

**STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND**

**OPERATIONS AGREEMENT FOR PARKS AND RECREATION
CONSOLIDATION**

THIS OPERATIONS AGREEMENT, dated the 7th day of June, 2004, by and between the CITY OF FAYETTEVILLE (the "CITY") and the COUNTY OF CUMBERLAND (the "COUNTY").

RECITALS:

1. The CITY and the COUNTY entered into an Interlocal Agreement dated January, 2004, (the "Interlocal Agreement") pursuant to which the CITY and COUNTY agreed to consolidate parks and recreation services and for the CITY to manage and operate such services.
2. Such consolidated provision of parks and recreation services of the City and County will improve the coordination of service delivery to the public and provide for maximum operational efficiency.
3. The Interlocal Agreement contemplated that the CITY and the COUNTY would adopt one or more agreements for the transition of parks and recreation services from the COUNTY to the CITY and for their management and operation by the CITY.
4. The CITY and the COUNTY agree to this Operations Agreement to provide for the transition of parks and recreation services from the COUNTY to the CITY and for their management and operation by the CITY.

NOW, THEREFORE, the CITY and the COUNTY in consideration of the mutual term, provisions, obligations and benefits provided herein, agree as follows:

1. (A) The COUNTY and the CITY agree to consolidate the provision of parks and recreation services previously provided separately by them, in order to more efficiently and effectively serve their citizens and meet the demand for such services. The City and the County agree that a truly consolidated system of recreation services with a unified single revenue source to support those services is their goal, but that there will be a need and justification in the near term to track budgets, revenues, personnel, expenditures and assets according to urban and rural service areas, respectively.

(B) These consolidated services shall be managed and operated by the City of Fayetteville as a single system of parks and recreation throughout Cumberland County

(C) The name of the consolidated parks and recreation system shall be the Fayetteville/Cumberland Regional Parks and Recreation Department.

(D) The City Manager, after full consultation with the County Manager, shall designate a headquarters location for the consolidated system. In making such designation, the City Manager shall, as much as practical, take into consideration convenience and accessibility for patrons, efficiency of operation, and cost. The administrative headquarters and central office functions will initially be located at City Hall, 433 Hay Street, Fayetteville, NC.

(E) This program shall be directly managed and operated by the CITY, with funding provided by both the CITY and COUNTY.

2. (A) Service level standards shall be designed to maintain services generally as provided in the municipal and county areas of jurisdiction on June 30, 2004, subject to the parties' inherent discretion to fund, evolve, change, adjust, modify or terminate services and programs from time to time within their own jurisdictions. The City Manager's designee as chief operating officer of the consolidated Department (hereafter referred to as the "Director") shall determine the nature and level of parks and recreation(s) services and programs provided from time to time, consistent with budgetary authorizations. The director will consult from time to time as appropriate with the citizen advisory committee established for such purposes.

(B) Programs and services will be divided between parks and recreation functions. Each of the parks and recreation functions, respectively, shall operate from geographic district offices, which need not be co-terminus. District areas shall be defined to efficiently and flexibly provide demand-responsive services and programs, taking into account population and resources.

(C) Programs and services will be provided according to City policies and procedures.

3. The City and County Managers shall conduct a systematic review of revenue sources, cost allocations and expenditures of the consolidated system and make recommendations to the governing boards by May 1, 2006. These recommendations will also be forwarded to the advisory board by the managers for comment and recommendations.

4. The consolidated department will maintain a schedule for periodic inspection, maintenance, repair of facilities and equipment, and for training of employees to maintain and enhance proficiency in provision of services.

5. (A) All full-time personnel of the Cumberland County Parks & Recreation Department shall, on the effective date of this Agreement, become either regular or first-year employees of the City of Fayetteville with the following terms and conditions:

(i) Employment status: The City of Fayetteville requires one (1) full year of probationary employment in a regular position before an employee is considered a regular employee. Employees of the Cumberland County Parks & Recreation Department will be given credit for the length of time they have been continuously employed in a permanent position with the COUNTY in determining their employment status with the City of Fayetteville. Upon successful completion of one (1) full year of combined employment with the Cumberland County Parks & Recreation Department and the City of Fayetteville, these individuals will be granted regular status as City of Fayetteville employees.

(ii) All personnel will be subject to the provisions of the City of Fayetteville Personnel Ordinance, and the City of Fayetteville's Administrative Policies effective on the date of the transfer to the City of Fayetteville and all future amendments thereto.

(B) Fair Labor Standards Act (FLSA):

(i) Non-Exempt (Hourly): By accepting employment with the CITY, County Parks & Recreation employees are agreeing to accept compensatory time in lieu of cash compensation for overtime. The CITY reserves the right, however, to pay time and a half cash overtime at its discretion. County Parks & Recreation employees classified as Non-Exempt from the FLSA, that have accrued compensatory time on the COUNTY books, shall be paid out by the COUNTY prior to transferring to the CITY.

a. Exempt: The FLSA status of County Parks & Recreation employees transferring to the CITY will be determined based on the CITY's classification. Employees who are classified as Exempt from the FLSA will not be eligible for overtime compensation after transfer to the CITY. County Parks & Recreation employees classified as Exempt from the FLSA who accrued compensatory time on the COUNTY books shall be paid out by the COUNTY for the time accrued prior to transferring to the CITY.

Date of Hire and Date in Class: Date of hire will be assigned based on original date hired as an employee of Cumberland County. Date in class will be the effective date of promotion/placement to position held at time of transfer to the City of Fayetteville.

Promotions: The City will determine promotional eligibility for individuals transferred to the City in accordance with its administrative policies in effect at the time the individual is eligible for promotion.

Longevity: Longevity for pay purposes will be calculated based upon combined length of service as an employee of the County Parks & Recreation and of the consolidated Department, based upon the City of Fayetteville longevity pay policy in effect at the time the individual is eligible for longevity pay.

1. Because five (5) COUNTY employees are eligible for longevity based on their three (3) to four (4) years of service with the COUNTY, and because the City's longevity policy begins with five (5) years of service, those five employees their longevity pay will be rolled into base pay and the lump sum longevity payment discontinued. When the employees become eligible for longevity under the City's policy, the employees shall receive a biweekly pay longevity supplement in accordance with the City's longevity policy.

All COUNTY employees that are eligible for longevity pay under the CITY's policy shall receive a biweekly pay supplement based on the number of years of combined continuous service.

Performance Evaluation: Supervisors shall evaluate employees under his/her immediate supervision. If the employee transferring to the CITY is assigned to a different supervisor and the evaluation period covers both before and after July 1, 2004, both the previous and the current supervisor shall conduct a joint evaluation.

Pay: All employees of the County Parks & Recreation Department who are transferred to the City shall be paid a salary equivalent to that paid the same position in the CITY's pay plan. Employees whose base salary is at or above the minimum of the CITY's pay range shall retain their base salary. Employee's whose salary is below the minimum of the CITY's pay range shall have their salaries increased to the new minimum.

Benefits: Upon the effective date of their transfer to the City, all personnel will be entitled to any and all benefits enjoyed by the City employees in accordance with existing eligibility requirements as follows:

Sick Leave: Sick leave accrued before July 1, 2004, shall be wholly transferable to the City of Fayetteville.

Vacation Time: Annual leave accrued before July 1, 2004, shall be transferred in accordance with current CITY policies governing maximum vacation leave accumulation based on credible years of service. All vacation time accrued in excess of maximum allowable accumulation will be converted and transferred into sick leave in accordance with existing CITY policy

Retirement System: All provisions for participation in the Local Governmental Employees' Retirement System will apply.

Dental: All personnel, including dependents, to be transferred from the County Parks & Recreation Department to the City will be enrolled in the CITY's Dental Care Plan effective on their date of transfer to the CITY if they have thirty (30) or more days of full-time creditable service with the COUNTY, if they elect to participate. Those persons with less than thirty (30) days of service will be eligible for enrollment effective on the first day following the thirty (30) days of continuous service. Note: If employee is on the COUNTY Dental Plan at the time of transfer to the CITY, there should be no waiting period for pre-existing conditions with the exception of the "Missing Tooth Provision" whereby the individual is not covered until insured for twenty-four (24) months of combined, continuous service. This provision applies to all CITY employees and/or dependents.

Health: Health insurance eligibility will be effective on the date of transfer to the City subject to the terms of coverage and the impact of pre-existing conditions in effect on that date.

6. The City and County Managers will agree on and include as an attachment to this agreement an organizational chart for the consolidated department, which shall be changed in the first year only after full consultation by the City Manager with the County Manager.

7. The City will adopt a standardized uniform and logo representative of the consolidated department for all consolidated department personnel, to be phased as current uniform contracts expire or are terminated.

8. (A) The CITY director shall prepare a proposed budget each year for the consolidated department that identifies parks and recreation expenses for both CITY and Recreation District areas. The budget shall include projected operating expenses for J.P. Riddle Stadium, including the operating expenses components supported by County Recreation Tax District revenues (one half of two maintenance personnel positions) as well as County General Fund revenues (one half of two maintenance personnel positions and maintenance). That proposed budget shall be submitted to the CITY and COUNTY Managers no later than March 1 of each year, and thereafter to the governing bodies of the CITY and COUNTY no later than June 1 of each year, for inclusion in the CITY

adopted budget, and for inclusion in the COUNTY adopted budget of an appropriation transferring the proceeds of the COUNTY recreation tax to the CITY.

(B) Consolidated operations shall be provided on a balanced budget basis, taking into account actual County Recreation District Tax receipts.

(C) The COUNTY will be constructing an additional recreation center project, at Armstrong School. The County will be responsible to provide for operating expenditures of that project from County Recreation District Tax revenues.

(D) The COUNTY will provide monthly cash payments to the CITY, as advances on Recreation District Tax Collections, to facilitate cash flow management through December 2004 based on FY 2003 monthly expenditures (i.e., July 2003 is the basis for the July 2004 payment), adjusted for the estimated reduction due to Phase V annexation. The payments will be made no later than the 15th of each month for that given month through December 2004. In addition, the County will transfer to be City, as an undesignated fund balance, eight percent of the projected FY 05 budget for operation of the consolidated department in the County Recreation Tax District. The City will credit interest on the undesignated fund balance allocable to County Recreation District revenues to the benefit of the County Recreation District, on the same basis as it credits interest to its own fund balance. If the City is required to advance any payments from its own fund balance to pay County Recreation District expenses, the County will pay interest on such funds until repaid at the North Carolina Cash Management Trust Fund rate. Commencing January 15, 2005, the COUNTY will remit County Recreation District Tax collections on a monthly basis, based on actual collections for the previous month. However, total COUNTY payments to the CITY as of any June 30, cannot be less than total County Recreation District taxes collected during that fiscal year.

9. (A) All property (other than real property) that belongs to the COUNTY Parks & Recreation program at the effective date of the merger shall become the CITY's property. The CITY will enter those items into the CITY's financial system, track and depreciate them accordingly. The City's tracking system shall designate and track those items as County Recreation District assets.

(B) For the existing COUNTY fixed assets, as well as new COUNTY fixed assets, the CITY will maintain records for items that meet or exceed the COUNTY's capitalization threshold of \$5,000.00.

(C) A physical fixed asset inventory will be performed on July 1 and 2, 2004. The City shall inspect during the first quarter of FY 2005 all real and personal property which it takes possession of from the County and shall either accept or reject any such property that poses a significant risk of liability because

of poor upkeep, deterioration or lack of maintenance, stating in writing the City's objection thereto. The County may attempt to cure any such objection within 30 days of receiving any City notice of objection and re-tender such property to the City, upon which the City may, again, either accept or reject such property a significant risk of liability because of poor upkeep, deterioration or lack of maintenance.

(D) The consolidated department will purchase new or replacement equipment from the approved consolidated department budget. The City and County Finance Officers, or their respective designees shall, at the time funds for new or replacement equipment are budgeted or in any event at the time any asset is purchased, designate the item as allocated 100% for use of the County Recreation District, or 100% for use of the City, or a percentage agreed upon at such time allocating the reasonably projected use of an asset between the County Recreation District and the City. The City's tracking system shall designate and track those items by County Recreation District asset number, by City Recreation asset number, or by Joint Asset number.

10. (A) The COUNTY will initiate a service change so utility bills will be sent to the CITY.

(B) The COUNTY will be responsible for paying all purchase orders outstanding at June 30, 2004, as well as any FY 2004 accounts payable items. The COUNTY will adjust the tax payment for July 2004 to reflect the elimination of purchase orders paid in July.

11. The COUNTY grants to the consolidated department an unrestricted license, which shall be irrevocable during the effectiveness of this agreement and which license shall continue until the expiration or termination of this agreement, to occupy, use, possess, and maintain all of the real estate facilities and fixtures occupied, used, possessed, and maintained by the COUNTY's Parks and Recreation Department for parks and recreation programs and services. A schedule of all such facilities and fixtures is included as an attachment to this agreement.

12. (A) Parks and recreation facilities shall be provided generally in accordance with a Parks and Recreation Master Plan to be recommended by the advisory board provided for herein and approved by the parties' respective governing boards by July 1, 2005, and bi-annually thereafter.

(B) Separately from this agreement, the parties shall develop a Joint Capital Improvements Plan for the development, construction and funding of any new facilities after the execution of this agreement.

(C) The COUNTY shall pay the direct costs of capital improvement projects built outside of the corporate limits of the CITY, including development

and design costs, provided, however, that the CITY and the COUNTY may agree on joint funding of facilities in the Recreation District but which are near to the CITY's municipal limits and likely to be used jointly by residents of the CITY and the COUNTY tax district. Likewise, the COUNTY and CITY may agree on joint funding of facilities in the CITY's jurisdiction and likely to be used by residents of both the CITY and the COUNTY tax district.

13. (A) The COUNTY will maintain in force and effect the insurance policies that it currently has in effect, including specifically, but without limitation, casualty insurance on J.P. Riddle Stadium and Lake Rim Park, but naming the consolidated department and/or the City of Fayetteville as an additional insured.

(B) Other than for loss or damage which may be covered by the insurance policies, the County shall indemnify and hold harmless the City for any loss or damage due to any claim, action, case or other proceeding arising out of any action or inaction during FY 2005 in connection with the consolidated department's operations in the County Recreation Tax District or in connection with the consolidated department's operation or use of J.P. Riddle Stadium or Lake Rim Park. Thereafter, the City and the County will be jointly and severally liable for any uninsured risk exposure in the County Recreation Tax District or arising out of the consolidated department's operation or use of J.P. Riddle Stadium, and the City will be liable for any uninsured risk exposure arising out of the consolidated department's operation or use of Lake Rim Park. The City Attorney and the County Attorney shall adopt protocols for the defense of and settlement of claims arising out of the consolidated department's operations in the County Recreation Tax District.

(C) The COUNTY will be responsible for and pay all workers' compensation claims filed prior to the applicable statute of limitations for persons that are COUNTY Parks and Recreation Department employees as of June 30, 2004, for occurrences arising to and through June 30, 2004. A schedule of open COUNTY workers' compensation claims as of June 7, 2004, is included as an attachment to this agreement. The COUNTY shall update that schedule of workers' compensation claims to and through June 30, 2004.

(D) CITY procedures currently in place will be used to process and assess risk management claims.

(E) During the first year of operation, personnel from the CITY's Risk Management Department, the COUNTY's Risk Management Department, and the management of the consolidated Department will conduct quarterly risk management evaluations. These evaluations will determine how the program is working from a risk perspective and whether changes are necessary. After the first year, frequency of evaluation meetings will be assessed.

14. The consolidated department will be responsible for maintenance and repair of any facilities and operational equipment, including any rolling stock and other fixed assets conveyed or turned over to it as of July 1, 2004, used to provide services or programs of the consolidated department, pursuant to the City's schedules for inspection and maintenance. The County Recreation District budget shall pay for maintenance and repair of facilities within the County Recreation Tax District unless such work is performed by the consolidated department's own forces. With the exception of emergency maintenance or repair, the City shall generally consider performing such work, first, with consolidated department forces, second, by County Facilities Maintenance Division forces or by City Building Maintenance Division forces pursuant to a cost schedule agreed-upon from time to time in advance by the County Manager or his designee, or third, pursuant to an informal or formal bid process. In all cases, the objective shall be to perform maintenance or repair work in the most cost-effective way to achieve it given the circumstances.

15. The CITY and COUNTY Parks and Recreation Advisory Boards shall develop a plan by June 1, 2004, to consolidate the two boards effective July 1, 2004. The plan shall provide for both CITY and COUNTY representatives to be appointed by the respective governing boards. The plan shall also provide that either the County or City governing board may designate a liaison member to the advisory board. This plan shall be submitted during June, 2004 to and approved by the CITY and COUNTY governing boards.

16. This Agreement shall become effective July 1, 2004, and shall remain effective until terminated as provided herein. Prior to July 1, 2004, CITY and COUNTY Parks and Recreation staffs, along with CITY and COUNTY Managers shall be expected to operate their respective programs in a manner which will not adversely affect current services, programs, and employees.

17. (A) Either party to this Agreement may at any time terminate this Agreement effective on June 30 of any year upon giving twelve (12) months written notice to the other party of its intention to terminate same. This Agreement shall continue until terminated as provided herein. Upon termination and winding up of the consolidated department's operation, the City shall transfer to the County the County's pro-rata share of assets and equipment, which shall be sufficient to allow it reasonably to re-commence operation of a separate parks and recreation system at such time. The County's pro-rata share shall be based on (i) County Parks and Recreation Department equipment, supplies or assets transferred to the City and remaining in service, (ii) its depreciated share of fixed assets as tracked by the City, (iii) program supplies being divided based on the City and County participant populations, and (iv) supplies and equipment associated with a recreation center's operations staying at that center.

(B) The COUNTY agrees that if this agreement is terminated within five (5) years from its effective date, it will accept transfer back to County

employment of those employees who became employed with the City as a result of this Agreement who at the time of termination are providing parks and recreation services to areas outside the city limits of Fayetteville. Should those same people not be in the employ of the CITY at the date of termination of this agreement, the COUNTY agrees it shall accept transfer back to it of people in the following order: (i) employees who were previously employed by the COUNTY, (ii) those who volunteer to transfer and (iii) those most junior in seniority.

18. The County shall pay to the City in each fiscal year the sum of \$60,000 for recovery of its indirect administrative costs in operating the consolidated department.

19. (A) The City Manager and County Manager are, respectively, authorized to enter into such protocols, or to take such actions, as they deem necessary or desirable to carry into effect the consolidation and provision of services contemplated by this agreement and the Interlocal Agreement.

(B) The City and County Managers shall present for approval to the governing boards by September 7, 2004, agreed-upon "measures of success," including a survey of customers and employees reflecting satisfaction ratings to benchmarks agreed upon by the City Manager and County Manager, to use as a basis for evaluating success of consolidation activities. Both governing boards shall conduct a review of consolidation activities between July 1, 2005 and September 1, 2005.

20. The parties may only amend this agreement by a writing approved by both boards and signed by their respective duly authorized representatives.

21. Any notice to be given by either party to the other under this agreement shall be in writing and shall be deemed to have been sufficiently given if delivered by hand, with written acknowledgment of receipt, or mailed by certified mail return receipt requested to the other party at the following address or to such other address as either party from time to time designates in writing to the other party for the receipt of notice:

CITY:
City Manager
433 Hay Street
Fayetteville, N.C. 28301

COUNTY:
County Manager
P.O. Box 1829
Fayetteville, NC 28302

IN WITNESS WHEREOF, the CITY of Fayetteville and the COUNTY of Cumberland each pursuant to resolution of their respective governing bodies, have caused this Agreement to be executed and attested by their duly authorized officers, and their official seals affixed, the day and year first above written.

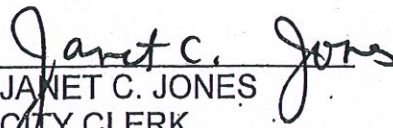
CITY OF FAYETTEVILLE

(Municipal Seal)

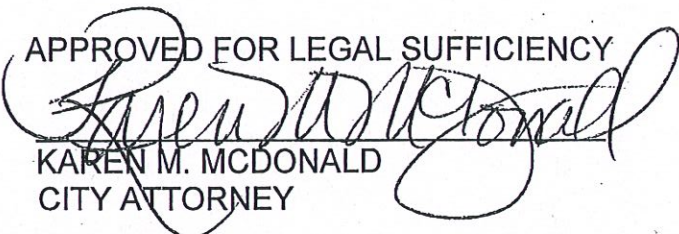
BY: 

MARSHALL PITTS
Mayor

ATTEST:


JANET C. JONES
CITY CLERK

APPROVED FOR LEGAL SUFFICIENCY


KAREN M. MCDONALD
CITY ATTORNEY

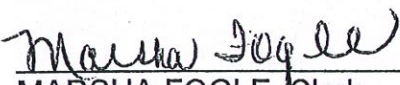
CUMBERLAND COUNTY

(County Seal)

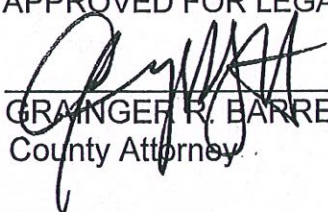
BY: 

JEANNETTE M. COUNCIL
Chairman of Board of Commissioners

ATTEST:


MARSHA FOGLE, Clerk
Board of Commissioners

APPROVED FOR LEGAL SUFFICIENCY


GRANGER R. BARRETT
County Attorney