the authority granted by G.S. 20-141(f), determined upon the basis of an engineering and traffic investigation and duly declared, on the _____ day of _____, 20_____, the repeal of speed limits as set forth above on the designated portion of the State Highway System, which shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

The said municipal declaration is recorded as follows:

Minute Book: _____ Page: _____ Ordinance Number: _____

In witness whereof, I have hereunto set my
hand and the municipal seal this _____ day
of _____, 20_____.

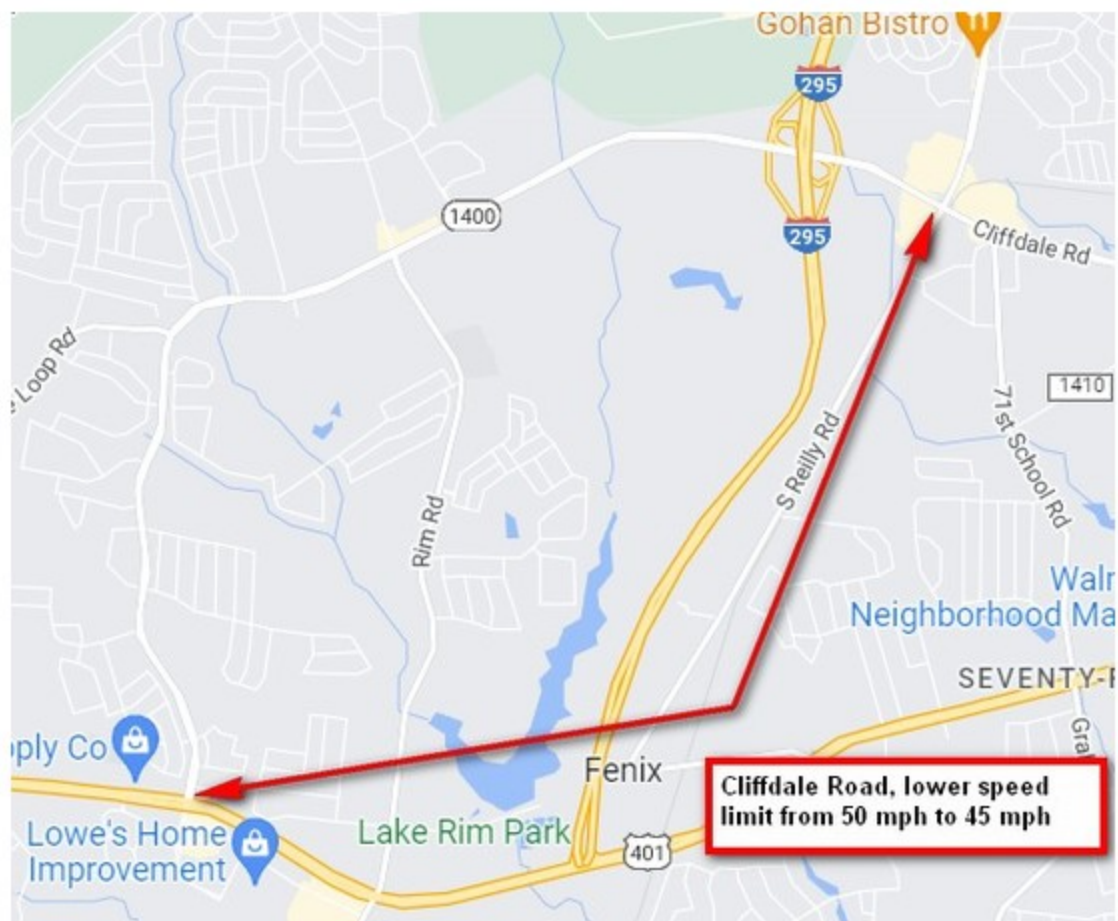
(signature)

(municipal seal)

Department of Transportation Approval

Division: _____ **Title:** _____ **Date:** _____

Region: _____ **Title:** _____ **Date:** _____





City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-2765

Agenda Date: 6/13/2022

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 7.013

TO: Mayor and Members of City Council

THRU: Adam Lindsay, Assistant City Manager

FROM: Sheila Thomas-Ambat, PE, CCM, CFM, Director of Public Services
Lee Jernigan, PE, Assistant Public Services Director

DATE: June 13, 2022

RE:

Approval of Municipal Certificates with NCDOT for speed limit reduction to 45 mph on Pamalee Drive/Country Club Drive between Bragg Boulevard and Ramsey Street

COUNCIL DISTRICT(S):

1, 3, 4

Relationship To Strategic Plan:

Goal IV: Desirable place to live, work and recreate

Executive Summary:

NCDOT conducted a review of speed limit along Pamalee Drive/Country Club Drive (US 401 Business) at the request of Mayor Mitch Colvin. After review, NCDOT is recommending the speed limit be reduced from 50 mph to 45 mph along the length of Pamalee Drive/Country Club Drive from Bragg Boulevard to Ramsey Street. Based on this, NCDOT is requesting City Council concur with repeal of the existing 50 mph speed limit ordinance, and enacting an ordinance for the proposed 45 mph speed limit.

Background:

City staff requested NCDOT review the speed limit along Pamalee Drive/Country Club Drive in response to a request they received from Mayor Colvin. After review, NCDOT is recommending the speed limit be reduced to 45 mph between Bragg Boulevard and Ramsey Street.

Issues/Analysis:

NCDOT is requesting City Council repeal the municipal certificate for the existing 50 mph speed limit, and enact a certificate for the proposed 45 mph municipal speed limit. Should Council reject the certificate, the existing 50 mph speed limit will remain.

Budget Impact:

There is no budget impact to the City for this item.

Options:

- Approve the repeal of the 50 mph speed limit certificate and enact the 45 mph speed certificate
- Reject the repeal of the 50 mph municipal speed limit certificate and request additional information

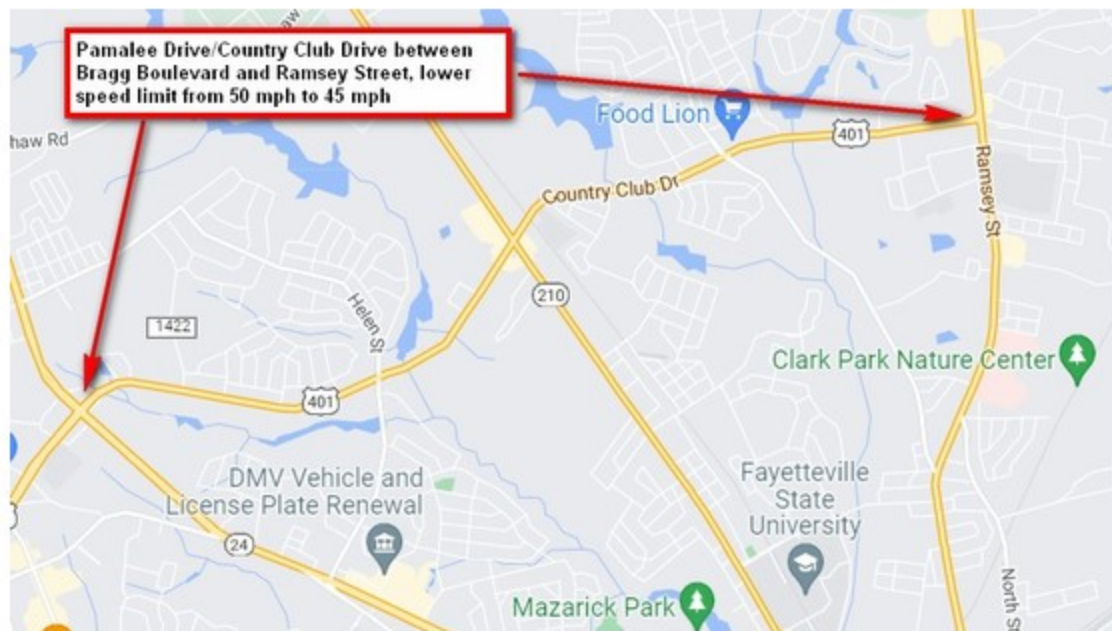
Recommended Action:

Staff recommends Council move to repeal the 50 mph speed limit certificate and enact the 45 mph speed certificate.

Attachments:

Pamalee Drive/Country Club Drive municipal certificates, map

**Pamalee Drive/Country Club Drive between
Bragg Boulevard and Ramsey Street, lower
speed limit from 50 mph to 45 mph**



**Certification of Municipal Declaration
To Enact Speed Limits and Request for Concurrence**

Concurring State Ordinance Number: 1081814

Division: 6 **County:** CUMBERLAND

Municipality: FAYETTEVILLE

Type: Municipal Speed Zones

Road: US 401

Car: 45 MPH

Truck: 45 MPH

Description: Between 0.14 miles north of NC 24 and US 401BUS (Ramsey Street).

Municipal Certification

I, _____, Clerk of _____, do hereby certify that the municipal governing body, pursuant to the authority granted by G.S. 20-141(f), determined upon the basis of an engineering and traffic investigation and duly declared, on the _____ day of _____, 20_____, the speed limits as set forth above on the designated portion of the State Highway System, which shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

The said municipal declaration is recorded as follows:

Minute Book: _____ **Page:** _____ **Ordinance Number:** _____

In witness whereof, I have hereunto set my
hand and the municipal seal this _____ day
of _____, 20_____.

(signature)

(municipal seal)

Department of Transportation Approval

Division: _____ **Title:** _____ **Date:** _____

Region: _____ **Title:** _____ **Date:** _____

**Certification of Municipal Declaration
To Repeal Speed Limits and Request for Concurrence**

Concurring State Ordinance Number: 1062356

Division: 6 **County:** CUMBERLAND

Municipality: FAYETTEVILLE

Type: Municipal Speed Zones

Road: US 401

Car: 50 MPH

Truck: 50 MPH

Description: From 0.14 mile north of NC 24 to 0.39 mile south of SR 1726.

Municipal Certification

I, _____, Clerk of _____, do hereby certify that the municipal governing body, pursuant to the authority granted by G.S. 20-141(f), determined upon the basis of an engineering and traffic investigation and duly declared, on the _____ day of _____, 20_____, the repeal of speed limits as set forth above on the designated portion of the State Highway System, which shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

The said municipal declaration is recorded as follows:

Minute Book: _____ **Page:** _____ **Ordinance Number:** _____

In witness whereof, I have hereunto set my
hand and the municipal seal this _____ day
of _____, 20_____.

(signature)

(municipal seal)

Department of Transportation Approval

Division: _____ **Title:** _____ **Date:** _____

Region: _____ **Title:** _____ **Date:** _____



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-2783

Agenda Date: 6/13/2022

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 7.014

TO: Mayor and Members of City Council

THRU: Adam Lindsay, Assistant City Manager

FROM: Sheila Thomas-Ambat, PE, CCM, CFM, Director of Public Services
Lee Jernigan, PE, Assistant Public Services Director

DATE: June 13, 2022

RE:

Approval of Municipal Certificates with NCDOT for speed limit reduction to 45 mph on Stoney Point Road between Dundle Road and the Hoke County line

COUNCIL DISTRICT(S):

6, 8

Relationship To Strategic Plan:

Goal IV: Desirable place to live, work and recreate

Executive Summary:

NCDOT conducted a review of speed limit along Stoney Point Road (State Road 1112) at the request of citizens in the area. After review, NCDOT is recommending the speed limit be reduced from 55 mph to 45 mph along the length of Stoney Point Road from Dundle Road to the Hoke County line. Based on this, NCDOT is requesting City Council concur with repeal of the existing 55 mph speed limit ordinance, and enacting an ordinance for the proposed 45 mph speed limit.

Background:

NCDOT received requests to review the speed limit along Stoney Point Road from citizens in the area. After review, NCDOT is recommending the speed limit be reduced to 45 mph between Dundle Road and the Hoke County line.

Issues/Analysis:

NCDOT is requesting City Council repeal the municipal certificate for the existing 55 mph speed limit, and enact a certificate for the proposed 45 mph municipal speed limit. Should Council reject the certificate, the existing 55 mph speed limit will remain.

Budget Impact:

There is no budget impact to the City for this item.

Options:

- Approve the repeal of the 55 mph speed limit certificate and enact the 45 mph speed certificate
- Reject the repeal of the 55 mph municipal speed limit certificate and request additional information

Recommended Action:

Staff recommends Council move to repeal the 55 mph speed limit certificate and enact the 45 mph speed certificate.

Attachments:

Stoney Point Road municipal certificates, map

**Certification of Municipal Declaration
To Enact Speed Limits and Request for Concurrence**

Concurring State Ordinance Number: 1082193

Division: 6 **County:** CUMBERLAND

Municipality FAYETTEVILLE

Type: Municipal Speed Zones

Road: SR 1112

Car: 45 MPH

Truck: 45 MPH

Description: Between 0.15 miles west of SR 1109 (Dundle Road) and Hoke CL.

Municipal Certification

I, _____, Clerk of _____, do hereby certify that the municipal governing body, pursuant to the authority granted by G.S. 20-141(f), determined upon the basis of an engineering and traffic investigation and duly declared, on the _____ day of _____, 20____, the speed limits as set forth above on the designated portion of the State Highway System, which shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

The said municipal declaration is recorded as follows:

Minute Book: _____ Page: _____ Ordinance Number: _____

In witness whereof, I have hereunto set my
hand and the municipal seal this _____ day
of _____, 20_____.

(signature)

(municipal seal)

Department of Transportation Approval

Division: _____ **Title:** _____ **Date:** _____

Region: _____ **Title:** _____ **Date:** _____

**Certification of Municipal Declaration
To Repeal Speed Limits and Request for Concurrence**

Concurring State Ordinance Number: 1061022

Division: 6 **County:** CUMBERLAND

Municipality FAYETTEVILLE

Type: Municipal Speed Zones

Road: SR 1112

Car: 55 MPH

Truck: 55 MPH

Description: From 0.15 mile west of SR 1109 to the Hoke County Line.

Municipal Certification

I, _____, Clerk of _____, do hereby certify that the municipal governing body, pursuant to the authority granted by G.S. 20-141(f), determined upon the basis of an engineering and traffic investigation and duly declared, on the _____ day of _____, 20____, the repeal of speed limits as set forth above on the designated portion of the State Highway System, which shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

The said municipal declaration is recorded as follows:

Minute Book: _____ Page: _____ Ordinance Number: _____

In witness whereof, I have hereunto set my
hand and the municipal seal this _____ day
of _____, 20_____.

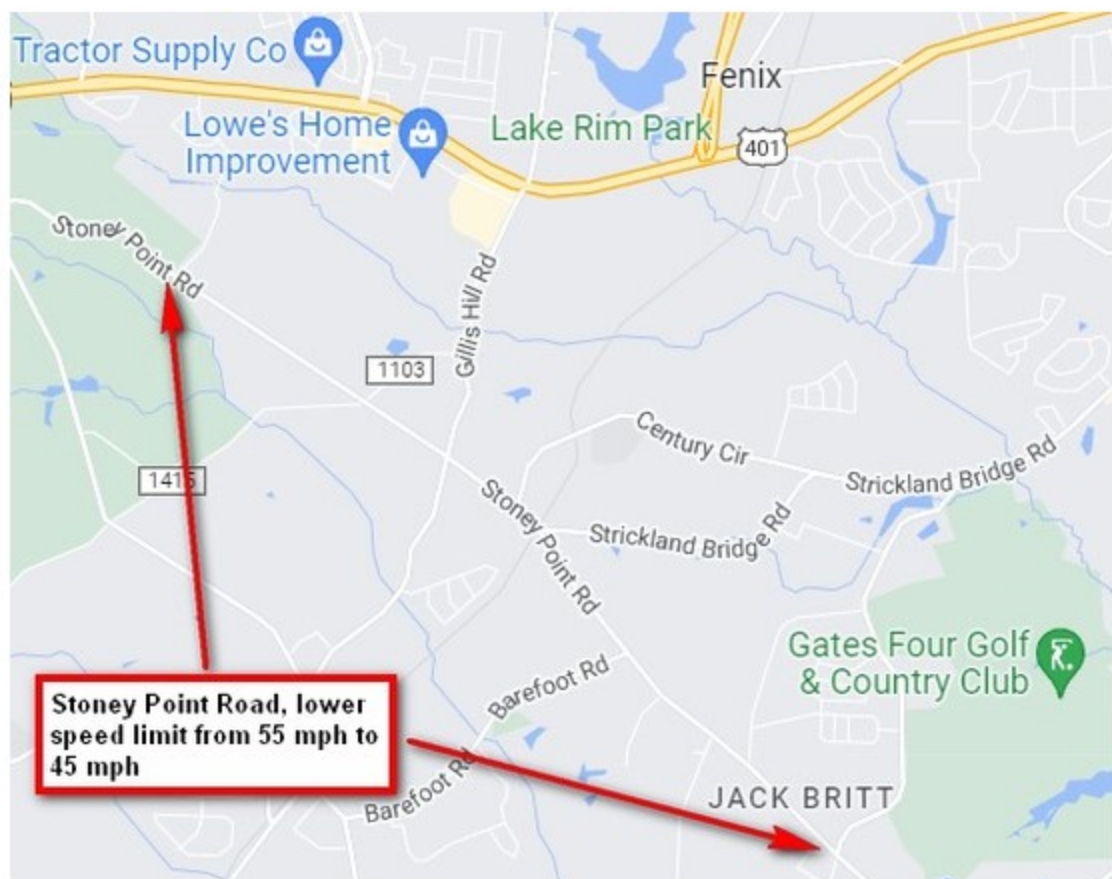
(signature)

(municipal seal)

Department of Transportation Approval

Division: _____ **Title:** _____ **Date:** _____

Region: _____ **Title:** _____ **Date:** _____





City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-2770

Agenda Date: 6/13/2022

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 7.015

TO: Mayor and Members of City Council

THRU: Elaina L. Ball, CEO/General Manager
Fayetteville Public Works Commission

FROM: Fayetteville Public Works Commission

DATE: June 13, 2022

RE:

**Bid Recommendation - Re-Roofing Cross Creek Transfer Thickening Bldgs., &
Water Resources and Electric Vehicle Sheds**

COUNCIL DISTRICT(S):

All

Relationship To Strategic Plan:

High Quality Built Environment

Executive Summary:

Bids were received for the Re-Roofing Cross Creek Transfer & Thickening Buildings and Water Resources and Electric Vehicle Sheds contract. The recommended lowest responsive, responsible bidder is Owens Roofing, Inc., Smithfield, NC, in the total amount of \$541,950.00.

Background:

The Fayetteville Public Works Commission, during their meeting on May 25, 2022, approved the bid recommendation to award the contract for Re-roofing the Cross Creek Transfer & Thickening Buildings, and the Water Resources & Electric Vehicle Sheds to Owens Roofing, Inc., Smithfield, NC, the lowest responsive, responsible bidder, in the total amount of \$541,950.00, and forward to City Council for approval.

BIDDERS

TOTAL COST

Owens Roofing, Inc., Smithfield, NC	\$541,950.00
DLT Roofing, Inc., Kenly, NC	\$617,914.00
Curtis Construction Company, Inc., Kinston, NC	\$724,800.00
Industrial Contract Service Corporation, Leland, NC	\$752,774.00

Issues/Analysis:

Bid was advertised through normal channels on March 21, 2022, with a bid opening date of April 19, 2022. Bids were solicited from twelve (12) vendors and (4) bids were considered. Work for the Cross Creek Transfer & Thickening Buildings will begin in FY22; and work for the Water Resources & Electric Vehicle Sheds will be performed in FY23. In addition to the above-listed bidders, CentiMark Corporation of Apex, NC submitted a bid. During the bid opening it was discovered that CentiMark's submission did not include the required bid bond; therefore, its bid could not be considered for award.

SDBE/Local Participation: Owens Roofing is not a local business and is not classified as a SDBE Minority or Woman-Owned business. Owens Roofing, Inc., plans to subcontract \$9,646.00 to Protech Construction, which is a woman owned firm from Raleigh, NC.

Budget Impact:

Funding for the Cross Creek Transfer & Thickening Buildings is available from the FY22 CIP budget, CPR1000497, and funding for the Water Resources and Electric Vehicle Sheds will be funded from the FY23 CIP Budget, CPR1000518

Options:

N/A

Recommended Action:

The Fayetteville Public Works Commission recommends the Fayetteville City Council approve the bid recommendation to award the Re-Roofing Cross Creek Transfer & Thickening Buildings and Water Resources & Electric Vehicle Sheds contract to Owens Roofing, Inc., Smithfield, NC, the lowest responsive, responsible bidder, in the total amount of \$541,950.00.

The Fayetteville Public Works Commission also requests City Council authorize the CEO and General Manager of the Fayetteville Public Works Commission to execute for that purpose the contract for its construction.

Attachments:

Bid Recommendation - Re-Roofing Building

**FAYETTEVILLE PUBLIC WORKS COMMISSION
ACTION REQUEST FORM**

TO: Elaina Ball, CEO/General Manager

DATE: May 6, 2022

FROM: Trent Ensley, Procurement Manager

.....
ACTION REQUESTED: Approve award for Re-Roofing Cross Creek Transfer & Thickening Buildings and the Water Resources and Electric Vehicle Sheds

BID/PROJECT NAME: Re-Roofing Cross Creek Transfer & Thickening Buildings and Water Resources and Electric Vehicle Sheds

BID DATE: April 19, 2022

DEPARTMENT: Water Resources and Electric Systems Divisions

BUDGET INFORMATION: Funding for the Cross Creek Transfer & Thickening Buildings is available from the FY 22 CIP budget, CPR1000497 and funding for the Water Resources and Electric Vehicle Sheds will be funded from the FY 23 CIP budget, CPR1000518.

.....

BIDDERS	TOTAL COST
Owens Roofing Inc., Smithfield, NC	\$541,950.00
DLT Roofing Inc, Kenly, NC	\$617,914.00
Curtis Construction Company Inc, Kinston, NC	\$724,800.00
Industrial Contract Service Corporation, Leland, NC	\$752,774.00

.....

AWARD RECOMMENDED TO: Owens Roofing Inc., Smithfield, NC

BASIS OF AWARD: Award is recommended to Owens Roofing Inc. as the lowest responsive, responsible bidder.

COMMENTS: The Commission is asked to approve the award for the Cross Creek Re-Roofing Transfer & Thickening Buildings & Water Resources & Electric Vehicle Sheds project to Owens Roofing Inc. of Smithfield, NC as the lowest responsive, responsible bidder. Bid was advertised through normal channel on March 21, 2022, with a bid opening date on April 19, 2022. Bids were solicited from twelve (12) vendors and four (4) bids were considered. Work for the Cross Creek Transfer & Thickening Buildings will begin in FY 22 and work for the Water Resources & Electric Vehicle Sheds will performed in FY 23. In addition to the above-listed bidders, CentiMark Corporation of Apex, NC submitted a bid. During the bid opening, it was discovered that CentiMark's submission did not include the required bid bond; therefore, its bid could not be considered for award. The award is recommended Owens Roofing Inc. as the lowest responsive, responsible bidder.

.....

ACTION BY COMMISSION
APPROVED _____ **REJECTED** _____
DATE _____

ACTION BY COUNCIL
APPROVED _____ **REJECTED** _____
DATE _____

**BID HISTORY
RE-ROOFING CROSS CREEK
TRANSFER & THICKENING
BUILDINGS & WATER
RESOURCES & ELECTRIC
VEHICLE SHEDS**

BID DATE: April 19, 2022

Advertisement

- | | |
|----------------|-----------------------------|
| 1. PWC Website | 3/21/2022 through 4/19/2022 |
|----------------|-----------------------------|

List of Prospective Bidders Notified of Bid

1. Owens Roofing Inc, Smithfield NC
2. CentiMark Corporation, Apex NC
3. DLT Roofing Inc, Kenly NC
4. Curtis Construction Company Inc, Kinston NC
5. Industrial Contract Service Corporation, Leland NC
6. Triangle Roofing Service Inc., Zebulon NC
7. Hamlin Roofing Company, Garner NC
8. GMC Roofing Inc, Maysville NC
9. Highland Roofing Company, Fayetteville NC
10. Wayne Roofing & Sheet Metal Company, Goldsboro NC
11. ARS Extreme Construction, Angier NC
12. Carolina Group Contracting, Goldsboro NC

**PWC Procurement Mailing List- Registered vendors via the PWC website and BBR registrants.
(approximately 2000+ contacts)**

Small Business Administration Programs:

Small Business Administration Regional Office (SBA)
NC Procurement & Technical Assistance Center (NCPTAC)
Veterans Business Outreach Center (VBOC)
Small Business Technology Center (SBTDC)
Women's Business Center of Fayetteville (WBC)

Local Business and Community Programs

FSU Construction Resource Office (FSUCRO)
FSU Economic Development Administration Program (FSUEDA)
FSU Career Pathways Initiative
NAACP, Fayetteville Branch
FTCC Small Business Center (SBC)
Greater Fayetteville Chamber, RFP posting submitted
Hope Mills Chamber
Spring Lake Chamber
Hoke Chamber
Fayetteville Business & Professional League (FBPL)

State Business and Community Programs

NC Institute of Minority Economic Development (The Institute) Durham, NC

NAACP, State Branch Raleigh, NC

National Utility Contracting Association- NC Chapter (NUCA)

Durham Chapter of the National Association of Women in Construction (NAWIC)

South Atlantic Region of National Association of Women in Construction (NAWIC)

The Hispanic Contractors Association of the Carolinas (HCAC)

United Minority Contractors of North Carolina

International Women in Transportation- Triangle Chapter

Media

Fayetteville Observer

WIDU, AM1600

IBronco Radio at FSU

Fayetteville Press News

Up & Coming Weekly

Bladen Journal

Greater Fayetteville Business Journal

SDBE / Local Participation

Owens Roofing Inc. is not a local business and is not classified as a SDBE Minority or Women-Owned business. Owens Roofing Inc. plans to subcontract \$9,646.00 to Protech Construction, which is a woman owned firm from Raleigh, NC.



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-2751

Agenda Date: 6/13/2022

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 7.016

TO: Mayor and Members of City Council

THRU: Karen M. McDonald, City Attorney

FROM: Kecia N. Parker, NCCP, Real Estate Manager

DATE: June 13, 2022

RE:

Resolution Authorizing a Quitclaim Deed of the City's Title to the County in Order to Expedite the Sale of Land located at 521 Martin Road

COUNCIL DISTRICT(S):

2

Relationship To Strategic Plan:

A Desirable Place to Live, Work and Recreate

Executive Summary:

Cumberland County has requested that the City of Fayetteville quitclaim their interest in the parcel located at 521 Martin Road having a tax parcel id number of 0446-49-0036 so that they may complete the sale of the jointly owned property that was acquired by tax foreclosure. This allows the property to be added back to the tax base and not continue to remain in joint governmental ownership.

Background:

Cumberland County and the City of Fayetteville received joint title to the property identified as 521 Martin Road which has a parcel number of 0446-49-0036 being known as lots within 2nd Cedar Rose Addition on October 4, 2011. The County has received an offer to purchase the property in the amount of \$5,206.75 which represents the amount paid at the foreclosure sale.

The County is requesting that the City declare the above property surplus and quitclaim

the City's interest to the County. Title is jointly held due to tax foreclosure by the County in their capacity as tax administrator. The purchase offer received is equal to the foreclosure bid. If the present bid is declined, the property will remain in joint ownership not earning taxes and requiring upkeep.

Issues/Analysis:

No known issues.

Budget Impact:

There is no significant impact to the budget; however this will enable the property to be added back to the tax roll.

Options:

- Accept the County's request to declare the property surplus and quitclaim the City's title to the County according to the Resolution attached.
- Reject the County's request and retain joint ownership.

Recommended Action:

Staff recommends adopting the attached Resolution declaring the property surplus and authorizing the City Manager to sign a Quitclaim Deed conveying the City's interest to the County.

Attachments:

Map
Resolution

22.65

521 Martin Road

73.63

CHRISTIAN ST

72.92

50.08

20.3

54.5

MARTIN RD

53.8

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE TO
DECLARE CITY PROPERTY SURPLUS AND QUITCLAIM CITY'S INTEREST IN
JOINTLY HELD PROPERTY TO CUMBERLAND COUNTY**

WHEREAS, the City of Fayetteville and the County of Cumberland jointly own real property in Cumberland County known as 521 Martin Road and being more particularly described as follows:

Being Lots 88, 89 and 90 in the subdivision of the J.W. Hollingsworth Property, being 2nd Cedar Rose Addition as recorded in Book of Plats No. 7, page 137, Cumberland County Registry.

It is excepted and excluded from the above-described property the tracts of land recorded in Book 3533, Page 652 and in Book 5211, Page 232, Cumberland County Registry.

WHEREAS, the City of Fayetteville has a financial interest in the form of adding the real property back to the tax roll and;

WHEREAS, the property is surplus to the needs of the City of Fayetteville, and;

WHEREAS, the County of Cumberland has received an offer to purchase the parcel and requests that the City of Fayetteville join in the sale of the property by declaring the parcel surplus to the City's needs and quitclaiming the City's title to the County, and;

WHEREAS, the City Council of the City of Fayetteville finds such action to be in the public interest, and;

NOW, THEREFORE, BE IT RESOLVED on behalf of the people of Fayetteville, this Council of the City of Fayetteville, North Carolina does hereby resolve that the aforesaid real property is surplus to the City's needs and authorizes its Manager to sign a deed quitclaiming title to the County of Cumberland.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
FAYETTEVILLE, NORTH CAROLINA**, on this, the 13th day of June, 2022; such meeting was held in compliance with the Open Meetings Act, at which meeting a quorum was present and voting.

CITY OF FAYETTEVILLE

ATTEST:

MITCH COLVIN, MAYOR

PAMELA J. MEGILL, City Clerk



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-2785

Agenda Date: 6/13/2022

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 7.017

TO: Mayor and Members of City Council

THRU: Adam Lindsay, Assistant City Manager

FROM: Sheila Thomas-Ambat, PE, Director of Public Services

DATE: June 13, 2022

RE:

Bid Recommendation - U-5528FA Rosehill Road Sidewalk (Country Club Drive to Shaw Mills Road)

COUNCIL DISTRICT(S):

3

Relationship To Strategic Plan:

Goal IV: Desirable Place to Live, Work and Recreate

Objective 4.3: To improve mobility and connectivity through sidewalk, trail and bike lane improvement

Executive Summary:

The Council is asked to approve award of, and authorize the execution of, a contract for the U-5528FA Rosehill Road Sidewalk. The lowest responsive, responsible bidder, Mohammad Construction, LLC is recommended.

Background:

With the adoption of the FY 2017 annual operating budget, Council appropriated a \$100,000 transfer from the General Fund to a capital project for the design of sidewalks on the east side of Rosehill Road from Country Club Drive to Shaw Mill Road.

Subsequently, at the November 28, 2016 regular meeting, Council approved a municipal agreement with NCDOT and appropriated federal Transportation Alternatives Program (TAP) grant funding in the amount of \$436,500 with a \$113,500 General Fund transfer for the required local match.

After design of the project was complete, the project estimate increased based on the additional drainage work required by NCDOT. Staff submitted an application to the Fayetteville Area Metropolitan Planning Organization (FAMPO) for additional federal TAP grant funds passed through the NCDOT for installation of the sidewalk. The City was awarded an additional \$240,000 grant for the project, which required \$60,000 in local matching funds. At that time, the total project budget was increased by \$305,000, to include \$5,000 for potentially ineligible expenditures. Council approved the supplemental municipal agreement with NCDOT and Capital Project Ordinance Amendment 2019-46, appropriating the funds at the June 10, 2019 regular meeting.

NCDOT encountered department-wide budget restrictions due to COVID, and ceased authorization of construction funding for these types of locally administered projects. The project was placed on hold until early 2021 when NCDOT authorized the City to advertise the project for bids. City staff advertised for bids in May 2021 and received responses in June 2021. The bids received exceeded the project budget by over \$500,000. The City requested additional funding of \$480,000 from FAMPO, which was approved by resolution at the Transportation Advisory Committee meeting on October 27, 2021. The award requires a local match of \$120,000. The total project budget after this appropriation will be \$1,561,295.

Bidders:

Lanier Construction Company	\$1,955,827.50
Mohammad Construction, LLC	\$1,201,892.76

Issues/Analysis:

The City will be required to administer this project through NCDOT's Locally Administered Process. Upon successful completion of the construction, NCDOT will reimburse the City 80% of the cost. The City will be required to maintain the sidewalks upon completion of the projects.

Budget Impact:

There is no impact to the General Fund

Options:

1. Authorize the award and execution of the contract to the lowest responsive, responsible bidder by the City Manager as recommended by staff.
2. Do not award the contract as recommended and provide further direction to staff.

Recommended Action:

Staff recommends that Council approve the award and authorize the City Manager to

execute the contract for the U-5528FA Rosehill Road Sidewalk to the lowest responsive, responsible bidder, Mohammad Construction, LLC in the total amount of \$1,201,892.76

Attachments:

1. U-5528FA Rosehill Road Sidewalk Bid Tabulation

BID TABULATION						
ITB - U-5528FA Rosehill Road Sidewalk						
			LANIER CONSTRUCTION CO		MOHAMMAD CONSTRUCTION, LLC	
Description	Unit	Quantity	Price	Extension	Price	Extension
Mobilization	LS	1	\$93,000.00	\$93,000.00	\$90,000.00	\$90,000.00
Relocate Existing Mailbox [Generic Misc Item]	EA	15	\$165.00	\$2,475.00	\$136.63	\$2,049.45
Grading	LS	1	\$430,000.00	\$430,000.00	\$30,000.00	\$30,000.00
Supplementary Clearing and Grubbing (including tree removal)	ACR	2.7	\$5,500.00	\$14,850.00	\$17,370.97	\$46,901.62
Select Borrow Material	CY	1250	\$38.50	\$48,125.00	\$36.83	\$46,037.50
12" RC Pipe Culverts, Class III Depth ex. (0' - 6')	LF	10	\$115.00	\$1,161.50	\$61.43	\$620.44
15" RC Pipe Culverts, Class III Depth ex. (0' - 6')	LF	144	\$75.00	\$10,800.00	\$80.12	\$11,537.28
18" RC Pipe Culverts, Class III Depth ex. (0' - 6')	LF	135	\$100.00	\$13,500.00	\$89.13	\$12,032.55
24" RC Pipe Culverts, Class III Depth ex. (0' - 6')	LF	200	\$126.50	\$25,300.00	\$149.63	\$29,926.00
30" RC Pipe Culverts, Class III Depth ex. (0' - 6')	LF	408	\$176.00	\$71,808.00	\$173.94	\$70,967.52
36" RC Pipe Culverts, Class III Depth ex. (0' - 6')	LF	60	\$242.00	\$14,520.00	\$240.07	\$14,404.20
15" Pipe End Section [Flared]	EA	4	\$1,870.00	\$7,480.00	\$2,517.59	\$10,070.36
18" Pipe End Section [Flared]	EA	2	\$2,025.00	\$4,050.00	\$8,327.92	\$16,655.84
Incidental Stone Base	TN	50	\$60.00	\$3,000.00	\$87.00	\$4,350.00
Asphalt Conc. Base Course, Type B25.0B	TN	70	\$275.00	\$19,250.00	\$222.16	\$15,551.20
Asphalt Conc. Base Course, Type S9.5B	TN	20	\$275.00	\$5,500.00	\$364.78	\$7,295.60
Pipe Collars (Class B 2500psi)	CY	2.84	\$1,100.00	\$3,124.00	\$2,311.19	\$6,563.78
Masonry Drainage Structures	EA	13	\$5,500.00	\$71,500.00	\$2,395.86	\$31,146.18
Frame with Grate & Hood, STD 840.03, Type E	EA	13	\$1,325.00	\$17,225.00	\$1,155.97	\$15,027.61
1'-6" Concrete Curb & Gutter	LF	200	\$38.50	\$7,700.00	\$34.76	\$6,952.00
2' x 6" Concrete Curb and Gutter (Class B 2500psi)	LF	4053	\$45.00	\$182,385.00	\$42.79	\$173,427.87
Modified Sidewalk Flume	EA	17	\$1,980.00	\$33,660.00	\$2,400.28	\$40,804.76
4" Concrete Sidewalk (Class B 2500psi)	SY	3622	\$55.00	\$199,210.00	\$54.55	\$197,580.10
Retrofit Esixting Curb Ramps (Truncated Domes, 2.5)	EA	4	\$1,320.00	\$5,280.00	\$778.01	\$3,112.04
Concrete Curb Ramps (ADA Parallel Wheelchair Ramp, Concrete with Truncated Domes, Double Wing, 2.4)	EA	13	\$ 5,000.00	\$65,000.00	\$ 2,433.68	\$ 31,637.84
Concrete Curb Ramps (Mid-Block Parallel Curb Wheelchair Ramp, Concrete with Truncated Domes, 2.6)	EA	2	\$ 5,000.00	\$10,000.00	\$ 2,433.68	\$ 4,867.36
Concrete Curb Ramps (Directional ADA Wheelchair Ramp, Concrete with Truncated Domes, 2.7)	EA	2	\$ 5,000.00	\$10,000.00	\$ 2,433.68	\$ 4,867.36
6" Concrete Driveway (To include concrete Apron)	SY	399	\$ 105.00	\$41,895.00	\$ 70.14	\$ 27,985.86
Concrete Pad for Bus Stop, (5" thick) [Generic Paving Item]	SY	58.1	\$ 105.00	\$6,100.50	\$ 50.64	\$ 2,942.18
Adjustment of Drop Inlets	EA	1	\$ 1,500.00	\$1,500.00	\$ 1,132.21	\$ 1,132.21
Convert DI to CB	EA	1	\$ 3,080.00	\$3,080.00	\$ 2,608.50	\$ 2,608.50
Handrail [Generic Fencing Item]	LF	550	\$ 150.00	\$82,500.00	\$ 105.41	\$ 57,975.50
Rip Rap Class 1	TN	6	\$ 195.00	\$1,170.00	\$ 82.11	\$ 492.66
Rip Rap, CL B	TN	90	\$ 110.00	\$9,900.00	\$ 82.11	\$ 7,389.90
Sign Erection, Type E (Signage Relocation)	EA	22	\$ 250.00	\$5,500.00	\$ 271.32	\$ 5,969.04
Traffic Control	LS	1	\$ 320,000.00	\$320,000.00	\$ 79,204.02	\$ 79,204.02
Temporary Silt Fence	LF	2800	\$ 4.00	\$11,200.00	\$ 3.12	\$ 8,736.00
Stone for Erosion Control, Class B	TN	220	\$ 110.00	\$24,200.00	\$ 54.09	\$ 11,899.80
Sediment Control Stone, Standard Size No.5 or 57	TN	35	\$ 82.50	\$2,887.50	\$ 51.50	\$ 1,802.50
Coir Fiber Wattle Barrier (10' L)	LF	430	\$ 20.00	\$8,600.00	\$ 9.94	\$ 4,274.20
Seeding and Mulching	ACR	0.75	\$ 8,580.00	\$6,435.00	\$ 4,435.08	\$ 3,326.31
Sodding, (Centipede)	SY	5759.6	\$ 10.00	\$57,596.00	\$ 10.17	\$ 58,575.13
Concrete Washout Structure	EA	2	\$ 1,320.00	\$2,640.00	\$ 1,304.48	\$ 2,608.96
Response for Erosion Control	EA	2	\$ 360.00	\$720.00	\$ 291.76	\$ 583.52
TOTAL				\$1,955,827.50		\$1,201,892.76



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-2794

Agenda Date: 6/13/2022

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 7.018

TO: Mayor and Members of City Council

THRU: Douglas J. Hewett, ICMA-CM - City Manager

FROM: Jay C. Toland, CMA - Assistant City Manager/CFO

DATE: June 13, 2022

RE:

Adoption of Capital Project Ordinance Amendment 2022-65 for Parks and Recreation, 2nd Tranche, General Obligation Bond Issuance Cost

COUNCIL DISTRICT(S):

All

Relationship To Strategic Plan:

Goal 4 - The City of Fayetteville will be a highly desirable place to live, work, and recreate with thriving neighborhoods and a high quality of life for its citizens.

Executive Summary:

Council is asked to adopt Capital Project Ordinance Amendment 2022-65 to appropriate \$335,006 for bond issuance costs associated with the sale of the 2nd tranche of General Obligation bonds. The funding source for this appropriation is bond premium received from the sale of the previously referenced bonds.

Background:

On May 3rd, 2022, the final tranche of the Parks and Recreation General Obligation bonds closed. The total was \$19 Million.

This amendment appropriates \$335,006 to cover final bills related to issuing the debt on behalf of the City.

Issues/Analysis:

The sale of the bonds resulted in a premium of approximately \$1.4 Million. A premium received on a bond is an excess of funds on the sale of the bonds beyond the face value of the bonds. Previous council action has provided direction for the use of the majority of these funds.

Budget Impact:

There is no impact to the General Fund as it is proposed that the additional appropriation for the bonds issuance costs be funded from premium payments from the sale of previously referenced bonds.

Options:

1. Adopt Capital Project Ordinance 2022-65 to provide funding for the estimated bond issuance costs from the premium payments.
2. Do not Adopt the Capital Project Ordinance Amendment as presented, and provide guidance to staff as to a different source of funding for the amendment.

Recommended Action:

Staff recommends that Council move to adopt Capital Project Ordinance Amendment 2022-65 as presented.

Attachments:

Capital Project Ordinance Amendment 2022-65

**CAPITAL PROJECT ORDINANCE AMENDMENT
CHANGE 2022-65 (CPO 2017-12)**

BE IT ORDAINED by the City Council of the City of Fayetteville, North Carolina, that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby amended:

Section 1. The project change authorized is to Capital Project Ordinance 2017-12, adopted August 8, 2016, as amended, for Parks and Recreation Bond Fund program implementation and associated bond issuance costs.

Section 2. The project director is hereby directed to proceed with the project within the terms of the various agreements executed and within the funds appropriated herein.

Section 3. The following revenues are anticipated to be available to the City to complete the project:

	Listed As	Amendment	Revised
Parks & Recreation Bond Issuance Phase 1	\$ 100,000	\$ -	\$ 100,000
Parks & Recreation Bond Issuance Phase 1 - Premium	245,000	-	245,000
Parks & Recreation Bond Issuance Phase 2 - Premium	-	335,006	335,006
	<u>\$ 345,000</u>	<u>\$ 335,006</u>	<u>\$ 680,006</u>

Section 4. The following amounts are appropriated for the project:

Project Expenditures	<u>\$ 345,000</u>	<u>\$ 335,006</u>	<u>\$ 680,006</u>
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Section 5. Copies of the capital project ordinance amendment shall be made available to the budget officer and the finance officer for direction in carrying out the projects.

Section 6. The City Manager is hereby authorized and directed to take such action as he may deem necessary or appropriate to execute this ordinance.

Adopted this 13th day of June, 2022.



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-2796

Agenda Date: 6/13/2022

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Public Hearing

Agenda Number: 9.01

TO: Mayor and Members of City Council

THRU: Douglas Hewett, ICMA-CM, City Manager

FROM: Robert Van Geons, President & CEO, FCEDC

DATE: June 13, 2022

RE:

Public Hearing & Consideration of Economic Development Incentives for Project Dogwood

COUNCIL DISTRICT(S):

ALL

Relationship To Strategic Plan:

GOAL II: Responsive City Government Supporting a Diverse and Viable Economy

2.1 - To ensure a diverse City tax base

2.2 - To invest in community places to ensure revitalization and increase quality of life

2.3 - To leverage partnerships for job creation and retention, with a focus on the local and regional workforce to increase per capita income

Executive Summary:

The City Council is required by North Carolina General Statute 158-7.1(c) to set a public hearing to consider incentives for Project Dogwood. The company behind Project Dogwood is one of the nation's leading homebuilders. They are looking to establish a building component manufacturing facility to service operations. The proposed project entails the construction of an approximately 130,000-square-foot industrial facility that will be used to manufacture trusses, wall panel systems, and other essential homebuilding components. The company is considering locations in South Carolina, Georgia, and other areas of North Carolina. City Council is asked to consider up to \$317,000 in economic development incentive grants paid out over five years for Project Dogwood.

This project is in the City of Fayetteville's Municipal Influence Area (MIA). North Carolina law allows a property owner to submit a petition to the City requesting annexation. The

property owners have requested Voluntary Annexation.

Background:

Project Dogwood will allow for more Fayetteville and Cumberland County residents to secure higher paying jobs, resulting in an improved quality of life. Project Dogwood would create 189 jobs by 2027, paying an average wage of \$45,079 per year. This project would inject more than \$8.5 million of annual payroll into our community, paying wages 10 percent above our private sector average. The positive impact this company would have on our local economy cannot be understated.)

Project Dogwood is in talks with Realty Link, owners of the former Soffe Building on Dunn Road where Amazon and Fed Ex have opened operations, to build a new 129,600-square-foot building across the street. This project would be the cornerstone for a medium-sized industrial park.

Issues/Analysis:

N/A

Budget Impact:

This project will positively benefit the City's tax base, generating an estimated \$134,000 per year in tax revenue. The project will create a significant investment in real estate and equipment in the City of Fayetteville exceeding \$25 million over the next five years.

Options:

1. City Council moves to approve up to \$317,000 in economic development incentive grants paid out over five years for Project Dogwood, subject to the aforementioned performance standards.
2. City Council moves to deny the request for incentives to support Project Dogwood.

Recommended Action:

Staff requesting that the City Council hold the required public hearing and City Council moves to approve up to \$317,000 in economic development incentive grants paid out over five years for Project Dogwood, subject to the aforementioned performance standards.

Attachments:

Public Hearing Notice - published
NCGS 158-7.1(c)

NOTICE – PUBLIC HEARING

NOTICE is hereby given that the Fayetteville City Council will hold a public hearing in the City Council Chamber, 1st Floor of City Hall, 433 Hay Street, Fayetteville, NC 28301, on June 13, 2022, beginning at 7:00 pm, or as soon thereafter as may be heard on the following:

In accordance with North Carolina General Statute §158-7.1(c), the purpose of the hearing is to receive public comments on a proposed Economic Development Incentive being considered for “Project Dogwood,” a United States headquartered company that is considering property on Dunn Road, for a new manufacturing facility.

The project shall (1) create a significant investment in real estate and equipment in the City of Fayetteville exceeding \$25,000,000 over the next five years, and (2) create more than 189 full-time jobs in the City by 2027 with an average wage exceeding \$45,000. The City’s proposed incentive offer consists of an incentive grant, not to exceed \$319,000.

Anyone desiring to speak must sign up in advance during normal business hours with the City Clerk by calling 910-433-1312, or by fax at 910-433-1980, or by e-mail at cityclerk@fayettevillenc.gov. Each speaker shall have no more than 3 minutes to speak. No electronic media presentations by citizens will be allowed. Written comments may also be submitted to Pamela Megill, City Clerk, at 433 Hay Street, Fayetteville, North Carolina, or at cityclerk@fayettevillenc.gov. Anyone planning to attend this meeting who will need services to accommodate speech, hearing, or visual impairments should call the City Clerk’s office at 910-433-1989 one week in advance of the meeting so appropriate arrangements can be made.

Chapter 158.
Local Development.

Article 1.

Local Development Act of 1925.

§ 158-1. Repealed by Session Laws 1973, c. 803, s. 37.

§ 158-2. Repealed by Session Laws 1973, c. 803, s. 38.

§§ 158-3 through 158-7. Repealed by Session Laws 1973, c. 803, ss. 39-43.

§ 158-7.1. Local development.

(a) Economic Development. – Each county and city in this State is authorized to make appropriations for economic development purposes. These appropriations must be determined by the governing body of the city or county to increase the population, taxable property, agricultural industries, employment, industrial output, or business prospects of the city or county. These appropriations may be funded by the levy of property taxes pursuant to G.S. 153A-149 and 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law. The specific activities listed in subsection (b) of this section are not intended to limit the grant of authority provided by this section.

(b) Specific Activities. – A county or city may undertake any of the following specific economic development activities under this section:

- (1) A county or city may acquire and develop land for an industrial park, to be used for manufacturing, assembly, fabrication, processing, warehousing, research and development, office use, or similar industrial or commercial purposes. A county may acquire land anywhere in the county, including inside of cities, for an industrial park, while a city may acquire land anywhere in the county or counties in which it is located. A county or city may develop the land by installing utilities, drainage facilities, street and transportation facilities, street lighting, and similar facilities; may demolish or rehabilitate existing structures; and may prepare the site for industrial or commercial uses. A county or city may convey property located in an industrial park pursuant to subsection (d) of this section.
- (2) A county or city may acquire, assemble, and hold for resale property that is suitable for industrial or commercial use. A county may acquire such property anywhere in the county, including inside of cities, while a city may acquire such property inside the city or, if the property will be used by a business that will provide jobs to city residents, anywhere in the county or counties in which it is located. A county or city may convey property acquired or assembled under this subdivision pursuant to subsection (d) of this section.
- (3) A county or city may acquire options for the acquisition of property that is suitable for industrial or commercial use. The county or city may assign such an option, following such procedures, for such consideration, and subject to such terms and conditions as the county or city deems desirable.

- (4) A county or city may acquire, construct, convey, or lease a building suitable for industrial or commercial use.
- (5) A county or city may construct, extend or own utility facilities or may provide for or assist in the extension of utility services to be furnished to an industrial facility, whether the utility is publicly or privately owned.
- (6) A county or city may extend or may provide for or assist in the extension of water and sewer lines to industrial properties or facilities, whether the industrial property or facility is publicly or privately owned.
- (7) A county or city may engage in site preparation for industrial properties or facilities, whether the industrial property or facility is publicly or privately owned.
- (8) A county or city may make grants or loans for the rehabilitation of commercial or noncommercial historic structures, whether the structure is publicly or privately owned.

(c) Public Hearing. – Any appropriation or expenditure for economic development purposes pursuant to this section must be approved by the county or city governing body after a public hearing, which may be part of the public hearing on the annual budget pursuant to G.S. 159-12 if the appropriation or expenditure is included in the annual budget. If the appropriation or expenditure is not included in the annual budget, the county or city shall hold at least one public hearing, publishing notice of the public hearing at least 10 days before the public hearing is held. If the appropriation or expenditure is for the acquisition of an interest in real property, the notice shall describe the interest to be acquired, the proposed acquisition cost of such interest, the governing body's intention to approve the acquisition, the source of funding for the acquisition and such other information needed to reasonably describe the acquisition. If the appropriation or expenditure is for the improvement of privately owned property by site preparation or by the extension of water and sewer lines to the property, the notice shall describe the improvements to be made, the proposed cost of making the improvements, the source of funding for the improvements, the public benefit to be derived from making the improvements, and any other information needed to reasonably describe the improvements and their purpose.

(d) Interests in Real Property. – A county or city may lease or convey interests in real property held or acquired pursuant to subsection (b) of this section in accordance with the procedures of this subsection. A county or city may convey or lease interests in property by private negotiation and may subject the property to such covenants, conditions, and restrictions as the county or city deems to be in the public interest or necessary to carry out the purposes of this section. Any such conveyance or lease must be approved by the county or city governing body, after a public hearing. The county or city shall publish notice of the public hearing at least 10 days before the hearing is held; the notice shall describe the interest to be conveyed or leased, the value of the interest, the proposed consideration for the conveyance or lease, and the governing body's intention to approve the conveyance or lease. Before such an interest may be conveyed, the county or city governing body shall determine the probable average hourly wage to be paid to workers by the business to be located at the property to be conveyed and the fair market value of the interest, subject to whatever covenants, conditions, and restrictions the county or city proposes to subject it to. The consideration for the conveyance may not be less than the value so determined.

(d1) Repealed by Session Laws 1993, c. 497, s. 22.

(d2) Calculation of Consideration. – In arriving at the amount of consideration that it receives, the Board may take into account prospective tax revenues from improvements to be

constructed on the property, prospective sales tax revenues to be generated in the area, as well as any other prospective tax revenues or income coming to the county or city over the next 10 years as a result of the conveyance or lease provided the following conditions are met:

- (1) The governing board of the county or city shall determine that the conveyance of the property will stimulate the local economy, promote business, and result in the creation of a substantial number of jobs in the county or city that pay at or above the median average wage in the county or, for a city, in the county where the city is located. A city that spans more than one county is considered to be located in the county where the greatest population of the city resides. For the purpose of this subdivision, the median average wage in a county is the median average wage for all insured industries in the county as computed by the Department of Commerce, Division of Employment Security, for the most recent period for which data is available.
- (2) The governing board of the county or city shall contractually bind the purchaser of the property to construct, within a specified period of time not to exceed five years, improvements on the property that will generate the tax revenue taken into account in arriving at the consideration. Upon failure to construct the improvements specified in the contract, the purchaser shall reconvey the property back to the county or city.

(e) Local Government Budget and Fiscal Control Act. – All appropriations and expenditures pursuant to this section shall be subject to the provisions of the Local Government Budget and Fiscal Control Acts of the North Carolina General Statutes, respectively, for cities and counties and shall be listed in the annual financial report the county or city submits to the Local Government Commission. The budget format for each such governing body shall make such disclosures in such detail as the Local Government Commission may by rule and regulation direct.

(f) Limitation. – At the end of each fiscal year, the total of the following for each county and city may not exceed one-half of one percent (0.5%) of the outstanding assessed property tax valuation for the county or city as of January 1 preceding the beginning of the fiscal year:

- (1) The investment in property acquired at any time under subdivisions (b)(1) through (b)(4) of this section and owned at the end of the fiscal year.
- (2) The amount expended during the fiscal year under subdivisions (b)(5) and (b)(7) of this section.
- (3) The amount of tax revenue that was taken into account under subsection (d2) of this section and was expected to be received during the fiscal year.

The Local Government Commission shall review the annual financial reports filed by counties and cities to determine if any county or city has exceeded the limit set by this subsection. If the Commission finds that a county or city has exceeded this limit, it shall notify the county or city. A county or city that receives a notice from the Commission under this subsection must submit to the Commission for its review and approval any appropriation or expenditure the county or city proposes to make under this section during the next three fiscal years. The Commission shall not approve an appropriation or expenditure that would cause a county or city to exceed the limit set by this subsection.

(g) Repealed by Session Laws 1989, c. 374, s. 1.

(h) Economic Development Agreement. – Each economic development agreement entered into between a private enterprise and a city or county shall clearly state their respective responsibilities under the agreement. Each agreement shall contain provisions regarding remedies

for a breach of those responsibilities on the part of the private enterprise. These provisions shall include a provision requiring the recapture of sums appropriated or expended by the city or county upon the occurrence of events specified in the agreement. Events that would require the city or county to recapture funds would include the creation of fewer jobs than specified in the agreement, a lower capital investment than specified in the agreement, and failing to maintain operations at a specified level for a period of time specified in the agreement. (1973, c. 803, s. 37; 1985, c. 639, s. 1; 1985 (Reg. Sess., 1986), c. 846, s. 1; c. 848, s. 1; c. 858, s. 1; c. 911, s. 1; c. 921, s. 1; 1987, c. 577, s. 1.1; 1989, c. 374, s. 1; 1991, c. 598, s. 6; c. 659, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 793, s. 1; c. 799, s. 1; c. 938, s. 1; 1993, c. 31, s. 1; c. 42, s. 1; c. 246, ss. 1(a), 1(b); c. 275, s. 2; c. 358, s. 13; c. 497, ss. 22, 24; c. 536, ss. 1, 4; 2007-515, ss. 1, 7; 2011-401, s. 3.24; 2015-277, s. 1; 2019-112, s. 1.)

§ 158-7.2. Accounting for expenditures.

In the event funds appropriated for the purposes of this Article are turned over to any agency or organization other than the county or city for expenditure, no such expenditure shall be made until the county or city has approved the same, and all such expenditures shall be accounted for by the agency or organization at the end of the fiscal year for which they were appropriated. (1973, c. 803, s. 38.)

§ 158-7.3. Development financing.

(a) Definitions. – The following definitions apply in this section:

(1) Development project. – A capital project that includes capital expenditures by both private persons and one or more units of local government and that increases net employment opportunities for residents of the development district or within a two-mile radius of the project, whichever is larger, and increases the local government tax base.

If the district in which such a project will occur is outside a city's central business district (as that district is defined by resolution of the city council, which definition is binding and conclusive), then, of the private development forecast for a development project by the development financing plan for the district in which the project will occur, a maximum of twenty percent (20%) of the plan's estimated square footage of floor space may be proposed for use in retail sales, hotels, banking, and financial services offered directly to consumers, and other commercial uses other than office space. The twenty percent (20%) limitation in the preceding sentence does not apply to development financing districts located in a development tier one area, as defined in G.S. 143B-437.08 and created primarily for tourism-related economic development, such as developments featuring facilities for exhibitions, athletic and cultural events, show and public gatherings, racing facilities, parks and recreation facilities, art galleries, museums, and art centers.

(2) Publish. – Insertion in a newspaper qualified under G.S. 1-597 to publish legal advertisements in the county or counties in which the unit is located.

(3) Unit or unit of local government. – A county, city, town, or incorporated village.

(b) Authorization. – A unit of local government may finance public improvements that are part of a development project with the proceeds of project development financing debt instruments,

issued pursuant to Article 6 of Chapter 159 of the General Statutes, together with any other revenues that are available to the unit. Before it receives the approval of the Local Government Commission for issuance of project development financing debt instruments, the unit's governing body must define a development financing district and adopt a development financing plan for the district. The county may act jointly with a city to finance a project, define a development financing district that is within the city, and adopt a development financing plan for the district.

(c) Development Financing District. – A development financing district created pursuant to this section must be comprised of property that is one or more of the following:

- (1) Blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth.
- (2) Appropriate for rehabilitation or conservation activities.
- (3) Appropriate for the economic development of the community.

The total land area within development financing districts in a unit, including development financing districts created pursuant to G.S. 160A-515.1, may not exceed five percent (5%) of the total land area of the unit. For the purposes of this section, land in a district created by a county that subsequently becomes part of a city, town, or incorporated village does not count against the five-percent (5%) limit for the city, town, or incorporated village unless the city, town, or incorporated village and the county have entered into an agreement pursuant to G.S. 159-107(e). A county may not include in a district created pursuant to this section any land that, at the time the district is created, is inside a city, town, or incorporated village.

(d) Development Financing Plan. – The development financing plan must include all of the following:

- (1) A description of the boundaries of the development financing district.
- (2) A description of the proposed development of the district, both public and private.
- (3) The costs of the proposed public activities.
- (4) The sources and amounts of funds to pay for the proposed public activities.
- (5) The base valuation of the development financing district.
- (6) The projected incremental valuation of the development financing district.
- (7) The estimated duration of the development financing district.
- (8) A description of how the proposed development of the district, both public and private, will benefit the residents and business owners of the district in terms of jobs, affordable housing, or services.
- (9) A description of the appropriate ameliorative activities which will be undertaken if the proposed projects have a negative impact on residents or business owners of the district in terms of jobs, affordable housing, services, or displacement.
- (10) A requirement that the initial users of any new manufacturing facilities that will be located in the district and that are included in the plan will comply with the wage requirements referred to in subsection (e) of this section.

(e) Wage Requirements. – A development financing plan shall include a requirement that the initial users of a new manufacturing facility to be located in the district and included in the plan must pay its employees an average weekly manufacturing wage that is either above the average manufacturing wage paid in the county in which the district will be located or not less than ten percent (10%) above the average weekly manufacturing wage paid in the State. The plan may include information on the wages to be paid by the initial users of a new manufacturing facility to

its employees and any provisions necessary to implement the wage requirement. The issuing unit's governing body shall not adopt a plan until the Secretary of Commerce certifies that the Secretary has reviewed the average weekly manufacturing wage required by the plan to be paid to the employees of a new manufacturing facility and has found either (i) that the wages proposed by the initial users of a new manufacturing facility are in compliance with the amount required by this subsection or (ii) that the plan is exempt from the requirement of this subsection. The Secretary of Commerce may exempt a plan from the requirement of this subsection if the Secretary receives a resolution from the issuing unit's governing body requesting an exemption from the wage requirement and a letter from an appropriate State official, selected by the Secretary, finding that unemployment in the county in which the proposed district is to be located is especially severe. Upon the creation of the district, the unit of local government proposing the creation of the district shall take any lawful actions necessary to require compliance with the applicable wage requirement by the initial users of any new manufacturing facility included in the plan; however, failure to take such actions or obtain such compliance shall not affect the validity of any proceedings for the creation of the district, the existence of the district, or the validity of any debt instruments issued under Article 6 of Chapter 159 of the General Statutes. All findings and determinations made by the Secretary of Commerce under this subsection shall be binding and conclusive. For purposes of this section, the term "manufacturing facility" means any facility that is used in the manufacturing or production of tangible personal property, including the processing resulting in a change in the condition of the property.

(f) County Review. – If the unit creating a development financing district and adopting a development financing plan is a city, town, or incorporated village, before adopting the plan the unit's governing body shall send notice of the plan, by first-class mail, to the board of county commissioners of the county or counties in which the development financing district is located. The person mailing the notice shall certify that fact, and the date thereof, to the governing body, and the certificate is conclusive in the absence of fraud. Unless the board of county commissioners (or either board, if the district is in two counties) by resolution disapproves the proposed plan within 28 days after the date the notice is mailed, the governing body may proceed to adopt the plan.

(g) Environmental Review. – Before adopting a plan for development financing districts, the issuing unit's governing body shall submit the plan to the Secretary of Environmental Quality to review to determine if the construction and operation of any new manufacturing facility in the district will have a materially adverse effect on the environment and whether the company that will operate the facility has operated in substantial compliance with federal and State laws, regulations, and rules for the protection of the environment. If the Secretary finds that the new manufacturing facility will not have a materially adverse effect on the environment and that the company that will operate the facility has operated other facilities in compliance with environmental requirements, the Secretary shall approve the plan. In making the determination on environmental impact, the Secretary shall use the same criteria that apply to the determination under G.S. 159C-7 of whether an industrial project will have a materially adverse effect on the environment. The findings of the Secretary are conclusive and binding.

(h) Plan Adoption. – Before adopting a plan for a development financing district, the issuing unit's governing body shall hold a public hearing on the plan. The governing body shall, no more than 30 days and no less than 14 days before the day of the hearing, cause notice of the hearing to be published once and shall cause notice of the hearing to be mailed, by first-class mail, to all property owners and mailing addresses of the development financing district and to the

governing body of any special district, as defined by G.S. 159-7, within which the development financing district is located. The notice shall state the time and place of the hearing, shall specify its purpose, and shall state that a copy of the proposed plan is available for public inspection in the office of the unit's clerk. At the public hearing, the governing body shall hear anyone who wishes to speak with respect to the proposed district and proposed plan. Unless a board of county commissioners or the Secretary of Environmental Quality has disapproved the plan pursuant to subsection (f) or (g) of this section, the governing body may adopt the plan, with or without amendment, at any time after the public hearing. However, the plan and the district do not become effective until the unit's application to issue project development financing debt instruments has been approved by the Local Government Commission, pursuant to Article 6 of Chapter 159 of the General Statutes.

(i) **Plan Modification.** – Subject to the limitations of this subsection, a governing body may, after the effective date of the district, amend a development financing plan adopted for a development financing district. Before making any amendment, the governing body shall follow the procedures and meet the requirements of subsections (e) through (h) of this section. The boundaries of the district may be enlarged only during the first five years after the effective date of the district and only if the area to be added has been or is about to be developed and the development is primarily attributable to development that has occurred within the district, as certified by the Local Government Commission. The boundaries of the district may be reduced at any time, but the unit may agree with the holders of any project development financing debt instruments to restrict its power to reduce district boundaries.

(j) **Plan Implementation.** – In implementing a development financing plan, a unit may act directly, through one or more contracts with other public agencies, through one or more contracts with private agencies, or by any combination thereof. A private agency that enters into a contract with a unit for the implementation of a development financing plan is subject to the provisions of Article 8 of Chapter 143 of the General Statutes only to the extent specified in the contract. (2003-403, s. 19; 2005-238, s. 1; 2005-407, s. 1; 2006-211, s. 3; 2006-252, s. 2.10; 2015-241, s. 14.30(v).)

§ 158-7.4. Interlocal agreements concerning economic development.

(a) Any two or more units of local government may enter into contracts or agreements to execute undertakings pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, under which each participating local government agrees to provide resources for the development of an industrial or commercial park or industrial or commercial site pursuant to G.S. 158-7.1. In consideration for that participation, the unit or units in which the park or site is located may agree to place the proceeds from some or all property taxes levied on the park or site into a common fund or transfer those proceeds to a nonprofit corporation or other entity. The proceeds placed into the common fund or transferred to the other entity may then be distributed among the participating local governments as provided in the contract or agreement.

(b) Any undertaking entered into pursuant to this section may be for that period that is agreed to by the participating local governments, up to a maximum of 99 years.

(c) Any undertaking entered into pursuant to this section is binding upon each participating local government for the duration of the contract or agreement. Any participating local government may bring an action to specifically enforce the contract or agreement. (2003-417, s. 2; 2005-72, s. 1.)

Article 2.

Economic Development Commissions.

§ 158-8. Creation of municipal, county or regional commissions authorized; composition; joining or withdrawing from regional commissions.

The governing body of any municipality or the board of county commissioners of any county may by resolution create an economic development commission for said municipality or county. The governing bodies of any two or more municipalities and/or counties may by joint resolution, adopted by separate vote of each governing body concerned, create a regional economic development commission. A municipal or county economic development commission shall consist of from three to nine members, named for terms and compensation (if any) fixed by its respective governing body. The membership, compensation (if any), and terms of a regional economic development commission, and the formula for its financial support, shall be fixed by the joint resolution creating the commission. Additional governmental units may join a regional commission with the consent of all existing members. Any governmental unit may withdraw from a regional commission on two years' notice to the other members. The resolution creating a municipal, county, or regional economic development commission may be modified, amended, or repealed in the same manner as it was originally adopted. (1961, c. 722, s. 2; 2013-360, s. 15.28(a); 2013-363, s. 5.7(a).)

§§ 158-8.1 through 158-8.8: Repealed effective June 30, 2014, by Session Laws 2013-360, s. 15.28(a), as amended by Session Laws 2013-363, s. 5.7(a).

§ 158-9. Organization of commission; rules and regulations; committees; meetings.

Upon its appointment, the economic development commission shall promptly meet and elect from among its members a chairman and such other officers as it may choose, for such terms as it shall prescribe in its rules and regulations. The commission shall adopt such rules and regulations not inconsistent herewith as it may deem necessary for the proper discharge of its duties. The chairman may appoint such committees as the work of the commission may require. The commission shall meet regularly, at least once every three months, at places and dates specified in the rules. Special meetings may be called as specified in the rules. (1961, c. 722, s. 2.)

§ 158-10. Staff and personnel; contracts for services.

Within the limits of appropriated funds, the commission may hire and fix the compensation of any personnel necessary to its operations, contract with consultants for such services as it may require, and contract with the State of North Carolina or the federal government, or any agency or department thereof, for such services as may be provided by such agencies; and it is hereby empowered to carry out the provisions of such contracts as it may enter. (1961, c. 722, s. 2.)

§ 158-11. Office and equipment.

Within the limits of appropriated funds, the commission may lease, rent, or purchase, or otherwise obtain suitable quarters and office space for its staff, and may lease, rent, or purchase necessary furniture, fixtures, and other equipment. (1961, c. 722, s. 2.)

§ 158-12. Fiscal affairs generally; appropriations.

The commission may accept, receive, and disburse in furtherance of its functions any funds, grants, and services made available by the federal government and its agencies, the State government and its agencies, any municipalities or counties, and by private and civic sources.

Each municipality or county shall have authority to appropriate funds to any local or regional economic development commission which it may have created. These appropriations may be funded by levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law. (1961, c. 722, s. 2; 1973, c. 803, s. 44; c. 1446, s. 26.)

§ 158-12.1: Repealed effective June 30, 2014, by Session Laws 2013-360, s. 15.28(a), as amended by Session Laws 2013-363, s. 5.7(a).

§ 158-13. Powers and duties.

Any economic development commission created pursuant to this Article shall:

- (1) Receive from any municipal, county, joint, or regional planning board or commission with jurisdiction within its area an economic development program for part or all of the area;
- (2) Formulate projects for carrying out such economic development program, through attraction of new industries, encouragement of existing industries, encouragement of agricultural development, encouragement of new business and industrial ventures by local as well as foreign capital, and other activities of a similar nature;
- (3) Conduct industrial surveys as needed, advertise in periodicals or other communications media, furnish advice and assistance to business and industrial prospects which may locate in its area, furnish advice and assistance to existing businesses and industries, furnish advice and assistance to persons seeking to establish new businesses or industries, and engage in related activities;
- (4) Encourage the formation of private business development corporations or associations which may carry out such projects as securing and preparing sites for industrial development, constructing industrial buildings, or rendering financial or managerial assistance to businesses and industries; furnish advice and assistance to such corporations or associations;
- (4a) Use grant funds to make loans for purposes permitted by the federal government, by the grant agreement and in furtherance of economic development; the economic development commission may delegate to another organization or agency the implementation of the grant's purposes, subject to approval by the federal agency involved and the commission's board of directors.

- (5) Carry on such other activities as may be necessary in the proper exercise of the functions described herein. (1961, c. 722, s. 2; 1979, c. 775.)

§ 158-14. Regional planning and economic development commissions authorized.

Any municipalities and/or counties desiring to exercise the powers granted by this Article may, at their option, create a regional planning and economic development commission, which shall have and exercise all of the powers and duties granted to a regional economic development commission under this Article and in addition the powers and duties granted to a regional planning commission under Article 23 of Chapter 153. In the event that such a combined commission is created, it shall keep separate books of accounts for appropriations and expenditures made pursuant to this Article and for appropriations and expenditures made pursuant to Article 23 of Chapter 153. The financial limitations set forth in each such Article shall govern expenditures made pursuant to such Article. (1961, c. 722, s. 2; 1965, c. 431, s. 2.)

§ 158-15. Powers granted herein supplementary.

The powers granted to counties and municipalities by this Article shall be deemed supplementary to any powers heretofore or hereafter granted by any general or local act for the same or similar purposes, and in any case where the provisions of this Article conflict with or are different from the provisions of any other act, the board of county commissioners or the municipal governing board may in its discretion proceed in accordance with the provisions of this Article or, as an alternative method, in accordance with the provisions of such other act. (1961, c. 722, s. 2.)

Article 2A.

Multi-County Water Conservation and Infrastructure District.

§ 158-15.1. Multi-County Water Conservation and Infrastructure District.

(a) There is established the Multi-County Water Conservation and Infrastructure District, which is a public authority for the purpose of the Local Government Budget and Fiscal Control Act.

(b) The member counties of the Multi-County Water Conservation and Infrastructure District are Bertie, Caswell, Forsyth, Granville, Guilford, Halifax, Martin, Northampton, Person, Rockingham, Stokes, Surry, Vance, Warren, and Washington.

(c) The governing body of the Multi-County Water Conservation and Infrastructure District is the Multi-County Water Commission. One member of this Commission shall be appointed for a three-year term by the board of commissioners of each member county.

(d) All monies received by the State of North Carolina for sale of water under the Roanoke River Basin Compact, if enacted, shall be paid to the Multi-County Water Conservation and Infrastructure District.

(e) The District may accept for any of its purposes and functions any and all donations, grants of money, equipment, supplies, materials and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any political subdivision of this State or any other state, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. The nature, amount and condition,

if any, attendant upon any donation or grant accepted pursuant to this subsection together with the identity of the donor or grantor, shall be detailed in the annual audit of the District.

(f) At times specified by the Multi-County Water Commission, net revenues after operating expenses of the District shall be paid to each of the fifteen member counties according to the following formula: (i) one-half pro-rata based on the population located within the Roanoke River basin area of each member county; and (ii) one-half pro-rata based on the land area located within the Roanoke River Basin area of each county.

(g) Member counties may use funds received under this section for public purposes relating to infrastructure development, economic development, and water conservation.

(h) The Commission may adopt such rules as may be needful for operation of its affairs, and shall employ and terminate personnel as if it were a county. (1995, c. 507, s. 26.12; 1996, 2nd Ex. Sess., c. 18, s. 24.22(a); 1997-443, s. 15.48(a).)

§§ 158-15.2 through 158-15.9. Reserved for future codification purposes.

Article 3.

Tax Elections for Industrial Development Purposes.

§ 158-16. Board of commissioners may call tax election; rate and purposes of tax.

The board of county commissioners in any county is authorized and empowered to call a special election to determine whether it be the will of the qualified voters of said county that they levy and cause to be collected annually, at the same time and in the same manner as the general county taxes are levied and collected, a special tax at a rate not to exceed five cents (5¢) on each one hundred dollars (\$100.00) valuation of property in said county, to be known as an "industrial development tax," the funds therefrom, if the levy be authorized by the voters of said county, to be used for the purpose of attracting new and diversified industries to said county, and for the encouragement of new business and industrial ventures by local as well as foreign capital, and for the purpose of aiding and encouraging the location of manufacturing enterprises, making industrial surveys and locating industrial plants in said county, and for the purpose of encouraging agricultural development in said county. Any special election shall be conducted in accordance with G.S. 163-287. (1959, c. 212, s. 1; 2013-381, s. 10.25; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 158-17. Registration of voters; election under supervision of county board of elections.

There shall be no new registration of voters for such an election. Registration shall be open for registration of new voters in said county and registration of any and all legal residents of said county, who are or could legally be enfranchised as qualified voters for regular general elections, shall be carried out in accordance with the general election laws of the State of North Carolina as provided for local elections. Notice of such registration of new voters shall be published in a newspaper circulated in said county, once, not less than 55 days before and not more than 65 days before the election, stating the hours and days for registration. The special election, if called, shall

be under the control and supervision of the county board of elections. (1959, c. 212, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 11.)

§ 158-18. Form of ballot; when ballots supplied; designation of ballot box.

The form of the question shall be substantially the words "For Industrial Development Tax," and "Against Industrial Development Tax," which alternates shall appear separated from each other on one ballot containing opposite, and to the left of each alternate, squares of appropriate size in one of which squares the voters may make a mark "X" to designate the voter's choice for or against such tax. Such ballot shall be printed on white paper and each polling place shall be supplied with a sufficient number of ballots not later than the day before the election. At such special election the election board shall cause to be placed at each voting precinct in said county a ballot box marked "Industrial Development Tax Election." (1959, c. 212, s. 1.)

§ 158-19. Counting of ballots; canvassing, certifying and announcing results of elections.

The duly appointed judges and other election officials who are named and fixed by the county board of elections shall count the ballots so cast in such election and the results of the election shall be officially canvassed, certified and announced by the proper officials of the board of elections, according to the manner of canvassing, certifying and announcing the elections held under the general election laws of the State. Except as herein otherwise provided, the registration and election herein provided for shall be conducted in accordance with the general election laws of the State as provided for local elections. (1959, c. 212, s. 1.)

§ 158-20. Authorized tax rate.

If a majority of those voting in such election favor the levying of such a tax, the board of commissioners of said county are authorized to levy a special tax at a rate not to exceed five cents (5¢) on each one hundred dollars (\$100.00) of assessed value of real and personal property taxable in said county, and the General Assembly does hereby give its special approval for the levy of such special tax. (1959, c. 212, s. 1.)

§ 158-21. Creation of industrial development commission; membership and terms of office; vacancies; meetings; selection of officers; bylaws and procedural rules and policies; authority of treasurer and required bond; subsidy or investment in business or industry forbidden.

If the majority of the qualified voters voting in such election favor the levying of such a tax, then and in that event, the county commissioners may create a commission to be known as the "Industrial Development Commission" for said county. Such commission shall be composed of nine members. The terms of office of the members of the commission shall be three years, with the exception of the first two years' existence of the commission, in which three shall be appointed to serve for a period of one year, three for a period of two years, and three for a period of three years; thereafter, all members shall be appointed for three years, and shall serve until their successors have been appointed and qualified. All appointments for unexpired terms resulting from resignation, death or other causes, shall be made by the county board of commissioners. The

commission shall hold its first meeting within 30 days after its appointment as provided for in this Article, and the beginning date of all terms of office of the commissioners shall be the date on which the commission holds its first meeting. After the members of the commission shall have been appointed and at the time of the holding of the first meeting, they shall, by a majority vote, name and select from their membership their own chairman, vice-chairman, secretary and treasurer, and shall draw up and ratify their own bylaws and procedural rules and policies. The commission member who shall be named treasurer shall have supervision of all funds administered by the commission in any way whatsoever; shall sign and countersign all checks, drafts, bills of exchange, or any and all other negotiable instruments which shall properly be issued under his supervision; and shall furnish such surety bond as shall be designated by the board of county commissioners. No money, property or funds of the commission herein created shall be used directly or indirectly as a subsidy or investment in capital assets in any business, industry or business venture. (1959, c. 212, s. 1.)

§ 158-22. Bureau set up under supervision and control of industrial development commission; furnishing county commissioners with proposed budget.

Under the supervision and jurisdiction of the industrial development commission for said county there shall be set up a bureau, the purpose of which shall be as set forth in G.S. 158-16. The commission shall have charge of the activities of this bureau, full supervision of its operations, and full responsibility for its actions. The commission shall employ personnel for the bureau, supervise its purchases and expense accounts, and administer all the tax funds which shall be turned over to the commission by county authorities from the industrial development tax and any and all other funds which may come into its hands. The commission shall be empowered to lease, rent or purchase, or otherwise obtain suitable quarters and office space for an industrial development bureau, to lease, rent, or purchase necessary furniture, fixtures, and other equipment, to purchase advertising space in periodicals which may be selected for that purpose, and to otherwise engage in any and all activities which shall, in its discretion, promote the business and industrial development and general economic welfare of said county; and it shall have full power to exercise any and all other proper authority in connection with its duties and not expressly mentioned herein. Provided, that said commission shall provide the board of county commissioners 30 days prior to July 1 a proposed budget for the fiscal year commencing on July 1 and shall provide the board of county commissioners an audit by a certified public accountant within 60 days after the expiration of the fiscal year ending on June 30. (1959, c. 212, s. 1.)

§ 158-23. Board of county commissioners may function and carry out duties of industrial development commission.

Nothing herein shall prevent the board of county commissioners itself from functioning and carrying out the duties of the industrial development commission as provided for herein. (1959, c. 212, s. 1.)

§ 158-24. Counties to which Article applies.

The provisions of this Article shall apply only to the following counties: Alexander, Burke, Caswell, Chowan, Edgecombe, Franklin, Harnett, Haywood, Hertford, Mitchell, Northampton, Onslow, Pasquotank, Perquimans, Person, Polk, Rockingham, Rutherford, Tyrrell, Vance and

Warren. (1959, c. 212, s. 2; 1961, cc. 208, 228, 339, 560, 683, 701, 1011, 1058; 1963, c. 157, s. 2; cc. 443, 504, 506, 613, 1101; 1965, cc. 189, 523, 622.)

§§ 158-25 through 158-29. Reserved for future codification purposes.

Article 4.

North Carolina's Eastern Region.

§§ 158-30 through 158-42: Repealed effective June 30, 2014, by Session Laws 2013-360, s. 15.28(a), as amended by Session Laws 2013-363, s. 5.7(a).



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-2773

Agenda Date: 6/13/2022

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Public Hearing

Agenda Number: 9.02

TO: Mayor and Members of City Council

THRU: Jay C. Toland, Assistant City Manager

FROM: Kelly Olivera, Budget and Evaluation Director

DATE: June 13, 2022

RE:

Public Hearing on the Proposed Fiscal Year 2022-2023 Annual Operating Budget

COUNCIL DISTRICT(S):

All

Relationship To Strategic Plan:

Goal 5: Financially Sound City Providing Exemplary City Services

Objective 5.1: To ensure strong financial management with fiduciary accountability and plan for future resource sustainability by aligning resources with City priorities.

Executive Summary:

This public hearing has been set to receive comments from the residents regarding the annual operating budget proposed for the City for fiscal year 2022-2023. The notice advertising the public hearing was published in the Fayetteville Observer on Thursday, June 2, 2022.

Background:

The City Manager delivered his formal budget presentation at the May 24, 2022 Council meeting.

The budget had been made available for public inspection on the City's website at the following link:

[<https://www.fayettevillenc.gov/city-services/budget-evaluation/budget-chronicles>](https://www.fayettevillenc.gov/city-services/budget-evaluation/budget-chronicles)

Issues/Analysis:

This public hearing is required by the North Carolina Local Government Budget and Fiscal Control Act.

Budget Impact:

As presented in the Fiscal Year 2023 Recommended Budget document.

Options:

No Council action is required.

Recommended Action:

Receive public comments on the recommended budget.

Attachments:

FY 2023 Budget Public Hearing Presentation

 **FY**
2023

 **FAYETTEVILLE** ^{NC}
AMERICA'S CAN DO CITY



annual budget







recommended

Budget Public Hearing
June 13, 2022



- The City Manager's Recommended Budget was formally presented to City Council at the May 23rd meeting
- The document has been available for public review in the Office of the City Clerk and on the City's website
- The proposed budget provides for \$248,258,980 total expenditures across all funds, with \$188,318,886 General Fund expenditures

	FY2022 Original Adopted Budget	FY2023 Recommended Budget
General Fund	188,463,322	188,318,886
Solid Waste Fund	15,319,690	16,360,647
Transit Fund	12,415,571	13,325,042
Stormwater Fund	11,519,781	16,382,010
Airport Fund	5,045,544	5,765,927
PWC Assessment Fund	3,134,000	2,520,000
LEOSSA Fund	1,867,736	3,148,800
Emergency Telephone System Fund	1,001,723	960,166
Parking Fund	1,234,881	1,191,830
Central Business Tax District	302,707	285,672
Total Budget All Funds	\$240,304,955	\$248,258,980

-  **Goal 1:** Safe and Secure Community
-  **Goal 2:** Responsive City Government Supporting a Diverse and Viable Economy
-  **Goal 3:** Investment in Today and Tomorrow
-  **Goal 4:** Desirable Place to Live, Work and Recreate
-  **Goal 5:** Financially Sound City Providing Exemplary City Services
-  **Goal 6:** Collaborative Citizen and Business Engagement

- Ad Valorem Property Taxes
 - General Property Tax Rate
 - Proposed to remain at 49.95 cents per \$100 of property valuation
 - Minimal growth in taxable property values over current fiscal year
 - Central Business Tax District Tax Rate
 - Proposed to remain at 10.00 cents per \$100 of property valuation
 - Lake Valley Drive Municipal Service District
 - Abolished effective June 30, 2021



- Residential Solid Waste Fee
 - FY 2023 fee proposed to remain at \$225 per single family residential unit
- Stormwater fee
 - No change proposed to the current fee of \$6.00 per month per equivalent residential unit
- Transit Fares
 - No proposed changes
 - Return to fare collection is projected for September 2022

- Notice of the required public hearing on the budget was published in the Fayetteville Observer on Thursday, June 2nd
- Receive comments on the proposed budget through tonight's public hearing
- Council is scheduled to adopt the budget, CIP and TIP, strategic plan and fee schedule later tonight



Public Hearing on the Proposed Fiscal Year 2023 Annual Operating Budget





FayettevilleNC.gov



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-2774

Agenda Date: 6/13/2022

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Other Items of
Business

Agenda Number: 10.01

TO: Mayor and Members of City Council

THRU: Douglas J. Hewett, ICMA - CM, City Manager
Jay C. Toland, Assistant City Manager

FROM: Kelly Olivera, Budget and Evaluation Director

DATE: June 13, 2022

RE:

Adoption of the Fiscal Year 2022-2023 Budget Ordinance and Fee Schedule, the Fiscal Year 2022-2023 Strategic Plan, the Fiscal Years 2023-2027 Capital and Technology Improvement Plans, Capital Project Ordinances 2023-1 through 2023-7 and Capital Project Ordinance Amendments 2023-1 through 2023-10

COUNCIL DISTRICT(S):

All

Relationship To Strategic Plan:

Goal 5: Financially Sound City Providing Exemplary City Services

Objective 5.1: To ensure strong financial management with fiduciary accountability, and plan for future resource sustainability by aligning resources with City priorities.

Executive Summary:

Council is asked to consider adoption of the Fiscal Year 2022-2023 Budget Ordinance and Fee Schedule. In addition to setting the ad valorem tax rate at 49.95 cents and the Central Business Tax District rate at 10 cents, the ordinance also levies the stormwater fee at \$6.00 per month and the residential solid waste fee at \$225 per year, and adopts the fee schedule presented.

Council is asked to approve the Fiscal Year 2022-2023 Strategic Plan and the Fiscal Year 2023-2027 Capital and Technology Improvement Plans (CIP and TIP), and to adopt related capital project ordinances and capital project ordinance amendments to establish

project budgets as planned.

Background:

Fiscal Year 2023 Proposed Operating Budget

The City Manager's recommended budget was formally presented to City Council at the May 23, 2022 regular Council meeting. Council has deliberated the recommended budget at three budget work sessions on May 26th, June 2nd, and June 9th, and a public hearing on the budget was conducted earlier this evening.

Any changes to the Recommended Annual Operating Budget, Fee Schedule, Strategic Plan, or Capital and Technology Improvement Plans will be presented to Council during the June 13th regular Council meeting, prior to adoption of these items.

Issues/Analysis:

Council has deliberated the recommended budget and related items at three work sessions held on May 26th, June 2nd, and June 9th.

Budget Impact:

As presented in the recommended budget document and outlined above.

Options:

- 1) Adopt the proposed Budget Ordinance, Strategic Plan and related documents as presented.
- 2) Amend the proposed Budget Ordinance, Strategic Plan and related documents and adopt as amended.
- 3) Do not adopt the proposed Budget Ordinance and Strategic Plan and provide further direction to staff.

Recommended Action:

Staff recommends that Council move to adopt the proposed Fiscal Year 2022-2023 Budget Ordinance and Fee Schedule, the Fiscal Years 2023-2027 Capital and Technology Improvement Plans, Capital Project Ordinances 2023-1 through 2023-7 and Capital Project Ordinance Amendments 2023-1 through 2023-10

Attachments:

To be provided



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 22-2724

Agenda Date: 6/13/2022

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Administrative
Reports

Agenda Number: 11.01

TO: Mayor and Members of City Council

THRU: Jay C. Toland, Chief Financial Officer/Assistant City Manager

FROM: Jody Picarella, CPA, MBA, Assistant Chief Financial Officer
Brittany McLaurin, Financial Reporting Manager

DATE: June 13, 2022

RE:

Revenue and Expenditure Reports for the Annual Funds for the Nine-Month Period Ended March 31, 2022 with Comparative Information for the Nine-Month Period ended March 31, 2022, and Revenue and Expenditure Reports for the Multi-Year Funds from Inception and for the Nine-Month Period ended March 31, 2022

COUNCIL DISTRICT(S):

All

Relationship To Strategic Plan:

Goal 5: Financially Sound City Providing Exemplary City Services

Objective 5.1: Ensure strong financial management with fiduciary accountability and plan for the future resource sustainability by aligning resources with City priorities.

Executive Summary:

The City's revenue and expenditure reports for the nine-month period ending March 31, 2022 are provided for Council's information.

Background:

The attached reports consist of annual operating reports for the General Fund and Other Operating Funds. Revenue and expenditure reports for the multi-year funds are also provided. The annual operating reports provide revenue and expenditure data for the current fiscal year as of March 31, 2022 with comparative data for the same period of the

prior fiscal year. The current year annual budget along with positive or negative changes between the "Actuals" columns are also provided.

The revenue and expenditure reports for the multi-year funds provide revenue and expenditure data along with a listing of current projects and project authorizations, activity from inception, encumbrances and project balances.

Most revenues are reported when they are both measurable (cash flow from the revenue can be reasonably estimated) and available (revenue is available to finance current year expenditures to be paid within 60 days). Sales taxes and utility taxes are not measurable by the City until distributed by the State. Motor vehicle tax is not measurable by the City until distributed by the County. In order to present a full nine months of sales tax and utility tax revenues, those revenues are reported here on the cash basis.

Issues/Analysis:

Overall, general fund revenues are up \$490K over the previous year. Ad valorem taxes collected during this period decreased by \$273K as compared to the first 9 months of the previous year. Federal revenues decreased by \$1.7M due to COVID-19 pandemic revenues received during the 9-month period in the previous year. Revenues from Parks and Recreation programs increased by \$894K in the current year due to the reactivation of programs.

Overall total general fund expenditures increased \$5.4M, up 5% from the previous year due mainly to the timing of capital outlay this year vs. last year and an increase in debt service payments.

Transfers out to capital projects increased \$3.7M from the previous year for budgeted projects included in the FY21 CIP/TIP.

Overall, general fund revenues exceed expenditures for the first 9 months of the year by \$11.9M, which is a decrease of approximately \$12.9M over the same period last year.

Budget Impact:

See attached reports.

Options:

Not applicable.

Recommended Action:

For information purposes only.

Attachments:

Revenue and Expenditure Reports for the Annual and Multi-Year Funds for the Nine-Month
Period Ended March 31, 2022.

CITY OF FAYETTEVILLE, NORTH CAROLINA

**Schedules of Revenues and Expenditures
For the 6-Month Period Ended March 31, 2022
(Unaudited)**

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CITY OF FAYETTEVILLE, NORTH CAROLINA

**General Fund Revenue and Expenditure Report
For the Periods Ended March 2022 and 2021**

(Unaudited)

	Annual Budget As of March 31, 2022	Actuals thru March 31, 2022	Actuals thru March 31, 2021	\$ Change Actuals	% Change Actuals
General Fund Revenues					
Ad Valorem Taxes	\$ 72,013,601	\$ 68,530,219	\$ 68,804,031	\$ (273,812)	-0.40%
Other Taxes					
Vehicle license tax	640,200	312,721	495,128	(182,407)	-36.84%
Privilege license	18,000	4,281	3,860	421	210.91%
Gross receipts tax on rental property	775,900	515,811	544,446	(28,635)	-5.26%
Total Other Taxes	1,434,100	832,813	1,043,434	(210,621)	-20.19%
Intergovernmental					
Federal					
Federal - public safety	171,295	175,995	67,443	108,552	160.95%
Federal - other	133,068	19,295	1,861,466	(1,842,171)	-98.96%
State					
Sales Taxes	50,624,034	42,480,128	37,317,029	5,163,100	13.84%
Utility Taxes	12,565,700	8,273,157	9,093,767	(820,610)	-9.02%
Other	6,196,814	5,917,620	5,062,096	855,524	16.90%
Local					
Local - public safety	352,470	252,022	266,321	(14,299)	-5.37%
Local - other	5,007,153	1,038,837	5,585,227	(4,546,390)	-81.40%
Payment in lieu of taxes	11,853,127	8,889,845	8,588,150	301,695	3.51%
Total Intergovernmental	86,903,661	67,046,899	67,841,499	(794,599)	-1.17%
Functional Revenues					
Permits and Fees	2,228,496	2,382,187	1,681,618	700,569	41.66%
Sales and Services					
Property leases	460,289	113,496	100,521	12,975	12.91%
Engineering/planning services	469,910	290,524	370,451	(79,927)	-21.58%
Public safety services	1,236,428	1,132,404	757,422	374,982	49.51%
Recreation and cultural services	1,971,680	999,732	105,387	894,345	848.63%
Other fees and services	385,288	211,423	223,698	(12,275)	-5.49%
Total Functional Revenues	6,752,091	5,129,766	3,239,097	1,890,669	58.37%
Other Revenues					
Refunds and sundry	510,086	128,620	223,928	(95,308)	-42.56%
Indirect cost allocation	2,520,200	1,890,153	1,898,625	(8,472)	-0.45%
Special use assessment	86,750	40,924	57,966	(17,042)	-29.40%
Total Other Revenues	3,117,036	2,059,697	2,180,519	(120,822)	-5.54%
Investment Earnings	34,195	-	-	-	0.00%
Total General Fund Revenues	170,254,684	143,599,394	143,108,579	490,815	0.34%
General Fund Expenditures					
Community Investment					
Economic and Community Development					
Salaries and employee benefits	361,993	253,400	138,587	114,813	82.85%
Other operating expenditures	1,272,464	328,360	137,397	190,963	138.99%
Payments to agencies	277,913	136,250	85,127	51,123	15.00%
	1,912,370	718,010	361,111	356,899	98.83%
Development Services					
Salaries and employee benefits	4,094,095	2,949,005	2,814,589	134,416	4.78%
Other operating expenditures	627,285	285,865	258,950	26,915	10.39%
Capital outlay	214,199	65,598	-	65,598	0.00%
Payments to agencies	2,000	-	-	-	0.00%
	4,937,579	3,300,468	3,073,539	226,929	7.38%
Human relations					
Salaries and employee benefits	293,638	147,860	225,797	(77,937)	-34.52%
Other operating expenditures	40,532	18,706	19,215	(509)	-2.65%
Payments to agencies	14,658	-	-	-	0.00%
	348,828	166,566	245,012	(78,446)	-32.02%
Total Community Investment	7,198,777	4,185,044	3,679,662	505,382	13.73%

CITY OF FAYETTEVILLE, NORTH CAROLINA

General Fund Revenue and Expenditure Report
For the Periods Ended March 2022 and 2021

(Unaudited)

	Annual Budget As of March 31, 2022	Actuals thru March 31, 2022	Actuals thru March 31, 2021	\$ Change Actuals	% Change Actuals
Support Services and Administration					
Budget and Evaluation					
Salaries and employee benefits	516,753	396,593	374,466	22,127	5.91%
Other operating expenditures	16,303	11,608	10,076	1,532	15.20%
	<u>533,056</u>	<u>408,201</u>	<u>384,542</u>	<u>23,659</u>	<u>6.15%</u>
City Attorney's Office					
Salaries and employee benefits	960,235	750,195	699,268	50,927	7.28%
Other operating expenditures	422,834	266,679	318,412	(51,733)	-16.25%
	<u>1,383,069</u>	<u>1,016,874</u>	<u>1,017,680</u>	<u>(806)</u>	<u>-0.08%</u>
City Manager's Office					
Salaries and employee benefits	2,269,538	1,802,811	1,542,118	260,693	16.90%
Other operating expenditures	512,107	121,853	147,815	(25,962)	-17.56%
Capital outlay	29,541	-	-	-	0.00%
Cost redistribution	12,661	-	-	-	0.00%
	<u>2,823,847</u>	<u>1,924,664</u>	<u>1,689,933</u>	<u>234,731</u>	<u>13.89%</u>
Corporate Communications					
Salaries and employee benefits	678,196	479,103	532,473	(53,370)	-10.02%
Other operating expenditures	404,179	207,997	180,604	27,393	15.17%
Capital outlay	25,000	-	49,479	(49,479)	-100.00%
Inventory	84,600	34,799	31,004	3,795	12.24%
Cost redistribution	(87,800)	(62,173)	(50,689)	(11,484)	22.66%
	<u>1,104,175</u>	<u>659,726</u>	<u>742,871</u>	<u>(83,145)</u>	<u>-11.19%</u>
Finance					
Salaries and employee benefits	2,011,309	1,363,627	1,416,157	(52,530)	-3.71%
Other operating expenditures	1,187,251	376,200	520,479	(144,279)	-27.72%
	<u>3,198,560</u>	<u>1,739,827</u>	<u>1,936,636</u>	<u>(196,809)</u>	<u>-10.16%</u>
Human Resource Development					
Salaries and employee benefits	1,078,316	882,927	668,284	214,643	32.12%
Other operating expenditures	446,165	178,560	134,942	43,618	32.32%
	<u>1,524,481</u>	<u>1,061,487</u>	<u>803,226</u>	<u>258,261</u>	<u>32.15%</u>
Information Technology					
Salaries and employee benefits	2,550,374	1,916,626	1,714,615	202,011	11.78%
Other operating expenditures	4,479,410	2,663,366	2,564,665	98,701	3.85%
	<u>7,029,784</u>	<u>4,579,992</u>	<u>4,279,280</u>	<u>300,712</u>	<u>7.03%</u>
Mayor, Council and City Clerk					
Salaries and employee benefits	578,650	404,407	406,017	(1,610)	-0.40%
Other operating expenditures	723,213	321,694	289,289	32,405	11.20%
	<u>1,301,863</u>	<u>726,101</u>	<u>695,306</u>	<u>30,795</u>	<u>4.43%</u>
Total Support Services and Administration	18,898,835	12,116,872	11,549,474	567,398	4.91%
Operations					
Fire & Emergency Management					
Salaries and employee benefits	25,279,839	18,981,028	18,062,728	918,300	5.08%
Other operating expenditures	5,178,329	2,492,272	3,135,177	(642,905)	-20.51%
Capital outlay	4,906,420	4,559,553	2,329,477	2,230,076	95.73%
Cost redistribution	(75,000)	-	-	-	0.00%
	<u>35,289,588</u>	<u>26,032,853</u>	<u>23,527,382</u>	<u>2,505,471</u>	<u>10.65%</u>
Parks, Recreation and Maintenance					
Salaries and employee benefits	11,864,236	7,843,242	7,643,127	200,115	2.62%
Other operating expenditures	7,186,027	3,980,760	3,471,358	509,402	14.67%
Capital outlay	1,912,619	704,818	717,383	(12,565)	-1.75%
Payments to agencies	179,250	124,125	139,125	(15,000)	-10.78%
	<u>21,142,132</u>	<u>12,652,945</u>	<u>11,970,993</u>	<u>681,952</u>	<u>5.70%</u>
Police					
Salaries and employee benefits	45,871,840	33,899,086	32,399,261	1,499,825	4.63%
Other operating expenditures	11,631,782	4,687,777	4,818,036	(130,259)	-2.70%
Capital outlay	2,814,943	882,172	1,508,683	(626,511)	-41.53%
Payments to agencies	10,000	10,000	3,000	7,000	0.00%
	<u>60,328,565</u>	<u>39,479,035</u>	<u>38,728,980</u>	<u>750,055</u>	<u>1.94%</u>

CITY OF FAYETTEVILLE, NORTH CAROLINA

**General Fund Revenue and Expenditure Report
For the Periods Ended March 2022 and 2021**

(Unaudited)

	Annual Budget As of March 31, 2022	Actuals thru March 31, 2022	Actuals thru March 31, 2021	\$ Change Actuals	% Change Actuals
Public Services					
Engineering and Construction Management					
Salaries and employee benefits	1,762,879	1,344,744	1,147,264	197,480	17.21%
Other operating expenditures	1,257,546	405,360	105,256	300,104	285.12%
Capital outlay	47,312	47,312	-	47,312	-100.00%
	<u>3,067,737</u>	<u>1,797,416</u>	<u>1,252,520</u>	<u>544,896</u>	<u>43.50%</u>
Infrastructure Maintenance					
Salaries and employee benefits	1,521,143	986,004	1,127,854	(141,850)	-12.58%
Other operating expenditures	1,164,349	390,247	587,090	(196,843)	-33.53%
Capital outlay	1,672,914	926,839	118,205	808,634	684.09%
	<u>4,358,406</u>	<u>2,303,090</u>	<u>1,833,149</u>	<u>469,941</u>	<u>25.64%</u>
Real Estate					
Salaries and employee benefits	269,117	198,260	181,775	16,485	9.07%
Other operating expenditures	53,946	17,023	8,098	8,925	110.21%
Capital outlay	1,000	156	55	101	183.64%
	<u>324,063</u>	<u>215,439</u>	<u>189,928</u>	<u>25,511</u>	<u>13.43%</u>
Traffic Services					
Salaries and employee benefits	1,247,922	942,689	1,042,210	(99,521)	-9.55%
Other operating expenditures	2,362,009	1,285,589	1,071,601	213,988	19.97%
Capital outlay	108,455	53,365	68,362	(14,997)	100.00%
	<u>3,718,386</u>	<u>2,281,643</u>	<u>2,182,173</u>	<u>99,470</u>	<u>4.56%</u>
Total Public Services	<u>11,468,592</u>	<u>6,597,588</u>	<u>5,457,770</u>	<u>1,139,818</u>	<u>20.88%</u>
Total Operations	<u>128,228,877</u>	<u>84,762,421</u>	<u>79,685,125</u>	<u>5,077,296</u>	<u>6.37%</u>
Other Appropriations					
General Government					
Salaries and employee benefits	2,171,161	1,732,340	1,492,072	240,268	16.10%
Other operating expenditures	1,665,712	579,665	552,715	26,950	4.88%
Inventory	849,834	786,369	614,090	172,279	28.05%
Capital outlay	-	-	550,000	(550,000)	-100.00%
Payments to agencies	9,038,951	2,348,886	4,534,810	(2,185,924)	-48.20%
Cost redistribution	(907,734)	(846,112)	(650,137)	(195,975)	30.14%
Total Other Appropriations	<u>12,817,924</u>	<u>4,601,148</u>	<u>7,093,550</u>	<u>(2,492,402)</u>	<u>-35.14%</u>
Debt Service					
Operations					
Principal	1,236,199	-	-	-	0.00%
Interest	564,000	282,000	302,000	(20,000)	-6.62%
	<u>1,800,199</u>	<u>282,000</u>	<u>302,000</u>	<u>(20,000)</u>	<u>-6.62%</u>
Other Appropriations					
Principal	10,055,280	5,751,170	3,868,886	1,882,283	48.65%
Interest	2,723,785	1,276,175	1,375,565	(99,390)	-7.23%
Cost of Issuance	26,000	-	-	-	0.00%
	<u>12,805,065</u>	<u>7,027,345</u>	<u>5,244,452</u>	<u>1,782,893</u>	<u>34.00%</u>
Total Debt Service	<u>14,605,264</u>	<u>7,309,345</u>	<u>5,546,452</u>	<u>1,762,893</u>	<u>31.78%</u>
Total Expenditures	<u>181,749,677</u>	<u>112,974,829</u>	<u>107,554,262</u>	<u>5,420,567</u>	<u>5.04%</u>
Other Financing Sources (Uses)					
Sale of assets	150,000	161,661	479,256	(317,595)	-66.27%
Appropriated Fund Balance	27,246,597	-	-	-	0.00%
Transfers in from other funds	1,730,323	-	32,547	(32,547)	-100.00%
Transfers (out) - Community Investment	(507,774)	(438,137)	(314,456)	(123,681)	39.33%
Transfers (out) - Support Services & Administration	(2,183,719)	(2,183,719)	(2,663,722)	480,003	-18.02%
Transfers (out) - Operations	(11,339,932)	(11,128,154)	(7,121,764)	(4,006,390)	56.26%
Transfers (out) - Other Appropriations	(6,688,498)	(5,057,769)	(4,923,447)	(134,322)	2.73%
Proceeds from Loans	3,087,996	-	3,850,578	(3,850,578)	0.00%
Total Other Financing Sources (Uses)	<u>11,494,993</u>	<u>(18,646,118)</u>	<u>(10,661,008)</u>	<u>(7,985,110)</u>	<u>74.90%</u>
Revenues and Other Financing Sources (Uses) Over (Under) Expenditures	<u>\$ -</u>	<u>\$ 11,978,447</u>	<u>\$ 24,893,309</u>	<u>\$ (12,914,862)</u>	<u>-51.88%</u>

CITY OF FAYETTEVILLE, NORTH CAROLINA

**Other Operating Funds Revenue and Expenditure Report
For the Periods Ended March 31, 2022 and 2021**

(Unaudited)

	Annual Budget As of March 31, 2022	Actuals thru March 31, 2022	Actuals thru March 31, 2021	\$ Change Actuals	% Change Actuals
Central Business Tax District					
Revenues					
Ad Valorem Taxes	\$ 158,840	\$ 172,260	\$ 151,711	\$ 20,549	13.55%
Investment earnings	1,000	-	-	-	0.00%
Interfund transfers	139,274	69,637	104,456	(34,819)	-33.33%
Fund balance appropriation	3,593	-	-	-	0.00%
Total Revenues	302,707	241,897	256,167	(14,270)	-5.57%
Expenditures					
Other operating expenditures	246,110	127,408	128,055	(647)	-0.51%
Transfers to other funds	56,597	-	-	-	0.00%
Total Expenditures	302,707	127,408	128,055	(647)	-0.51%
Revenues Over (under) Expenditures	\$ -	\$ 114,489	\$ 128,112	\$ (13,623)	-10.63%
Emergency Telephone System Fund					
Revenues					
Intergovernmental revenues	\$ 978,606	\$ 489,203	\$ 642,088	\$ (152,885)	-23.81%
Investment earnings	137	-	-	-	0.00%
Fund balance appropriation	432,240	-	-	-	0.00%
Total Revenues	1,410,983	489,203	642,088	(152,885)	-23.81%
Expenditures					
Salaries and employee benefits	112,104	75,718	74,548	1,170	1.57%
Other operating expenditures	956,319	309,139	614,540	(305,401)	-49.70%
Capital outlay	342,560	-	-	-	0.00%
Total Expenditures	1,410,983	384,857	689,088	(304,231)	-44.15%
Revenues Over (under) Expenditures	\$ -	\$ 104,346	\$ (47,000)	\$ 151,346	-322.01%
Lake Valley Drive MSD Fund					
Revenues					
Ad Valorem Taxes	\$ -	\$ -	\$ 32,517	\$ (32,517)	-100.00%
Total Revenues	-	-	32,517	(32,517)	-100.00%
Expenditures					
Total Expenditures	-	-	32,547	(32,547)	0.00%
Revenues Over (under) Expenditures	\$ -	\$ -	\$ (30)	\$ 30	-100.00%
LEOSSA Fund					
Revenues					
Interfund charges	\$ 1,792,736	\$ 1,826,358	\$ 1,241,786	\$ 584,572	47.08%
Investment earnings	75,000	-	-	-	0.00%
Total Revenues	1,867,736	1,826,358	1,241,786	584,572	47.08%
Expenditures					
Salaries and employee benefits	1,365,800	963,568	894,250	69,318	7.75%
Other operating expenditures	501,936	-	-	-	0.00%
Total Expenditures	1,867,736	963,568	894,250	69,318	7.75%
Revenues Over (under) Expenditures	\$ -	\$ 862,790	\$ 347,536	\$ 515,254	148.26%

CITY OF FAYETTEVILLE, NORTH CAROLINA

**Other Operating Funds Revenue and Expenditure Report
For the Periods Ended March 31, 2022 and 2021**

(Unaudited)

	Annual Budget As of March 31, 2022	Actuals thru March 31, 2022	Actuals thru March 31, 2021	\$ Change Actuals	% Change Actuals
Parking Fund					
Revenues					
Functional revenues	\$ 672,864	\$ 399,069	\$ 148,307	\$ 250,762	169.08%
Other revenues	61,648	31,586	37,714	(6,128)	-16.25%
Interfund transfers	500,369	375,277	418,200	(42,923)	-10.26%
Fund balance appropriation	113,316	-	-	-	0.00%
Total Revenues	<u>1,348,197</u>	<u>805,932</u>	<u>604,221</u>	<u>201,711</u>	<u>33.38%</u>
Expenditures					
Salaries and employee benefits	-	-	22,147	(22,147)	100.00%
Other operating expenditures	907,814	568,442	484,578	83,864	17.31%
Capital outlay	154,163	6,143	57,222	(51,079)	100.00%
Debt service - principal	122,361	122,360	120,417	1,943	100.00%
Debt service - interest	5,133	5,132	7,028	(1,896)	100.00%
Transfers to other funds	158,726	-	-	-	0.00%
Total Expenditures	<u>1,348,197</u>	<u>702,077</u>	<u>691,392</u>	<u>10,685</u>	<u>1.55%</u>
Revenues Over (under) Expenditures	<u>\$ -</u>	<u>\$ 103,855</u>	<u>\$ (87,171)</u>	<u>\$ 191,026</u>	<u>-219.14%</u>
Fleet Maintenance Internal Service Fund					
Revenues					
Interfund charges	\$ 7,796,414	\$ 2,526,025	\$ 5,122,394	\$ (2,596,369)	-50.69%
Total Revenues	<u>7,796,414</u>	<u>2,526,025</u>	<u>5,122,394</u>	<u>(2,596,369)</u>	<u>-50.69%</u>
Expenditures					
Salaries and employee benefits	2,592,849	1,108,511	214,386	894,125	417.06%
Other operating expenditures	5,202,647	2,812,025	4,247,781	(1,435,756)	-33.80%
Capital outlay	918	918	-	918	100.00%
Total Expenditures	<u>7,796,414</u>	<u>3,921,454</u>	<u>4,462,167</u>	<u>(540,713)</u>	<u>483.26%</u>
Revenues Over (under) Expenditures	<u>\$ -</u>	<u>\$ (1,395,429)</u>	<u>\$ 660,227</u>	<u>\$ (2,055,656)</u>	<u>-311.36%</u>
Risk Management Internal Service Fund					
Revenues					
Interfund charges	\$ 20,010,788	\$ 13,212,893	\$ 12,543,266	\$ 669,627	5.34%
Employee contributions	4,369,000	2,934,416	2,936,353	(1,937)	-0.07%
Refunds	150,893	662,178	407,433	254,745	62.52%
Other revenues	20,000	20,174	23,456	(3,282)	-13.99%
Investment earnings	218,400	-	-	-	0.00%
Interfund transfers	580,320	294,797	296,344	(1,547)	-0.52%
Fund balance appropriation	1,163,180	-	-	-	0.00%
Total Revenues	<u>26,512,581</u>	<u>17,124,458</u>	<u>16,206,852</u>	<u>917,606</u>	<u>5.66%</u>
Expenditures					
Salaries and employee benefits	469,248	342,243	339,737	2,506	0.74%
Other operating expenditures	24,528,333	15,150,472	14,672,336	478,136	3.26%
Transfers to other funds	1,515,000	-	-	-	0.00%
Total Expenditures	<u>26,512,581</u>	<u>15,492,715</u>	<u>15,012,073</u>	<u>480,642</u>	<u>3.20%</u>
Revenues Over (under) Expenditures	<u>\$ -</u>	<u>\$ 1,631,743</u>	<u>\$ 1,194,779</u>	<u>\$ 436,964</u>	<u>36.57%</u>

CITY OF FAYETTEVILLE, NORTH CAROLINA

Other Operating Funds Revenue and Expenditure Report
For the Periods Ended March 31, 2022 and 2021

(Unaudited)

	Annual Budget As of March 31, 2022	Actuals thru March 31, 2022	Actuals thru March 31, 2021	\$ Change Actuals	% Change Actuals
Airport Fund					
Revenues					
Intergovernmental revenues	\$ 1,129,500	\$ 1,509,642	\$ 1,634,311	\$ (124,669)	-7.63%
Other functional revenues	3,149,447	2,971,005	2,245,042	725,963	32.34%
Other revenues	286,001	174,768	230,992	(56,224)	-24.34%
Investment earnings	4,500	-	-	-	0.00%
Fund balance appropriation	510,809	-	-	-	0.00%
Total Revenues	5,080,257	4,655,415	4,110,345	545,070	13.26%
Expenditures					
Salaries and employee benefits	1,934,195	1,356,792	1,261,480	95,312	7.56%
Other operating expenditures	2,579,838	1,152,420	1,283,318	(130,898)	-10.20%
Capital outlay	91,224	47,998	-	47,998	100.00%
Inventory	15,000	-	-	-	0.00%
Transfers to other funds	460,000	460,000	420,100	39,900	9.50%
Total Expenditures	5,080,257	3,017,210	2,964,898	52,312	1.76%
Revenues Over (under) Expenditures	\$ -	\$ 1,638,205	\$ 1,145,447	\$ 492,758	43.02%
Environmental Services Fund					
Revenues					
Solid Waste fees	\$ 14,114,800	\$ 13,741,520	\$ 13,915,936	\$ (174,416)	-1.25%
Intergovernmental revenues	465,428	343,440	189,810	153,630	80.94%
Property leases	219,533	130,863	163,633	(32,770)	-20.03%
Other revenues	167,955	66,110	177,347	(111,237)	-62.72%
Investment earnings	369	-	-	-	0.00%
Interfund transfers	326,605	-	550,629	(550,629)	-100.00%
Fund balance appropriation	3,705,985	-	-	-	0.00%
Proceeds from loans	897,000	-	-	-	0.00%
Total Revenues	19,897,675	14,281,933	14,997,355	(715,422)	-4.77%
Expenditures					
Salaries and employee benefits	4,919,923	3,286,029	3,226,994	59,035	1.83%
Other operating expenditures	10,622,765	6,335,011	4,913,232	1,421,779	28.94%
Capital outlay	3,118,373	1,530,519	1,212,245	318,274	26.25%
Debt service - principal	1,162,744	1,018,271	321,902	696,369	216.33%
Debt service - interest	70,419	14,283	12,158	2,125	17.48%
Payments to agencies	3,451	-	837	(837)	-100.00%
Transfers to other funds	-	-	116,821	(116,821)	100.00%
Total Expenditures	19,897,675	12,184,113	9,804,189	2,379,924	124.27%
Revenues Over (under) Expenditures	\$ -	\$ 2,097,820	\$ 5,193,166	\$ (3,095,346)	-59.60%
Stormwater Fund					
Revenues					
Stormwater fees	\$ 11,376,050	\$ 11,395,977	\$ 11,293,486	\$ 102,491	0.91%
Intergovernmental revenues	-	(20,008)	-	(20,008)	0.00%
Other functional revenues	129,691	52,601	51,915	686	1.32%
Other revenues	12,700	-	94,946	(94,946)	-100.00%
Investment earnings	1,340	-	-	-	0.00%
Fund balance appropriation	97,584	-	-	-	0.00%
Total Revenues	11,617,365	11,428,570	11,440,347	(11,777)	-0.10%
Expenditures					
Salaries and employee benefits	3,724,383	2,306,297	2,151,003	155,294	7.22%
Other operating expenditures	2,257,619	582,974	1,413,856	(830,882)	-58.77%
Debt service - principal	795,065	770,035	749,764	20,271	2.70%
Debt service - interest	135,240	76,690	90,024	(13,334)	-14.81%
Cost redistribution	75,000	-	-	-	0.00%
Transfers to other funds	4,630,058	3,791,922	6,064,781	(2,272,859)	-37.48%
Total Expenditures	11,617,365	7,527,918	10,469,428	(2,941,510)	-28.10%
Revenues Over (under) Expenditures	\$ -	\$ 3,900,652	\$ 970,919	\$ 2,929,733	301.75%
Transit Fund					
Revenues					
Other taxes	\$ 641,500	\$ 410,624	\$ 493,870	\$ (83,246)	-16.86%
Federal revenues	4,832,894	(196)	3,821,115	(3,821,311)	100.00%

CITY OF FAYETTEVILLE, NORTH CAROLINA

**Other Operating Funds Revenue and Expenditure Report
For the Periods Ended March 31, 2022 and 2021**

(Unaudited)

	Annual Budget As of March 31, 2022	Actuals thru March 31, 2022	Actuals thru March 31, 2021	\$ Change Actuals	% Change Actuals
State revenues	730,000	746,023	-	746,023	100.00%
Property use/rent	198,533	117,351	125,661	(8,310)	-6.61%
Bus fares	1,013,785	1,076	3,347	(2,271)	-67.85%
Contract transportation	89,109	-	-	-	0.00%
Other fees & services	870	595	499	96	19.24%
Miscellaneous revenue	98,624	112,434	84,979	27,455	32.31%
Interfund transfers	4,853,024	3,607,695	3,031,515	576,180	19.01%
Fund balance appropriation	52,971	-	-	-	0.00%
Total Revenues	<u>12,511,310</u>	<u>4,995,602</u>	<u>7,560,986</u>	<u>(2,565,384)</u>	<u>-33.93%</u>
Expenditures					
Salaries and employee benefits	7,731,749	4,976,962	4,893,752	83,210	1.70%
Other operating expenditures	4,152,661	2,340,968	2,195,949	145,019	6.60%
Capital outlay	20,000	8,000	11,607	(3,607)	-31.08%
Cost redistribution	(217,200)	(66,216)	(140,820)	74,604	-52.98%
Transfers to other funds	824,100	-	448,700	(448,700)	-100.00%
Total Expenditures	<u>12,511,310</u>	<u>7,259,714</u>	<u>7,409,188</u>	<u>(149,474)</u>	<u>-2.02%</u>
Revenues Over (under) Expenditures	<u>\$ -</u>	<u>\$ (2,264,112)</u>	<u>\$ 151,798</u>	<u>\$ (2,415,910)</u>	<u>-1591.53%</u>

CITY OF FAYETTEVILLE, NORTH CAROLINA

Schedule of Revenues and Expenditures
Budget and Actual - Federal and State Financial Assistance FundFrom Inception And For the 6-Month Period Ended March 31, 2022
(Unaudited)

	Project Authorization	Prior Years	Closed Projects	Current Year as of March 31, 2022	Inception to Date	Total Encumbrances	Balance Remaining
Revenues							
Restricted Intergovernmental							
Federal and State grants	\$ 79,288,532	\$ 25,734,935	\$ (2,473,257)	\$ 32,021,894	\$ 55,283,572	\$ -	\$ 24,004,960
County	48,608	57,560	-	7,615	65,175	-	(16,567)
Total Restricted Intergovernmental	79,337,140	25,792,495	(2,473,257)	32,029,509	55,348,747	-	23,988,393
Miscellaneous	6,391,567	4,643,890	(354,611)	96,919	4,740,809	-	1,650,758
Interest Earned on Investments	49,708	73,315	-	(2,208)	71,107	-	(21,399)
Total Revenues	85,778,415	30,509,700	(2,827,868)	32,124,220	60,160,663	-	25,617,752
Expenditures and Encumbrances							
Public Safety							
Federal and State Forfeiture	2,936,503	1,351,784	-	302,455	1,654,239	204,193	1,078,071
Juvenile Restitution	310,971	212,567	-	56,928	269,495	-	41,476
Fire Safety Awareness	10,000	10,000	-	-	10,000	-	-
Worth Court Program	11,232	-	-	-	-	-	11,232
FY14 Violent Gang and Gun Crime Reduction	50,000	46,423	-	3,577	50,000	-	-
FY19 School Safety Preparedness	35,000	-	-	34,806	34,806	-	194
FY20 FPD Block Grant	24,000	-	-	23,233	23,233	-	767
Homeland Security Grants	2,957,466	534,471	-	685,603	1,220,074	-	1,737,392
FY14 Violent Gang and Gun Crime Reduction	298,132	281,462	-	-	281,462	-	16,670
National Sexual Assault Initiative	1,156,462	870,816	-	-	870,816	-	285,646
Project Safe Neighborhoods	158,685	81,742	-	32,198	113,940	-	44,745
Byrne Justice Assistance	126,701	51,976	-	25,878	77,854	-	48,847
Coronavirus Emergency Supplies	408,226	194,011	-	47,479	241,490	14,905	151,831
SAKI Grant 2020	1,000,000	33,814	-	32,491	66,305	378,944	554,751
Peer Support Project	-	125,000	-	16,864	16,864	-	108,136
JAG 20 Byrne Justice Assistance	129,635	-	-	62,894	62,894	59,252	7,489
JAG 21 Byrne Justice Assistance	154,881	-	-	-	-	-	154,881
Cumberland Community Foundation	40,000	-	-	26,000	26,000	13,920	80
GCC-Fayetteville EKG 2018	46,914	-	-	-	-	-	46,914
Assistant Firefighter Grant	150,000	85,903	-	56,291	142,194	-	7,806
Fire Prevention & Safety	31,523	-	-	4,904	4,904	3,974	22,645
Total Public Safety	10,161,331	3,754,969	-	1,411,601	5,166,570	675,188	4,319,573
Economic and Physical Development							
Community Development Block Grant	8,429,731	7,386,437	(2,619,948)	1,132,831	5,899,320	679,858	1,850,553
HOME	10,831,667	6,178,865	-	1,051,862	7,230,727	123,795	3,477,145
Downtown Public Art Project	34,500	20,811	-	-	20,811	-	13,689
CDBG - DR	105,000	99,264	-	-	99,264	-	5,736
Hazard Mitigation Grant Program (HMGP)	4,552,227	1,409,195	-	-	1,409,195	51,079	3,091,953
Advanced Computer Learning	370,000	-	-	-	-	-	370,000
Kinlows	-	52,500	(52,500)	-	-	-	-
SARF	1,573,000	-	-	-	-	-	1,573,000
Rural Housing Recovery	329,631	329,631	-	-	329,631	-	-
Good Neighbor Program	450,000	-	-	-	-	-	450,000
Commercial Corridor Revitalization	250,000	110,868	-	33,084	143,952	13,168	92,880
Choice Neighborhoods	711,500	32,704	-	127,316	160,020	156,427	395,053
Rural Economic Development - Showcase	110,000	-	-	-	-	-	110,000
Emergency Rental Assistance	11,435,116	75,741	-	11,357,760	11,433,501	1,614	1
Coronavirus State and Local Fiscal Recovery	20,213,769	-	-	3,677,901	3,677,901	655,264	15,880,604
Airport Sewer Improvement	965,830	-	-	-	-	-	965,830
eClerx, LLC - Rural Economic Development	140,000	-	-	-	-	-	140,000
Total Economic and Physical Development	60,501,971	15,696,016	(2,672,448)	17,380,754	30,404,322	1,681,205	28,416,444
Environmental Protection							
Cross Creek Cemetery Bank & Grave Relocation	638,745	256,572	-	23,629	280,201	9,908	348,636
Cross Creek Bank Stabilization	11,235,175	8,635,579	-	365,808	9,001,387	282,941	1,950,847
Locks Creek Debris Removal	446,234	107,373	-	331,847	439,220	-	7,014
Emergency Watershed Protection	3,165,533	233,183	-	453,970	687,153	1,324,930	1,153,450
Total Environmental Protection	15,485,687	9,232,707	-	1,175,254	10,407,961	1,617,779	3,459,947
Recreation and Community Facilities							
Wayfinding signage	500,586	403,272	-	-	403,272	-	97,314
Big Cross Creek Multiuse Trail	800,000	500,025	-	-	500,025	283,616	16,359
Adaptive Sports for Disabled Vets	20,000	19,838	-	-	19,838	-	162
Healthy Out of School Time Grant	25,000	25,000	-	-	25,000	-	-
Cumberland Community Foundation	974	972	-	-	972	-	2
Historic Preservation Grant	28,000	12,475	-	15,400	27,875	-	125
Total Recreation and Community Facilities	1,374,560	961,582	-	15,400	976,982	283,616	113,962
Debt Service							
Principal	150,000	300,000	(150,000)	-	150,000	-	-
Interest	2,970	10,890	(7,920)	-	2,970	-	-
Total Debt Service	152,970	310,890	(157,920)	-	152,970	-	-
Total Expenditures and Encumbrances	87,676,519	29,956,164	(2,830,368)	19,983,009	47,108,805	4,257,788	36,309,926
Revenues Over (Under) Expenditures and Encumbrances	(1,898,104)	553,536	2,500	12,141,211	13,051,858	(4,257,788)	10,692,174
Other Financing Sources (Uses)							
Transfers in	1,907,686	1,975,054	(2,500)	67,153	2,039,707	-	(132,021)
Transfers out	(9,582)	(9,581)	-	-	(9,581)	-	(1)

CITY OF FAYETTEVILLE, NORTH CAROLINA

Schedule of Revenues and Expenditures
Budget and Actual - Federal and State Financial Assistance Fund

From Inception And For the 6-Month Period Ended March 31, 2022
(Unaudited)

	Project Authorization	Prior Years	Closed Projects	Current Year as of March 31, 2022	Inception to Date	Total Encumbrances	Balance Remaining
Total Other Financing Sources (Uses)	1,898,104	1,965,473	(2,500)	67,153	2,030,126	-	(132,022)
Revenues and Other Financing Sources (Uses) Over (Under) Expenditures and Encumbrances	\$ -	\$ 2,519,009	\$ -	\$ 12,208,364	\$ 15,081,984	\$ (4,257,788)	\$ 10,824,196

CITY OF FAYETTEVILLE, NORTH CAROLINA

Schedule of Revenues and Expenditures
Budget and Actual - Linear Park FundFrom Inception And For the 6-Month Period Ended March 31, 2022
(Unaudited)

	Project Authorization	Prior Years	Current Year as of March 31, 2022	Inception to Date	Total Encumbrances	Balance Remaining
Revenues						
Restricted Intergovernmental						
County grants and contributions	\$ 130,000	\$ 130,000	\$ -	\$ 130,000	\$ -	\$ -
Total Restricted Intergovernmental	<u>130,000</u>	<u>130,000</u>	<u>-</u>	<u>130,000</u>	<u>-</u>	<u>-</u>
Miscellaneous						
Other (donations)	1,949,654	1,944,094	-	1,944,094	-	5,560
Total Miscellaneous	<u>1,949,654</u>	<u>1,944,094</u>	<u>-</u>	<u>1,944,094</u>	<u>-</u>	<u>5,560</u>
Interest Earned on Investments	<u>49,337</u>	<u>49,404</u>	<u>(9)</u>	<u>49,396</u>	<u>-</u>	<u>(59)</u>
Total Revenues	<u>2,128,991</u>	<u>2,123,498</u>	<u>(9)</u>	<u>2,123,490</u>	<u>-</u>	<u>5,501</u>
Expenditures and Encumbrances						
Recreational and Community Facilities						
Linear Park	2,179,070	2,140,235	6,540	2,146,775	-	32,295
Total Expenditures and Encumbrances	<u>2,179,070</u>	<u>2,140,235</u>	<u>6,540</u>	<u>2,146,775</u>	<u>-</u>	<u>32,295</u>
Revenues Over (Under) Expenditures and Encumbrances	<u>(50,079)</u>	<u>(16,737)</u>	<u>(6,549)</u>	<u>(23,285)</u>	<u>-</u>	<u>26,794</u>
Other Financing Sources						
Transfers in	50,079	50,079	-	50,079	-	-
Revenues and Other Financing Sources (Uses) Over (Under) Expenditures and Encumbrances	<u>\$ -</u>	<u>\$ 33,342</u>	<u>\$ (6,549)</u>	<u>\$ 26,794</u>	<u>\$ -</u>	<u>\$ 26,794</u>

CITY OF FAYETTEVILLE, NORTH CAROLINA

**Schedule of Revenues and Expenditures
Budget and Actual - Parks and Recreation General Obligation Bond Fund**

**From Inception And For the 6-Month Period Ended March 31, 2022
(Unaudited)**

	<u>Project Authorization</u>	<u>Prior Years</u>	<u>Current Year as of March 31, 2022</u>	<u>Total Inception to Date</u>	<u>Total Encumbrances</u>	<u>Balance Remaining</u>
Revenues						
Restricted Intergovernmental						
Federal grants and contributions	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
State grants and contributions	250,000	250,000	-	250,000	-	-
Local	100,000	-	-	-	-	100,000
Total Restricted Intergovernmental	<u>350,000</u>	<u>250,000</u>	<u>-</u>	<u>250,000</u>	<u>-</u>	<u>100,000</u>
Miscellaneous						
Other	67,900	67,900	-	67,900	-	-
Donations	-	-	-	-	-	-
Total Miscellaneous	<u>67,900</u>	<u>67,900</u>	<u>-</u>	<u>67,900</u>	<u>-</u>	<u>-</u>
Interest Earned on Investments	<u>-</u>	<u>225,601</u>	<u>651</u>	<u>226,251</u>	<u>-</u>	<u>(226,251)</u>
Total Revenues	<u>417,900</u>	<u>543,501</u>	<u>651</u>	<u>544,151</u>	<u>-</u>	<u>(126,251)</u>
Expenditures and Encumbrances						
Recreational and Community Facilities						
Bond program implementation	345,000	264,415	-	264,415	-	80,585
Brentwood School Park	100,000	78,450	-	78,450	-	21,550
Clark Park improvements	175,000	101,117	2,800	103,917	6,555	64,528
Mazarick Park improvements	50,000	21,342	-	21,342	-	28,658
Seabrook Park improvements	85,538	85,538	-	85,538	-	-
D. Gilmore Therapeutic Rec Center	875,000	28,660	152,936	181,596	647,372	46,032
Massey Hill Recreation Center	352,940	352,940	-	352,940	-	-
Kiwanis splash pad	428,087	428,087	-	428,087	-	-
Massey Hill splash pad	428,125	428,125	-	428,125	-	-
Western Senior Center	8,300,338	2,708,885	3,064,916	5,773,801	2,286,564	239,973
Downtown skate park	981,766	981,766	-	981,766	-	-
Gilmore splash pad	335,902	335,902	-	335,902	-	-
Myers Rec splash pad	427,281	427,281	-	427,281	-	-
Downtown stadium splash pad	380,000	238,375	1,158	239,533	113,032	27,435
Senior/Wellness Feasibility Study	55,800	55,800	-	55,800	-	-
Senior Center East	6,197,900	395,189	356,198	751,386	128,113	5,318,401
McArthur Sports Field Complex	3,677,663	106,951	46,070	153,021	479,229	3,045,413
Jordan Soccer Complex	1,835,241	162,730	1,415,461	1,578,192	220,795	36,254
Tennis Center	6,000,000	216,899	507,397	724,296	115,404	5,160,300
Park Improvements for East of the River	756,660	-	87,818	87,818	388,211	280,631
Cape Fear River Park	2,380,815	-	-	-	35,300	2,345,515
Martin Luther King Jr. Park	100,000	-	-	-	15,000	85,000
Honeycutt Splashpad/Park	450,000	375,008	74,436	449,444	-	556
Montclair Playground	300,000	199,385	72,609	271,994	5,558	22,448
Lake Rim School Splash Pad	-	-	-	-	-	-
P&R Bond Fund Contingency	587,184	-	-	-	-	587,184
JS Spivery Recreation Center	756,660	-	251,686	251,686	224,367	280,607
Total Expenditures	<u>36,362,900</u>	<u>7,992,845</u>	<u>6,033,485</u>	<u>14,026,330</u>	<u>4,665,500</u>	<u>17,671,070</u>
Revenues Over (Under) Expenditures and Encumbrances	<u>(35,945,000)</u>	<u>(7,449,344)</u>	<u>(6,032,834)</u>	<u>(13,482,179)</u>	<u>(4,665,500)</u>	<u>(17,797,321)</u>
Other Financing Sources (Uses)						
Transfers In	225,000	225,000	-	225,000	-	-
Issuance of debt	35,720,000	17,650,720	-	17,650,720	-	18,069,280
	<u>35,945,000</u>	<u>17,875,720</u>	<u>-</u>	<u>17,875,720</u>	<u>-</u>	<u>18,069,280</u>
Revenues and Other Financing Sources (Uses) Over (Under) Expenditures and Encumbrances	<u>\$ -</u>	<u>\$ 10,426,376</u>	<u>\$ (6,032,834)</u>	<u>\$ 4,393,541</u>	<u>\$ (4,665,500)</u>	<u>\$ 271,959</u>

CITY OF FAYETTEVILLE, NORTH CAROLINA

**Schedule of Revenues and Expenditures
Budget and Actual - General Government Capital Project Fund**

**From Inception And For the 6-Month Period Ended March 31, 2022
(Unaudited)**

	Project Authorization	Prior Years	Current Year as of March 31, 2022	Total Inception to Date	Total Encumbrances	Balance Remaining
Revenues						
Restricted intergovernmental						
Federal grants	\$ 342,702	\$ 196,620	\$ -	\$ 196,620	\$ -	\$ 146,082
State Grants	390,056	241,538	-	241,539	-	148,517
Local	10,000	10,000	-	10,000	-	-
Total restricted intergovernmental	742,758	448,158	-	448,159	-	294,599
Miscellaneous						
Other	142,812	142,812	-	142,812	-	-
Interest Earned on Investments	1,391	1,510	254	1,763	-	(372)
Total Revenues	886,961	592,480	254	592,734	-	294,227
Expenditures and Encumbrances						
Administration						
Computer replacements	6,182,232	4,920,283	274,383	5,194,666	110,949	876,617
Enterprise-wide GIS	542,162	467,659	1,105	468,764	8,755	64,643
Disaster recovery system	1,820,843	1,312,673	-	1,312,673	24,390	483,780
Uninterruptible power supply	61,650	47,464	-	47,464	-	14,186
Virtual server expansion	352,034	245,443	-	245,443	-	106,591
Wireless network expansion	442,104	266,942	10,127	277,070	8,227	156,807
Building maintenance projects	6,174,832	5,807,724	(2,925,849)	2,881,876	820,108	2,472,848
Parking lot projects	416,359	328,886	67,520	396,406	7,454	12,499
Emergency Generator Connection	137,300	-	-	-	-	137,300
ADA Upgrades	246,946	181	3,064	3,245	-	243,701
Internet telephone system	513,038	425,709	-	425,709	72,962	14,367
Time and attendance system	821,171	768,214	-	768,214	24,483	28,474
E-mail system upgrade	430,052	290,962	21,334	312,296	41,896	75,860
External website for the City	213,000	199,924	-	199,924	5,200	7,876
LSDBE tracking software	64,500	-	-	-	-	64,500
Centralized Enterprise Data Warehouse	115,000	13,500	-	13,500	3,430	98,070
Direct Fiber Connection	355,496	-	238,651	238,651	-	116,845
Alexander Street facilities renovation	315,000	309,895	-	309,895	-	5,105
Alexander Street Hazard Mitigation	320,125	58,266	-	58,266	-	261,859
Asset Management System	250,000	-	-	-	-	250,000
Automated Truck Wash	467,284	75	-	75	-	467,209
Cross Creek/Lamon Street Hurrican Matthew Repairs	312,633	212,809	-	212,809	-	99,824
Revenue Management System	472,932	-	-	-	-	472,932
Server Replacement	42,000	41,463	-	41,463	-	537
Single Internet Domain	1,250,000	616,378	87,485	703,863	-	546,137
Access Control System	34,000	24,000	-	24,000	-	10,000
ERP System	5,164,152	1,531,618	1,587,018	3,118,637	1,055,248	990,267
Alexander Street facility repairs	305,000	236,952	21,229	258,182	6,934	39,884
App Packaging Factory System	95,000	-	-	-	-	95,000
Council Chambers AV Equipment	88,348	-	88,348	88,348	-	-
Fleet Mgmt Information System	150,000	-	-	-	-	150,000
Total Expenditures and Encumbrances	28,155,193	18,127,020	(525,585)	17,601,439	2,190,036	8,363,718
Revenues Over (Under) Expenditures and Encumbrances	(27,268,232)	(17,534,540)	525,839	(17,008,705)	(2,190,036)	8,069,491
Other Financing Sources (Uses)						
Transfers in	22,436,080	20,049,749	389,114	20,438,863	-	1,997,217
Issuance of debt	4,832,152	6,596,643	(1,800,000)	4,796,643	-	35,509
Transfers out	-	(665,782)	665,782	-	-	-
Total Other Financing Sources (Uses)	27,268,232	25,980,610	(745,104)	25,235,506	-	2,032,726
Revenues and Other Financing Sources (Uses) Over (Under) Expenditures and Encumbrances	\$ -	\$ 8,446,070	\$ (219,265)	\$ 8,226,801	\$ (2,190,036)	\$ 6,036,765

CITY OF FAYETTEVILLE, NORTH CAROLINA

Schedule of Revenues and Expenditures
Budget and Actual - Economic and Physical Development Capital Project Fund

From Inception And For the 6-Month Period Ended March 31, 2022
(Unaudited)

	<u>Project Authorization</u>	<u>Prior Years</u>	<u>Current Year as of March 31, 2022</u>	<u>Total Inception to Date</u>	<u>Total Encumbrances</u>	<u>Balance Remaining</u>
Revenues						
Restricted Intergovernmental						
Federal grants	\$ 3,990,000	\$ 110,404	\$ 787,778	\$ 898,182	\$ -	\$ 3,091,818
State grants	250,000	250,000	-	250,000	-	-
County	250,243	250,242	-	250,242	-	1
Local	92,105	73,290	-	73,290	-	18,815
Total Restricted Intergovernmental	<u>4,582,348</u>	<u>683,936</u>	<u>787,778</u>	<u>1,471,714</u>	<u>-</u>	<u>3,110,634</u>
Miscellaneous						
Other	1,348,517	1,027,792	436,018	1,463,810	-	(115,293)
Interest Earned on Investments	<u>661,788</u>	<u>663,218</u>	<u>24</u>	<u>663,242</u>	<u>-</u>	<u>(1,454)</u>
Total Revenues	<u>6,592,653</u>	<u>2,374,946</u>	<u>1,223,820</u>	<u>3,598,766</u>	<u>-</u>	<u>2,993,887</u>
Expenditures and Encumbrances						
Economic and Physical Development						
Texfi Project	895,724	839,595	-	839,595	6,491	49,638
HOPE VI	6,601,000	6,144,527	20,210	6,164,737	-	436,263
Murchison Road redevelopment	2,615,000	2,160,567	285,917	2,446,485	138,130	30,385
Dr. EE Smith House restoration	275,600	274,850	-	274,850	-	750
Affordable Housing	160,000	100,756	-	100,756	-	59,244
Downtown baseball stadium	41,368,102	41,327,794	21,580	41,349,374	4,787	13,941
Downtown redevelopment site	2,712,123	2,291,136	67,025	2,358,161	10,523	343,439
Downtown Parking	1,355,983	657,700	493,313	1,151,013	-	204,970
Hay Street Parking & Mixed Development	17,931,095	17,911,878	18	17,911,896	2,055	17,144
Homeless day resource center	3,990,000	110,404	963,169	1,073,573	160,092	2,756,335
Hurley plaza memorial	150,000	-	18,000	18,000	-	132,000
Segra Stadium CM&I	380,000	17,809	101,187	118,996	-	261,004
Rental to Homeownership	500,000	-	-	-	-	500,000
Total Economic and Physical Development	<u>78,934,627</u>	<u>71,837,016</u>	<u>1,970,419</u>	<u>73,807,436</u>	<u>322,078</u>	<u>4,805,113</u>
Revenues Over (Under) Expenditures and Encumbrances	<u>(72,341,974)</u>	<u>(69,462,070)</u>	<u>(746,599)</u>	<u>(70,208,670)</u>	<u>(322,078)</u>	<u>1,811,226</u>
Other Financing Sources (Uses)						
Transfers in	19,241,974	18,396,975	845,000	19,241,975	-	(1)
Sale of capital assets	-	-	-	-	-	-
Issuance of debt	53,140,000	53,140,000	-	53,140,000	-	-
Transfers out	(40,000)	(40,000)	-	(40,000)	-	-
Total Other Financing Sources (Uses)	<u>72,341,974</u>	<u>71,496,975</u>	<u>845,000</u>	<u>72,341,975</u>	<u>-</u>	<u>(1)</u>
Revenues and Other Financing Sources (Uses) Over (Under) Expenditures and Encumbrances	<u>\$ -</u>	<u>\$ 4,409,851</u>	<u>\$ 1,322,221</u>	<u>\$ 5,732,071</u>	<u>\$ (322,078)</u>	<u>\$ 4,805,112</u>

CITY OF FAYETTEVILLE, NORTH CAROLINA

**Schedule of Revenues and Expenditures
Budget and Actual - Environmental Protection Capital Project Fund**

**From Inception And For the 6-Month Period Ended March 31, 2022
(Unaudited)**

	<u>Project Authorization</u>	<u>Prior Years</u>	<u>Current Year as of March 31, 2022</u>	<u>Total Inception to Date</u>	<u>Total Encumbrances</u>	<u>Balance Remaining</u>
Revenues						
Restricted Intergovernmental						
Federal grants and contributions	\$ 6,462,804	\$ 4,491,980	\$ 262,722	\$ 4,754,701	\$ -	\$ 1,708,103
State grants and contributions	2,154,268	1,497,327	87,574	1,584,900	-	569,368
Total Restricted Intergovernmental	<u>8,617,072</u>	<u>5,989,307</u>	<u>350,296</u>	<u>6,339,601</u>	<u>-</u>	<u>2,277,471</u>
Total Revenues	<u>8,617,072</u>	<u>5,989,307</u>	<u>350,296</u>	<u>6,339,601</u>	<u>-</u>	<u>2,277,471</u>
Expenditures and Encumbrances						
Environmental Protection						
Mirror Lake Dam Restoration	5,656,861	5,594,549	18,703	5,613,252	21,728	21,881
Devonwood Lower Dam Restoration	3,279,200	394,757	952,927	1,347,684	1,544,924	386,592
Dam safety and preservation	100,000	4,681	87,830	92,511	-	7,489
Total Expenditures and Encumbrances	<u>9,036,061</u>	<u>5,993,987</u>	<u>1,059,460</u>	<u>7,053,447</u>	<u>1,566,652</u>	<u>415,962</u>
Revenues Over (Under) Expenditures and Encumbrances	<u>(418,989)</u>	<u>(4,680)</u>	<u>(709,164)</u>	<u>(713,846)</u>	<u>(1,566,652)</u>	<u>(1,861,509)</u>
Other Financing Sources (Uses)						
Transfers in	418,989	100,000	-	100,000	-	318,989
Issuance of debt	-	-	-	-	-	-
Transfers out	-	-	-	-	-	-
Total Other Financing Sources (Uses)	<u>418,989</u>	<u>100,000</u>	<u>-</u>	<u>100,000</u>	<u>-</u>	<u>318,989</u>
Revenues and Other Financing Sources (Uses) Over (Under) Expenditures and Encumbrances	<u>\$ -</u>	<u>\$ 95,320</u>	<u>\$ (709,164)</u>	<u>\$ (613,846)</u>	<u>\$ (1,566,652)</u>	<u>\$ (2,180,498)</u>

CITY OF FAYETTEVILLE, NORTH CAROLINA

**Schedule of Revenues and Expenditures
Budget and Actual - Public Safety Capital Project Fund**

**From Inception And For the 6-Month Period Ended March 31, 2022
(Unaudited)**

	Project Authorization	Prior Years	Current Year as of March 31, 2022	Total Inception to Date	Total Encumbrances	Balance Remaining
Revenues						
Restricted Intergovernmental						
Federal grants and contributions	\$ 428,258	\$ 379,160	\$ -	\$ 379,160	\$ -	\$ 49,098
State grants and contributions	-	-	-	-	-	-
Local	-	-	-	-	-	-
Total Restricted Intergovernmental	428,258	379,160	-	379,160	-	49,098
Miscellaneous						
Non-governmental grants	35,000	34,545	455	35,000	-	-
Total Miscellaneous	35,000	34,545	455	35,000	-	-
Interest Earned on Investments	-	15,744	-	15,744	-	(15,744)
Total Revenues	463,258	429,449	455	429,904	-	33,354
Expenditures and Encumbrances						
Public Safety						
Fire station #12	4,100,000	3,829,020	-	3,829,020	-	270,980
Fire station #4 relocation	8,313,284	669,964	467,838	1,137,801	110,168	7,065,315
Fire station #1 generator	62,330	58,918	-	58,918	-	3,412
Police 800MHz radio lease	3,126,694	3,122,197	-	3,122,197	-	4,497
Justice Assistance Grant	332,358	321,422	-	321,422	-	10,936
Homeland Security Grants	-	-	-	-	-	-
Enhanced security systems	419,601	227,357	-	227,357	-	192,244
FPD Glassdoor Initiative	-	-	-	-	-	-
Police - CAD and RMS	3,209,917	3,134,326	-	3,134,326	-	75,591
Police 800 mhz radios	5,049,000	4,618,252	-	4,618,252	-	430,748
Automated Alarm	27,260	26,060	-	26,060	-	1,200
Terrain Modeling Software	16,750	9,990	-	9,990	-	6,760
NCS Assistance Grant	73,900	37,046	-	37,046	-	36,854
Duke Energy Foundation Grant	35,000	34,545	-	34,545	-	455
2018 Byrne Justice Assistance Grant	22,000	22,000	-	22,000	-	-
Records Management System	79,200	-	-	-	18,300	60,900
Body Worn Camera Replacement	201,960	-	-	-	200,787	1,173
Total Expenditures and Encumbrances	25,069,254	16,111,097	467,838	16,578,934	329,255	8,161,065
Revenues Over (Under) Expenditures and Encumbrances	(24,605,996)	(15,681,648)	(467,383)	(16,149,030)	(329,255)	8,127,711
Other Financing Sources (Uses)						
Issuance of debt	21,713,364	13,647,682	-	13,647,682	-	8,065,682
Transfers in	5,214,732	4,441,895	428,910	4,870,805	-	343,927
Transfers out	(2,322,100)	(2,322,100)	-	(2,322,100)	-	-
Total Other Financing Sources (Uses)	24,605,996	15,767,477	428,910	16,196,387	-	8,409,609
Revenues and Other Financing Sources (Uses) Over (Under) Expenditures and Encumbrances	\$ -	\$ 85,829	\$ (38,473)	\$ 47,357	\$ (329,255)	\$ (281,898)

CITY OF FAYETTEVILLE, NORTH CAROLINA

**Schedule of Revenues and Expenditures
Budget and Actual - Recreational and Cultural Capital Project Fund**

**From Inception And For the 6-Month Period Ended March 31, 2022
(Unaudited)**

	Project Authorization	Prior Years	Current Year as of March 31, 2022	Total Inception to Date	Total Encumbrances	Balance Remaining
Revenues						
Restricted Intergovernmental						
Federal grants and contributions	\$ 1,414,629	\$ 1,282,864	\$ 16,411	\$ 1,299,275	\$ -	\$ 115,354
State grants and contributions	4,059,412	4,011,717	5,470	4,017,188	-	42,224
Local	18,750	3,994	-	3,994	-	14,756
Total Restricted Intergovernmental	5,492,791	5,298,575	21,881	5,320,457	-	172,334
Miscellaneous						
Other	659,385	819,458	46,265	865,724	-	(206,339)
Donations	395,671	363,388	20,000	383,388	-	12,283
Total Miscellaneous	1,055,056	1,182,846	66,265	1,249,112	-	(194,056)
Interest Earned on Investments	462,453	517,242	(313)	516,929	-	(54,476)
Total Revenues	7,010,300	6,998,663	87,833	7,086,498	-	(76,198)
Expenditures and Encumbrances						
Recreational and Community Facilities						
Freedom Park	592,341	567,449	-	567,449	-	24,892
NC State Veterans Park Phase 2	1,142,470	141,094	70,353	211,446	31,573	899,451
Playground equipment and improvements	1,259,834	1,113,331	106,789	1,220,120	13,742	25,972
Rec Trac Software	78,353	56,711	-	56,711	-	21,642
Cape Fear River Trail Phase 2	7,672,452	6,940,908	35,470	6,976,378	-	696,074
Cape Fear River Trail Connector	185,000	167,308	12,414	179,722	-	5,278
Tree Project	412,070	255,457	55,772	311,229	34,881	65,960
Mazarick Park play area	55,000	53,698	-	53,698	-	1,302
Veterans Park Hurricane Matthew repairs	328,452	151,581	4,494	156,075	-	172,377
Lafayette Park Hurricane Matthew repairs	216,907	209,332	-	209,332	-	7,575
Cross Creek Linear Park Hurricane Matthew	105,742	71,879	-	71,879	1,960	31,903
Big Cross Creek Land Acquisition	52,000	-	-	-	-	52,000
Lake Rim Aquatic Pool	3,139,414	3,132,304	-	3,132,304	-	7,110
Blount's Creek Trail III	93,750	5,675	-	5,675	-	88,075
Shelter and concession stand	155,000	54,802	4,764	59,567	17,225	78,208
Western Area Dog Park	198,000	24,899	152,221	177,120	6,717	14,163
Little Cross Creek Greenway	20,000	-	-	-	-	20,000
Playground equipment Honeycutt	40,000	40,000	-	40,000	-	-
Repaving of walking trails	60,000	35,620	13,118	48,738	8,891	2,371
Lake Rim Splash Pad	520,000	-	362,555	362,555	122,893	34,552
Wifi Locks System	80,000	-	3,440	3,440	2,975	73,585
Control Link Lights System	210,000	-	118,475	118,475	64,440	27,085
Makers Space Facility	800,000	-	97,828	97,828	-	702,172
Total Expenditures and Encumbrances	17,416,785	13,022,048	1,037,693	14,059,741	305,297	3,051,747
Revenues Over (Under) Expenditures and Encumbrances	(10,406,485)	(6,023,385)	(949,860)	(6,973,243)	(305,297)	3,127,945
Other Financing Sources (Uses)						
Issuance of debt	3,139,414	3,134,715	-	3,134,715	-	4,699
Sale of capital assets	712,600	712,600	-	712,600	-	-
Transfers in	6,585,626	4,277,347	2,315,000	6,592,347	-	(6,721)
Transfers out	(31,155)	(31,155)	-	(31,155)	-	-
Total Other Financing Sources (Uses)	10,406,485	8,093,507	2,315,000	10,408,507	-	(2,022)
Revenues and Other Financing Sources (Uses) Over (Under) Expenditures and Encumbrances	\$ -	\$ 2,070,122	\$ 1,365,140	\$ 3,435,264	\$ (305,297)	\$ 3,129,967

CITY OF FAYETTEVILLE, NORTH CAROLINA

**Schedule of Revenues and Expenditures
Budget and Actual - Transportation Capital Project Fund**

**From Inception And For the 6-Month Period Ended March 31, 2022
(Unaudited)**

	Project Authorization	Prior Years	Current Year as of March 31, 2022	Total Inception to Date	Total Encumbrances	Balance Remaining
Revenues						
Restricted Intergovernmental						
Federal grants	\$ 6,640,547	\$ 3,916,365	\$ 1,253	\$ 3,917,618	\$ -	\$ 2,722,929
State grants	1,414,683	1,159,788	418	1,160,206	-	254,477
Total Restricted Intergovernmental	<u>8,055,230</u>	<u>5,076,153</u>	<u>1,671</u>	<u>5,077,824</u>	<u>-</u>	<u>2,977,406</u>
Miscellaneous						
Owner contributions	401,576	300,038	150,267	450,304	-	(48,728)
Other	10,204	10,204	-	10,204	-	-
Total Miscellaneous	<u>411,780</u>	<u>310,242</u>	<u>150,267</u>	<u>460,508</u>	<u>-</u>	<u>(48,728)</u>
Interest Earned on Investments	<u>6,524</u>	<u>6,589</u>	<u>-</u>	<u>6,589</u>	<u>-</u>	<u>(65)</u>
Total Revenues	<u>8,473,534</u>	<u>5,392,984</u>	<u>151,938</u>	<u>5,544,921</u>	<u>-</u>	<u>2,928,613</u>
Expenditures and Encumbrances						
Transportation						
Thoroughfare streetlights	475,000	94,344	32,124	126,468	2,194	346,338
Sidewalks	6,585,550	1,549,127	245,558	1,794,685	555,621	4,235,244
Transportation improvements	3,940,280	2,101,382	339,473	2,440,856	560,572	938,852
Street resurfacing	24,130,782	13,351,703	1,820,047	15,171,750	7,371,316	1,587,716
Legend Avenue improvements	2,218,622	1,669,749	-	1,669,748	1,986	546,888
Rowan Street bridge replacement	403,602	403,601	-	403,602	-	-
Ann/Louise Streets bridge replacements	2,186,847	2,186,847	-	2,186,847	-	-
Shawcroft Rd Hurricane Matthew repairs	1,439,628	1,347,565	-	1,347,565	9,581	82,482
Offing Drive Hurricane Matthew repairs	938,323	683,318	-	683,318	-	255,005
N. Cool Spring St. Hurricane Matthew repairs	2,366,028	2,013,607	-	2,013,607	-	352,421
Siple Ave. Hurricane Matthew repairs	603,451	603,444	-	603,444	-	7
Sykes Pond Road Flood Damage	1,950,000	1,265,061	1,857	1,266,918	95,532	587,550
Comprehensive bicycle plan	80,327	79,618	-	79,618	-	709
FY20 Bridge preservation program	616,293	125,627	263,630	389,257	-	227,036
Greenock Drive Hurricane Matthew repairs	500,000	184,015	1,670	185,685	283,578	30,737
Total Expenditures and Encumbrances	<u>48,434,733</u>	<u>27,659,008</u>	<u>2,704,359</u>	<u>30,363,368</u>	<u>8,880,380</u>	<u>9,190,985</u>
Revenues Over (Under) Expenditures and Encumbrances	<u>(39,961,199)</u>	<u>(22,266,024)</u>	<u>(2,552,421)</u>	<u>(24,818,447)</u>	<u>(8,880,380)</u>	<u>6,262,372</u>
Other Financing Sources (Uses)						
Transfers in	41,057,817	32,479,692	8,084,947	40,564,639	-	493,178
Transfers out	(1,096,618)	(1,096,617)	-	(1,096,617)	-	(1)
Total Other Financing Sources (Uses)	<u>39,961,199</u>	<u>31,383,075</u>	<u>8,084,947</u>	<u>39,468,022</u>	<u>-</u>	<u>493,177</u>
Revenues and Other Financing Sources (Uses) Over (Under)						
Expenditures and Encumbrances	<u>\$ -</u>	<u>\$ 9,117,051</u>	<u>\$ 5,532,526</u>	<u>\$ 14,649,575</u>	<u>\$ (8,880,380)</u>	<u>\$ 5,769,195</u>

CITY OF FAYETTEVILLE, NORTH CAROLINA

**Schedule of Revenues and Expenditures
Budget and Actual - Storm Water Management Capital Project Fund**

**From Inception And For the 6-Month Period Ended March 31, 2022
(Unaudited)**

	<u>Project Authorization</u>	<u>Prior Years</u>	<u>Current Year as of March 31, 2022</u>	<u>Total Inception to Date</u>	<u>Total Encumbrances</u>	<u>Balance Remaining</u>
Revenues						
Restricted Intergovernmental						
State grants	\$ 309,500	\$ 309,500	\$ -	\$ 309,500	\$ -	\$ -
Total Restricted Intergovernmental	<u>309,500</u>	<u>309,500</u>	<u>-</u>	<u>309,500</u>	<u>-</u>	<u>-</u>
Interest Earned on Investments	<u>207,325</u>	<u>801,008</u>	<u>(5,668)</u>	<u>795,340</u>	<u>-</u>	<u>(588,015)</u>
Total Revenues	<u>516,825</u>	<u>1,110,508</u>	<u>(5,668)</u>	<u>1,104,840</u>	<u>-</u>	<u>(588,015)</u>
Expenditures and Encumbrances						
Environmental Protection						
Buckhead Creek Watershed	-	(1)	1	1	-	(1)
Roxie Ave Phase I	147,950	147,549	-	147,549	-	401
Boonie Doone Area 5	122,248	122,248	-	122,248	-	-
Spot repair program	1,348,673	888,454	44,006	932,460	5,372	410,841
Person St innovative stormwater greenscape	515,674	515,673	-	515,673	-	1
Broyhill Drive drainage improvements	82,215	82,215	-	82,215	-	-
Bonnie Doone, area 2	103,780	103,780	-	103,780	-	-
Beaver Creek Watershed Study	550,000	532,509	-	532,509	9,691	7,800
Neville Street stormwater improvements	613,344	112,585	606	113,190	4,387	495,767
North Street stormwater improvements	2,968,232	221,913	(237)	221,676	134,658	2,611,898
Liberty Hills subdivision drainage improvement	844,372	740,970	-	740,970	-	103,402
Market House Square drainage	254,075	254,075	-	254,075	-	-
FY19 Program Management Water	1,006,859	1,005,666	-	1,005,666	-	1,193
Watershed studies	10,993,141	2,997,402	2,972,941	5,970,344	1,360,953	3,661,844
Sunbury Drive drainage improvements	998,736	259,895	110,279	370,174	122,386	506,176
Spruce Street Acorn Phase 3	679,735	118,046	36,883	154,927	397,605	127,203
Breezewood drainage improvements	119,937	88,823	-	88,823	-	31,114
Drainage Assistance Program	2,048,164	340,782	100,044	440,826	314,012	1,293,326
U-4405 Raeform Rd sidewalks	78,313	-	-	-	78,313	-
Rolling Hill Road 2357	73,097	73,097	-	73,097	-	-
Argyll Rd 502	64,960	64,959	-	64,959	-	1
Iverleigh Cir 6004	18,097	18,097	-	18,097	-	-
Water Edge Dr 5831	17,580	17,580	-	17,580	-	-
Daytona 4005/4007	48,102	48,101	-	48,101	-	1
Murray Fork 255	90,000	-	-	-	84,730	5,270
Nato Rd 3412	120,000	-	16,330	16,330	82,485	21,185
Ray Avenue stormwater improvements	1,639,922	106,989	10,968	117,958	81,480	1,440,484
800 Mhz radio equipment	61,000	60,555	-	60,555	-	445
Stormwater drainage miscellaneous	4,909,956	2,289,995	69,065	2,359,060	850,163	1,700,733
Riverine Flood Assessments	500,000	-	-	-	76,904	423,096
Total Expenditures and Encumbrances	<u>31,018,162</u>	<u>11,211,957</u>	<u>3,360,886</u>	<u>14,572,843</u>	<u>3,526,235</u>	<u>12,419,084</u>
Revenues Over (Under) Expenditures and Encumbrances	<u>(30,501,337)</u>	<u>(10,101,449)</u>	<u>(3,366,554)</u>	<u>(13,468,003)</u>	<u>(3,526,235)</u>	<u>13,007,099</u>
Other Financing Sources						
Transfers in	30,440,337	26,649,576	3,791,922	30,441,498	-	(1,161)
Capital leases	61,000	60,644	-	60,644	-	356
Total Other Financing Sources	<u>30,501,337</u>	<u>26,710,220</u>	<u>3,791,922</u>	<u>30,502,142</u>	<u>-</u>	<u>(805)</u>
Revenues and Other Financing Sources Over (Under) Expenditures and Encumbrances	<u>\$ -</u>	<u>\$ 16,608,771</u>	<u>\$ 425,368</u>	<u>\$ 17,034,139</u>	<u>\$ (3,526,235)</u>	<u>\$ 13,007,904</u>

CITY OF FAYETTEVILLE, NORTH CAROLINA

**Schedule of Revenues and Expenditures
Budget and Actual - Transit Capital Project Fund**

**From Inception And For the 6-Month Period Ended March 31, 2022
(Unaudited)**

	Project Authorization	Prior Years	Current Year as of March 31, 2022	Total Inception to Date	Total Encumbrances	Balance Remaining
Revenues						
Restricted Intergovernmental						
Federal grants	\$ 18,607,795	\$ 12,406,588	\$ 1,805,340	\$ 14,211,928	\$ -	\$ 4,395,867
State grants	1,688,492	1,138,706	1,441	1,140,147	-	548,345
Total Restricted Intergovernmental	20,296,287	13,545,294	1,806,781	15,352,075	-	4,944,212
Other Revenues	-	43,000	-	43,000	-	(43,000)
Total Revenues	20,296,287	13,588,294	1,806,781	15,395,075	-	4,901,212
Expenditures and Encumbrances						
Transportation						
Improvements & Enhancements (no grant)	426,007	426,007	-	426,007	-	-
FTA 04.0055 Multimodal Transit Center	10,018,750	10,018,749	-	10,018,749	-	1
FTA NC-2016-030 FY17 MMTC	612,097	584,285	24,508	608,793	-	3,304
MMTC Tenant Improvements	358,946	358,946	-	358,946	-	-
FTA NC-2016-030 FY17	422,064	400,821	-	400,821	21,242	1
FTA NC-2016-021 FY17	1,100,000	1,097,809	2,191	1,100,000	-	-
FTA NC-2017-031 FY17 Capital	854,752	849,466	5,285	854,751	-	1
FTA NC-2018-045 FY18 Capital	697,647	680,204	17,443	697,647	-	-
FTA NC-2018-069 FY18 Capital	72,725	-	17,466	17,466	-	55,259
FTA NC-2019-021 FY19 Capital	764,600	666,399	62,518	728,917	23,472	12,211
FTA NC-2019-022 FY19 Capital - Bus Expan	920,000	920,000	-	920,000	-	-
FTA NC-2020-033 FY21 Capital - Bus Expan	2,558,000	106,159	2,123,194	2,229,352	13,591	315,057
Transit ROW & Easements	25,000	1,026	-	1,026	-	23,974
FTA NC-2021-023 Capital	4,661,125	163	55,030	55,193	2,197,363	2,408,569
Total Expenditures and Encumbrances	23,491,713	16,110,034	2,307,635	18,417,668	2,255,668	2,818,377
Revenues Over (Under) Expenditures and Encumbrances	(3,195,426)	(2,521,740)	(500,854)	(3,022,593)	(2,255,668)	(2,082,835)
Other Financing Sources (Uses)						
Proceeds from the sale of assets	-	6,250	-	6,250	-	(6,250)
Transfers in	4,226,701	4,467,509	-	4,467,510	-	(240,809)
Transfers out	(1,031,275)	(1,031,275)	-	(1,031,275)	-	-
Total Other Financing Sources (Uses)	3,195,426	3,442,484	-	3,442,485	-	(247,059)
Revenues and Other Financing Sources (Uses) Over (Under) Expenditures and Encumbrances	\$ -	\$ 920,744	\$ (500,854)	\$ 419,892	\$ (2,255,668)	\$ (1,835,776)

CITY OF FAYETTEVILLE, NORTH CAROLINA

**Schedule of Revenues and Expenditures
Budget and Actual - Transit II Capital Project Fund**

**From Inception And For the 6-Month Period Ended March 31, 2022
(Unaudited)**

	Project Authorization	Prior Years	Current Year as of March 31, 2022	Total Inception to Date	Total Encumbrances	Balance Remaining
Revenues						
Restricted Intergovernmental						
Federal grants	\$ 2,357,557	\$ 1,030,240	\$ 43,905	\$ 1,074,145	\$ -	\$ 1,283,412
Total Restricted Intergovernmental	<u>2,357,557</u>	<u>1,030,240</u>	<u>43,905</u>	<u>1,074,145</u>	<u>-</u>	<u>1,283,412</u>
Total Revenues	<u>2,357,557</u>	<u>1,030,240</u>	<u>43,905</u>	<u>1,074,145</u>	<u>-</u>	<u>1,283,412</u>
Expenditures and Encumbrances						
Transportation						
FTA 16.2011	147,075	122,858	-	122,858	-	24,217
FTA 2016-030 FY16 Planning	57,000	57,000	-	57,000	-	-
FTA 2016-014 Elderly & Disabled	480,613	248	(585)	(337)	-	480,950
FTA 2018-045 FY18 Planning	180,728	180,727	-	180,727	-	1
FTA 2018-069 FY18 Special Revenue	360,000	320,000	-	320,000	5,050	34,950
FTA 2019-021 FY19 Special Revenue	86,000	69,872	16,128	86,000	-	-
FTA 2019-021 FY19 Special Revenue	294,678	175,972	64,028	240,000	-	54,678
FTA 2020-024 FY19 CARES ACT Funding	110,000	97,724	(12,275)	85,449	-	24,551
FTA 2020-033 FY21 Special Revenue	250,000	84,266	112,312	196,578	37,575	15,847
FTA 2021-023 FY21 Special Revenue	286,000	-	56,904	56,904	16,500	212,596
FTA 2021-054 FY21 Special Revenue	296,400	-	-	-	-	296,400
Total Expenditures and Encumbrances	<u>2,548,494</u>	<u>1,108,667</u>	<u>236,512</u>	<u>1,345,179</u>	<u>59,125</u>	<u>1,144,190</u>
Revenues Over (Under) Expenditures and Encumbrances	<u>(190,937)</u>	<u>(78,427)</u>	<u>(192,607)</u>	<u>(271,034)</u>	<u>(59,125)</u>	<u>(139,222)</u>
Other Financing Sources (Uses)						
Transfers in	255,937	259,798	-	259,798	-	(3,861)
Transfers out	(65,000)	(65,000)	-	(65,000)	-	-
Total Other Financing Sources (Uses)	<u>190,937</u>	<u>194,798</u>	<u>-</u>	<u>194,798</u>	<u>-</u>	<u>(3,861)</u>
Revenues and Other Financing Sources (Uses) Over (Under) Expenditures and Encumbrances	<u>\$ -</u>	<u>\$ 116,371</u>	<u>\$ (192,607)</u>	<u>\$ (76,236)</u>	<u>\$ (59,125)</u>	<u>\$ (135,361)</u>

CITY OF FAYETTEVILLE, NORTH CAROLINA

**Schedule of Revenues and Expenditures
Budget and Actual - Airport Capital Project Fund**

**From Inception And For the 6-Month Period Ended March 31, 2022
(Unaudited)**

	Project Authorization	Prior Years	Current Year as of March 31, 2022	Total Inception to Date	Total Encumbrances	Balance Remaining
Revenues						
Restricted Intergovernmental						
Federal grants	\$ 34,325,323	\$ 23,081,191	\$ 2,711,899	\$ 25,793,090	\$ -	\$ 8,532,233
State grants	9,803,376	7,657,364	1,615,131	9,272,495	-	530,881
Total Restricted Intergovernmental	44,128,699	30,738,555	4,327,030	35,065,585	-	9,063,114
Other Revenues						
Passenger facility charges	5,971,487	5,411,112	446,365	5,857,476	-	114,011
Customer facility charges	1,200,000	5,961,732	508,295	6,470,027	-	(5,270,027)
Total Other Revenues	7,171,487	11,372,844	954,660	12,327,503	-	(5,156,016)
Interest Earned on Investments	311,091	898,449	(4,589)	893,861	-	(582,770)
Total Revenues	51,611,277	43,009,848	5,277,101	48,286,949	-	3,324,328
Expenditures and Encumbrances						
PW#1255 Airport Slope Failure	225,350	26,441	109,808	136,248	-	89,102
Parking Control System	350,000	-	-	-	-	350,000
AIP 43 Teminal Improvements	3,930,603	3,923,355	-	3,923,355	-	7,248
AIP 43 Teminal Improvements	20,254,141	20,111,427	79,105	20,190,531	2,013	61,597
Airport Public Art Project	50,000	-	-	-	-	50,000
8 Unit T-Hangar	2,000,000	54,742	27,107	81,849	85,435	1,832,716
FAR 139 Automation Software	76,000	73,876	-	73,876	-	2,124
Terminal Renovation Data Infrastructure	200,000	77,633	18,013	95,646	27,254	77,100
Airport Pavement Crack Seal	152,658	136,768	-	136,768	-	15,890
Terminal Improvements Part II	37,336,294	16,847,415	6,916,806	23,764,220	8,689,150	4,882,924
General Aviation Hangar	400,000	-	-	-	-	400,000
Total Expenditures and Encumbrances	64,975,046	41,251,657	7,150,839	48,402,493	8,803,852	7,768,701
Revenues Over (Under) Expenditures and Encumbrances	(13,363,769)	1,758,191	(1,873,738)	(115,544)	(8,803,852)	4,444,373
Other Financing Sources (Uses)						
Transfers in	13,363,769	13,332,231	460,000	13,792,231	-	(428,462)
Proceeds from sale of assets	-	1,934	-	1,934	-	(1,934)
Total Other Financing Sources (Uses)	13,363,769	13,334,165	460,000	13,794,165	-	(430,396)
Revenues and Other Financing Sources (Uses) Over (Under) Expenditures and Encumbrances	\$ -	\$ 15,092,356	\$ (1,413,738)	\$ 13,678,621	\$ (8,803,852)	\$ 4,874,769

CITY OF FAYETTEVILLE, NORTH CAROLINA

**Schedule of Revenues and Expenditures
Budget and Actual - Environmental Services Capital Project Fund**

**From Inception And For the 6-Month Period Ended March 31, 2022
(Unaudited)**

	<u>Project Authorization</u>	<u>Prior Years</u>	<u>Current Year as of March 31, 2022</u>	<u>Total Inception to Date</u>	<u>Total Encumbrances</u>	<u>Balance Remaining</u>
Revenues						
Interest earned on investments	\$ -	\$ 2,820	\$ -	\$ 2,820	\$ -	\$ (2,820)
Total Revenues	<u>-</u>	<u>2,820</u>	<u>-</u>	<u>2,820</u>	<u>-</u>	<u>(2,820)</u>
Expenditures and Encumbrances						
On Board/On Route Systems	477,848	477,624	-	477,624	-	224
800MHZ Radio Lease	160,801	159,641	-	159,641	-	1,160
Total Expenditures and Encumbrances	<u>638,649</u>	<u>637,265</u>	<u>-</u>	<u>637,265</u>	<u>-</u>	<u>1,384</u>
Revenues Over (Under) Expenditures and Encumbrances	<u>(638,649)</u>	<u>(634,445)</u>	<u>-</u>	<u>(634,445)</u>	<u>-</u>	<u>4,204</u>
Other Financing Sources (Uses)						
Transfers in	477,848	477,848	-	477,848	-	-
Capital Leases	160,801	159,499	-	159,499	-	1,302
Total Other Financing Sources (Uses)	<u>638,649</u>	<u>637,347</u>	<u>-</u>	<u>637,347</u>	<u>-</u>	<u>1,302</u>
Revenues and Other Financing Sources (Uses) Over (Under) Expenditures and Encumbrances	<u>\$ -</u>	<u>\$ 2,902</u>	<u>\$ -</u>	<u>\$ 2,902</u>	<u>\$ -</u>	<u>\$ 2,902</u>

CITY OF FAYETTEVILLE, NORTH CAROLINA

Schedule of Changes in Assets and Liabilities
Red Light Camera Agency Fund

For the 6-Month Period Ended March 31, 2022
(Unaudited)

	<u>Beginning Balance</u>	<u>Additions March 31, 2022</u>	<u>Deletions March 31, 2022</u>	<u>Ending Balance</u>
Assets				
Cash and Cash Equivalents	<u>\$ 162,049</u>	<u>\$ 2,081,808</u>	<u>\$ 2,023,438</u>	<u>\$ 220,419</u>
Liabilities				
Intergovernmental payable	<u>\$ 162,049</u>	<u>\$ 2,081,808</u>	<u>\$ 2,023,438</u>	<u>\$ 220,419</u>