

“CAN DO” PERFORMANCE FINANCING PROGRAM PANDEMIC RECOVERY AND SMALL BUSINESS DEVELOPMENT

The Community Development Foundation (the “CDF”) developed the “Can Do” Performance Financing Program (the “Program”) to address ongoing challenges faced by small businesses in the Qualified Census Tract surrounding the City of Fayetteville (the “QCT”) (Attachment A). According to the United States Department of the Treasury, small businesses operating in QCTs – particularly those small businesses that are women and minority-owned – suffered disproportionately during the pandemic because of long-standing problems accessing credit and other obstacles.¹ To help small businesses in the Fayetteville QCT overcome the lingering harms of the pandemic, the Program will provide performance-based grants and forgivable loans, technical assistance, and business counseling to assist these companies make new capital investments and hire more employees. The Program seeks to grow ten (10) companies, by ten (10) or more employees each, within five (5) years.

At its root, the Program is designed to serve two interrelated goals. First and foremost, the Program will provide interest-free financing to assist successful applicants redress harms caused or exacerbated by the pandemic. Small businesses in the Fayetteville QCT have less access to productive financing and less capacity to weather financial hardship than other businesses.² As a consequence, they have experienced ongoing financial insecurity since the pandemic. These businesses, however, are the bedrock of the Fayetteville QCT – they both serve, and are served by, the underserved communities in Fayetteville.³ The Program will provide these businesses grant or forgivable loan financing to cover expansion costs associated with overcoming harms caused by the pandemic and, ultimately, to strengthen their ability to endure future emergencies.

The Program’s second goal is to grow the City of Fayetteville’s tax base and provide greater employment opportunities for its citizens. In keeping with North Carolina’s commitment to using public funds to foster economic development, the Program will finance, assist, and monitor its participants’ capital investments to ensure they result in an expanded tax base, increased payroll and additional employment opportunities.⁴ The Program’s focus on small businesses within Fayetteville’s QCT will promote overall economic development within the City, but it will also strengthen small, minority-owned businesses that employ low and moderate-income residents. The goals of pandemic recovery and economic development are inseparable: the only way to overcome the harms caused or exacerbated by the pandemic for small businesses in the Fayetteville QCT is to invest in their stabilization and expansion.⁵

The Program, which will be administered by CDF, a 501(c)(3) nonprofit organization which is staffed by the Fayetteville Cumberland County Economic Development Corporation (“FCEDC”), will go beyond funding capital needs such as equipment and inventory. Eligible

¹ Department of the Treasury, Coronavirus State and Local Fiscal Recovery Funds, Final Rule, 31 CFR Part 35 (“ARPA Final Rule”) at 4376–4377.

² *Id.* at 4377.

³ *Id.*

⁴ N.C.G.S. § 158-7.1(a).

⁵ ARPA Final Rule at 4378.

companies will benefit from business counseling provided by local partners including the Center for Economic Empowerment & Development (“NCCEED”), Fayetteville Technical Community College (“FTCC”), the Fayetteville State University Regional Entrepreneur & Business Hub (“FSU”), the North Carolina Small Business Technical Development Center (“NCSBTDC”) and volunteers from locally owned private sector companies.

The Program will also seek to link business counseling with actual opportunities for Program participants. According to a 2018 joint supply chain mapping project led by the Fayetteville Public Works Commission (“PWC”), the City of Fayetteville, Cumberland County, Fayetteville State University, Fayetteville Technical Community College, and the Cape Fear Valley Regional Hospital system, there is more than \$600 million of local spending for which participating small businesses could compete. The Program will help guide participating small businesses to orient their capital investments and expanding workforce to take advantage of these robust procurement opportunities. The Program will also facilitate connections between participating small businesses and procuring partners to increase the likelihood of sustainable success by linking participants with a low-risk and motivated customer base. By design, this Program will increase the pool of qualified local vendors and retain public dollars in the local economy. In this way, the Program’s work will advance the goals identified in the City of Fayetteville’s 2022 Disparity Study with respect to local procurement.

About CDF

The 501(c)(3) Community Development Foundation was founded in 2009 for the purpose of improving the economic prosperity of our citizens through job creation and business expansion. Comprised of business professionals, the Board of Directors is diverse in terms of ethnicity, gender, and business type. In addition to supporting the general economic development of the community, CDF is facilitating more than \$5 million of local projects including the HR Talent Portal Project (serving transitioning soldiers, military spouses and veterans) and the new City-County supported Black Voices History Project.

Since the coronavirus pandemic, CDF has focused on monitoring the efforts of local businesses, especially those in the Fayetteville QCT, to move beyond the economic downturn caused by the pandemic. The Program is the result of CDF’s effort to identify sources of funding it could employ to foster this ongoing recovery.

Program Schedule

The Program will start on the date listed in Section 1 (Time Period of Performance) of the Funding Agreement between CDF and the City of Fayetteville. The Program will issue all funds provided to the Program (including Program income, if any) by December 31, 2026. The Program will continue in operation for a period of five (5) years from the date of the last Can Do Performance Financing Program Incentive Agreement (“Incentive Agreement”) entered into between CDF and a qualifying small business or December 31, 2031, whichever is earlier (the “Compliance Period”). CDF will continue in operation for this five (5) year period (the “Growth Assessment Period”) to monitor the grant recipients’ compliance with the goals of the Program.

Budget

The Program will be launched with at least \$3.75 million in total assets. The General Assembly has appropriated \$2.5 million for the Program, and the City of Fayetteville has approved the required \$2.5 million dollar match. CDF is actively pursuing additional public and institutional investment to increase the capacity and longevity of the Program.

CDF shall issue all funds granted by the City of Fayetteville for this Program to qualifying grant applicants. CDF shall issue any program income generated by the Program toward qualifying purposes of the Program.

Eligible Companies

Small business applicants to the Program (hereinafter, a “Company” or “Companies”) must meet several criteria. To qualify for participation in the Program, a Company must:

- (1) be established within the state of North Carolina, in good standing, and have been operating since 2021 or earlier;
- (2) have fifteen (15) or fewer employees at the time of application;
- (3) have a facility that is the intended beneficiary of Program investment and support located within the QCT identified on Attachment A as adjusted by [HUD QCT Map](#);
- (4) either (a) commit to hiring residents of the City of which at least sixty (60) percent are of low to moderate income households (as defined by HUD), or (b) be majority owned by residents of the QCT;
- (5) commit to creating and maintaining at least five (5) full-time equivalent employees within an agreed upon timeline (such positions to be assessed based on total jobs added and retained from the start of the Program, not based on retaining any one employee);
- (6) hire new employees at a wage 10% above the median wage for the local industry position classification or the equivalent;
- (7) create 50% of the qualifying jobs within the first 18 months;
- (8) commit to investing and maintaining an agreed-upon amount of capital in real estate developments and/or equipment for a period of at least five (5) years; and
- (9) enter an Incentive Agreement with CDF based on the foregoing criteria.

The Program will prioritize supporting growing Companies that provide goods or services in demand by institutional partners (City, County, PWC, CFVH, etc.). Priority shall be to provide performance financing to Companies for the acquisition of capital equipment, inventory, and real estate. (*See Attachment B for a list of Program funding priorities*). Applicants may apply for up to \$25,000 per job created, not to exceed \$750,000.

Application Process

To apply for participation in the Program, a Company shall do the following:

- (1) The Company must provide a business plan and three (3) years of certified financial statements prepared by a CPA, or such similar documentation as may be required to

adequately review the capacity of the Company. If the Company does not currently have a business plan, but otherwise provides evidence of possible participation in the Program, Program staff will provide assistance to the Company to create one.

(2) The Company shall provide a project summary detailing how the Company will use Program funds and demonstrating how the Company's project will advance the Program's goals of mitigating harms caused by the pandemic and diversifying and expanding the local supplier network.

(3) Applications will be reviewed by an Investment Committee made up of appointees from the City, FCEDC, and CDF, with input from non-voting local business support professionals.

(4) Since each Company's project will be unique, the Investment Committee will review applications on a case-by-case basis. The Investment Committee may require an applicant to submit additional information to ensure the viability of its project and its compliance with the goals of the Program. The Investment Committee will determine whether the applicant's project should receive grant or forgivable loan financing depending on the variable need for CDF to secure its interest in the project. The Investment Committee will score each application independently.

(5) Once approved by the Investment Committee, the completed application and project summary will be forwarded to City Council for a Public Hearing and awarding of funds.

Scoring Process

CDF will score applications based on the criteria outlined below. It will review applications in phases with a goal of issuing decisions every three months on a schedule CDF will publish as part of its advertising process. CDF will adjust the schedule as needed to effectively administer the Program.

During the first phase, applicants will require a score of 70 or above to receive funding. In phase 2, applicants will receive funding if their score is 60 or above. Additional phases will adjust the minimum score based on the number of applicants and amount of available funds.

CDF may adjust minimum scores based on the number of eligible applicants. CDF reserves the right to issue awards of less than \$25,000 per job or less than the total of jobs requested based on the application and the amount of funding available. Applicants that are denied can request being considered for future phases which may have lower thresholds for awards.

Scoring Criteria

<u>Criteria</u>	<u>Scores</u>
Viability of Proposal	Moderate 10 Good 20 Excellent 30
Supports Contracts with Institutional Gov Partners	Moderate 10 Good 20 Excellent 30
Jobs Created Per Dollar	20 Points max inverse Percentage from 0 at \$25,000 to 20 points at \$5000
<u>Max Total Base Score 80 Points</u>	
<u>Bonus Points:</u> Additional points will be awarded as follows:	
Minority Owned Business	15 Points
Business Type is one of the following: aerospace, technology, defense and cybersecurity	10 points
Veteran Owned	5 Points
Women Owned	5 Points

Additional Program Terms and Incentive Agreement

CDF will provide financing to assist Companies continue to recover and stabilize through guided expansion. CDF anticipates that grants or forgivable loans will range from between \$100,000 and \$750,000 depending on the Company and the project. Each successful applicant will receive only one performance grant or forgivable loan.

Each Company receiving a grant or forgivable loan will be required to enter into an Incentive Agreement with CDF, which will require the Company to reimburse CDF on a pro rata basis if the Company fails to fulfill its obligations under the Program and the Incentive Agreement. CDF may issue Program financing as a grant or as a forgivable loan depending on the details of the approved project. In every case, the funding will be subject to a “clawback” provision in the Incentive Agreement permitting CDF to recover any funds improperly used by the Program participant. As appropriate, CDF will obtain a security interest in property acquired using Program funds.

The Incentive Agreement, which will be substantially in the form of the sample agreement attached as Attachment C, will require Companies to employ the grant in compliance with the Program and to otherwise comply with all State, County, and City statutes and ordinances (collectively, “Laws”) throughout the term of their Incentive Agreement. The draft agreement attached as Attachment C is an example. The Incentive Agreement will be adjusted to fit the needs of each individual project and whether financing will be provided as a grant or a forgivable loan. In all cases, the Incentive Agreement will detail the specific Program requirements and the reporting, compliance, and security obligations of the Company.

Companies will be required to participate in scheduled financial reviews and business counseling sessions during the five (5) year term of the Incentive Agreement. The Company shall allow for review of their NCUI 101 forms, as may be required to document employment performance.

The Program depends on the availability of funds and may be discontinued by CDF at any time at the discretion of CDF.

Structure of CDF’s Engagement with Program Participants

Upon CDF receiving a letter of interest or initial application from an Eligible Company, CDF’s Loan Committee will work with the Company to craft a final application, depending on the Company’s specific needs and growth strategy. If the Company’s final application is ultimately approved by CDF’s Investment Committee, then CDF’s funding strategy in relation to the Company’s approved project will be brought before City Council for approval.

Once City Council approves funding of a project, CDF will require the Company to enter an Incentive Agreement which will establish the performance requirements attached to the funding. The Incentive Agreement will give CDF authority to monitor the Company’s compliance with the Program and to demand repayment in the event of material noncompliance. CDF reserves the right to demand repayment of all, or part, of any funding issued under the Program. Upon a showing of hardship, CDF will consider a payment plan on a case-by-case basis to be memorialized in a separate agreement.

Fund Administration

CDF will select Program participants and administer Program funds through an Investment Committee comprised of no less than six members. With input from FCEDC, the initial Investment Committee shall consist of four members appointed by the City, one appointed by FCEDC, and one appointed by CDF. The CEO of FCEDC shall serve as an ex-officio, non-voting member. Should additional funders invest in the Program, members may be added by a vote of the Investment Committee. The maximum number of members shall be nine,

An affirmative vote by a majority of the Investment Committee shall be required prior to the distribution of Program funds.

CDF shall secure its interests in property or other assets acquired using Program funds through reasonable means, which may include promissory notes, deeds of trust, legally binding

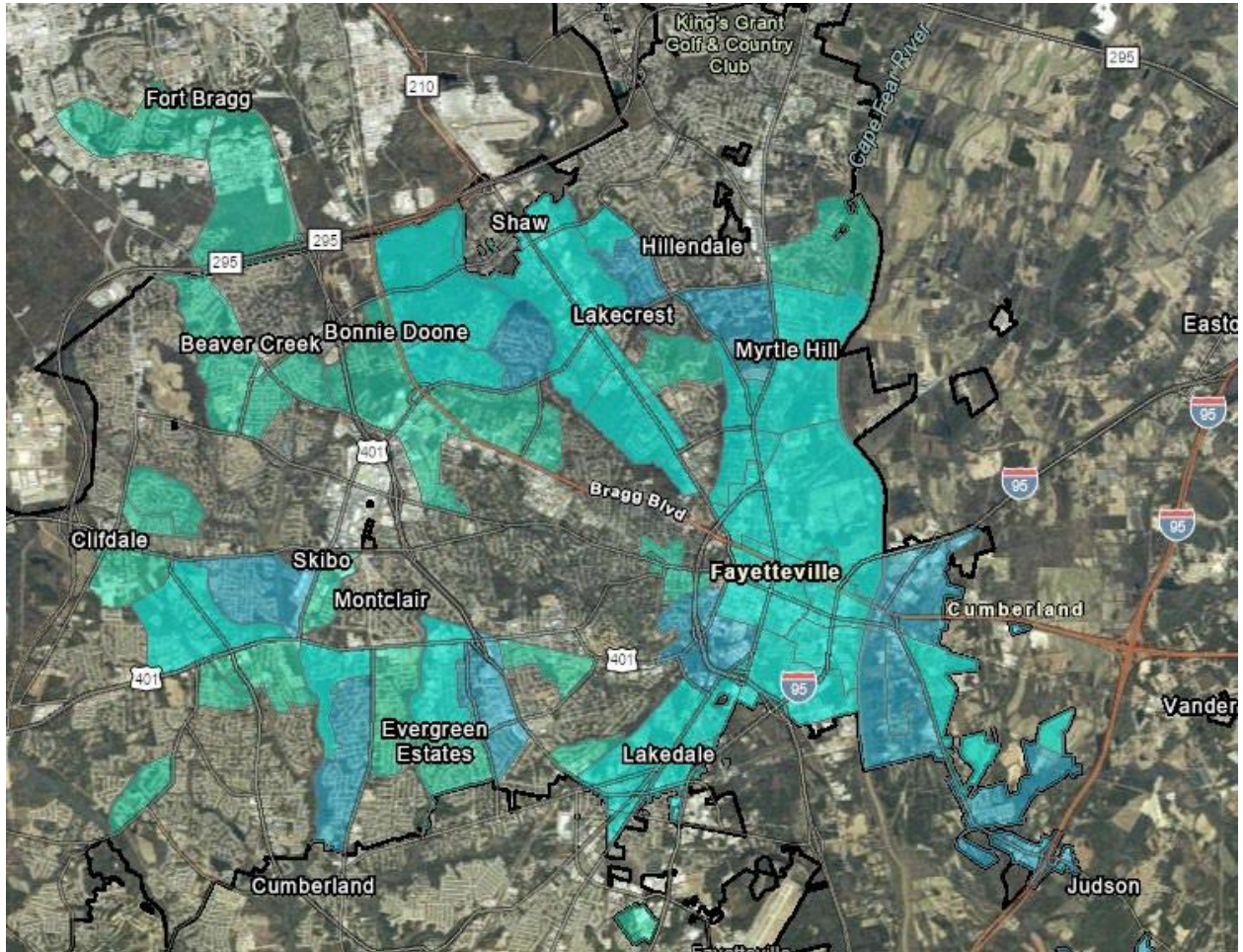
contracts or other forms of collateral. Should the Company fail to meet conditions set in the Agreement, the CDF shall use all reasonable efforts to facilitate repayment.

Accountability

CDF shall ensure that its administration of Program funds complies with the terms of the Compliance Agreement by complying with the following requirements:

- The CDF will separately account for all income, expenses and disbursements related to the Program, contracting with a qualified CPA firm for bookkeeping, ensuring compliance and appropriate financial controls.
- All funding partners shall receive a “project summary” for each investment approved by the Investment Committee.
- CDF shall make quarterly reports regarding its use of Program funds to the City of Fayetteville and provide such reports to all funding partners. CDF shall complete an annual audit for each year during which the Program is active.
- The above requirements shall be in addition to those set by the State of North Carolina, as a condition of its funding.
- An affirmative vote of the City Council, after a properly noticed public hearing, shall be required prior to the distribution of funds provided by the City.

ATTACHMENT A
FAYETTEVILLE AREA QCT



ATTACHMENT B
FUNDING PRIORITIES

The following are examples of capital investments preferred by the CDF:

- Purchase of machinery and equipment
- Acquisition or lease of commercial vehicles
- Purchase of computer equipment and/or systems
- Purchase of furniture, fixtures, or equipment
- Real estate (except for real estate acquired and held primarily for sale, lease, or investment)
- Improvements and/or expansion of facilities to accommodate additional employees or production capacity

ATTACHMENT C
SAMPLE INCENTIVE AGREEMENT

CAN DO PERFORMANCE FINANCING PROGRAM INCENTIVE AGREEMENT

THIS CAN DO PERFORMANCE FINANCING PROGRAM INCENTIVE AGREEMENT (the “Agreement”) is dated as of _____, 20__ (the “Effective Date”), and is between [INSERT APPLICANT NAME], a _____ [corporation/limited liability company] (the “Company”), and the COMMUNITY DEVELOPMENT FOUNDATION, a North Carolina 501(c)(3) non-profit corporation (the “Foundation”), with each being referred to separately a “Party” and both being referred to as the “Parties.”

RECITALS:

WHEREAS, the City of Fayetteville (the “City”) and the Foundation seek to assist small businesses in the Fayetteville-area Qualified Census Tract (“QCT”) to overcome harms caused by the global pandemic;

WHEREAS, many small businesses in the QCT (“Qualified Companies”), especially women and minority-owned small businesses, are economically distressed;

WHEREAS, the City and the Foundation seek to stabilize and strengthen Qualified Companies by providing them no-interest grant or forgivable loan financing so they may expand their operations, increase the value of taxable property within the QCT, and provide employment opportunities for low- and moderate-income residents;

WHEREAS, the Foundation created the Can Do Performance Financing Program (“Can Do Program”) to administer funds from the City and the State of North Carolina for the benefit of Qualified Companies;

WHEREAS, the Can Do Program serves the vital public purposes of helping Qualified Companies overcome harms caused or exacerbated by the pandemic, increasing taxable property, and growing employment opportunities;

WHEREAS, the Can Do Program is authorized by the American Rescue Plan Act and accompanying regulations issued by the United States Department of the Treasury, Coronavirus State and Local Fiscal Recovery Funds, Final Rule, 31 CFR Part 35;

WHEREAS, the Can Do Program is authorized by N.C.G.S. § 158-7.1(a) as a means to increase taxable property, employment, and business prospects within the Foundation and QCT;

WHEREAS, the Company has put forward a project that would benefit from financing through the Can Do Program and satisfies the goals of the Can Do Program (the “Project”);

WHEREAS, the Can Do Program requires the Company to agree to certain requirements to ensure compliance with the goals of the Program;

WHEREAS, the Foundation and the Company desire to enter into this Agreement to support the Project; and

WHEREAS, the Parties seek to enter this Agreement after appropriate approval from the City of Fayetteville City Council following a public hearing.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained in this Agreement, the sufficiency of which is acknowledged by the Parties, the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS; RULES OF CONSTRUCTION

1.1 Definitions. For all purposes of this Agreement, unless the context requires otherwise, the following terms shall have the following meanings:

“Abandonment of Operations” means that for a period in excess of two (2) weeks the Company’s level of new Full Time Equivalent Employees at the Requisite Wage, or Direct Investment goes below twenty percent (20%) of the guaranteed minimum levels of Performance Commitments for either new Full Time Equivalent Employees at the Requisite Wage or Direct Investment.

“Business Day” means any day that is not a Saturday or a Sunday, or a day on which banks in the State are required by law to be closed.

“Certification of Performance Commitments” means the document the Company is required to submit to the Foundation prior to January 15 of each year in order to retain the Incentive, which certifies that the Company has fulfilled its Performance Commitments contained in this Agreement. This Certification of new and retained Performance Commitments shall include documentation of the number of the Company’s new and retained Full Time Equivalent Employees shown on the previous year’s fourth quarter filing with the N.C. Employment Security Commission of the NCUI 101 form.

“Change in Use” means any material change in the operations of the Facility that fails or reduces the Company’s performance of the Performance Requirements, including the reduction in the number of Full Time Equivalent Employees at the Requisite Wage, or Direct Investments as set forth in Article III, but which is less than an Abandonment of Operations.

“Date of Execution” means the date on which this Agreement is first executed and delivered by the parties.

“Direct Investment” means the additional tax value of all land, building and equipment placed by the Company on the ad valorem tax rolls, regardless of the funding sources for said property, made after the Date of Execution.

“Facility” means the _____ facility, as more particularly described in Exhibit A, designated for improvement and/or expansion by the Company in order to satisfy its Performance Commitments.

“Final Verification” means the Foundation’s final review and determination of the Company’s fulfillment of the Performance Commitments at the end of the Growth Assessment period as provided in Article II of this Agreement.

“Full Time Equivalent Employees” means the number of employees arrived at by dividing the total annual payroll hours paid by 1820, which shall be computed on a calendar-year basis ending on December 31 of each year, and the certification of employment shall be reported within the Certification of Performance Commitments no later than February 15 of the year following the calendar year being reported, for the purposes of confirming the Company is maintaining its Performance Commitments as shown in Article II.

“Grant Documents” means this Agreement and such other documents the Foundation may require to secure its interest in property acquired through Can Do Program Funds.

“Growth Assessment Period” means a period of five (5) years after the Date of Execution, with an end date being through and including the fifth anniversary of the Date of Execution.

“Incentive” means the payment by the Foundation from all sources referred to in this Agreement to the Company, and such Incentive is intended to be treated as a grant, with full repayment forgiveness of the Incentive, if the Company maintains and fulfills its under this Agreement.

“Performance Commitments” means the levels of Full Time Equivalent Employees compensated at the Requisite Wage to be hired by the Company under Article II of this Agreement and/or the levels of Direct Investment to be made by the Company in relation to the Company’s operations in the Facility, the satisfaction of at least one Qualifying Criteria under Article II, and the business planning and training responsibilities provided in Article II.

“Qualifying Census Tract” means those certain tracts of land identified in the map titled “Qualifying Areas” attached to this Agreement as Exhibit B and incorporated into this Agreement by reference.

“Requisite Wage” means the wage provided in Article III of this Agreement which will be 10% above the median local wage for the industry position classification.

"State" means the State of North Carolina.

1.2 Rules of Construction. Unless the context otherwise indicates:

- (a) Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders as well;
- (b) All references to Articles, Sections or Exhibits are references to Articles, Sections and Exhibits of this Agreement;
- (c) All references to officers are references to Foundation officers or officers of the Company; and
- (d) The headings and Table of Contents herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meanings, construction or effect.

ARTICLE II
INCENTIVE PAYMENT

2.1 Incentive Payment. The Foundation shall pay Company an Incentive in an amount not to exceed _____ dollars (\$ _____) (the “Grant”). The Grant shall be disbursed in installments as detailed below.

2.2 Interest. Disbursements of the Grant shall bear interest at the rate of zero percent (0%) per annum.

2.3 Repayment and Forgiveness. During the Term, no monthly payments shall be due and payable. Subject to the Project’s compliance with this Agreement, the following terms of loan forgiveness shall apply:

- a. (Determined based on the individual project.)
- b. (Determined based on the individual project.)
- c. (Determined based on the individual project.)

2.4 Term. The term of the Grant shall begin on the Effective Date and end on the Maturity Date.

2.5 Use of Grant Proceeds. The proceeds of the Grant shall be used exclusively for eligible purposes under the Can Do Program including those identified in Section 3.2 below. Company shall identify uses of the Grant as line items in the Development Budget approved by the Foundation. With the Foundation’s prior written approval, the Company shall be entitled to make adjustments to line items within the Development Budget.

2.6 Disbursements Generally. The Foundation will disburse the Grant to the Company in at least six (6) disbursements. The Company shall ensure that any expenditure of the Grant proceeds

shall be in compliance with the Can Do Program. The Company may not request disbursement of Grant proceeds until the funds are needed for the payment of Can Do Program eligible costs, and the amount of each request is limited to the amount needed at the time of such request.

2.7 Disbursement Requests. Subject to the requirements of this Agreement, and at such time as the Company desires to obtain a disbursement of any portion of the Grant, the Company shall complete, execute, and deliver to the Foundation a disbursement request containing such information as the Foundation may require to properly document Company's compliance with the Can Do Program.

2.8 Limits on Amounts of Disbursements.

2.9 Amount and Timing of Disbursements. Following the approval of any Disbursement Request, the Foundation shall issue a portion of the Grant as follows:

- a. (Determined based on the individual project.)
- b. (Determined based on the individual project.)
- c. (Determined based on the individual project.)

2.10 Notice, Frequency, and Place of Disbursement. The Foundation shall disburse the Grant proceeds based on properly documented Disbursement Requests not later than thirty (30) calendar days after such Disbursement Requests have been approved by the Foundation.

2.11 Deposit of Grant Funds. The Company shall promptly deposit all Grant proceeds disbursed by the Foundation in a separate and exclusive deposit account with a financial institution acceptable to the Foundation, and the Foundation, at its option, may make any disbursement directly to such account (with the date of the deposit being the date of the advance for all purposes). All Grant proceeds shall be withdrawn and used solely for the purposes specified in the Disbursement Request, and Company will promptly furnish the Foundation with evidence thereof. The Foundation reserves the right to require that disbursements from any disbursement account for major contracts or subcontracts be made by checks with joint payees requiring endorsements by both the labor contractor and the materialmen.

2.12 Advances Do Not Constitute a Waiver. No advance of Grant proceeds shall constitute a waiver of any of the conditions of the Foundation's obligation to make further advances nor, in the event the Company is unable to satisfy any such condition, shall any such advance have the effect of precluding the Foundation from declaring an Event of Default under this Agreement.

2.13 No Warranty by the Foundation. The Foundation does not make any warranty, either express or implied, that the proceeds of the Grant shall be sufficient to pay all or any particular portion of the cost of the Project.

ARTICLE III
CAN DO PROGRAM AND PROJECT USE REQUIREMENTS

3.1 Can Do Program Compliance. In exchange for the Grant, the Company shall comply with all requirements of the Can Do Program and shall use the Grant exclusively for the Project for a period of five (5) years (the "Compliance Period"). The Company agrees the Grant requires the Company to provide and maintain the required Performance Commitment levels of Full Time Equivalent Employees at the Requisite Wage and Direct Investment in plant, property and equipment at the Facility.

3.2 Performance Requirements. The Company shall meet or exceed the following Performance Requirements:

a. The Company shall continuously maintain the facility subject to Can Do Program funding within the QCT, and comply with all Program and reporting requirements, throughout the Growth Assessment Period.

b. The Company shall create and maintain in the Facility for the five (5) year term of this Agreement, jobs for at least _____ (_____) new Full Time Equivalent Employees, with fifty percent (50%) of this number of jobs being created no later than eighteen (18) months from the Effective Date.

c. The Company shall maintain the average wage level of all new Full Time Equivalent Employees in the Facility hired pursuant to this Agreement at the Requisite Wage.

d. The Company shall provide benefits to all new Full Time Equivalent Employees in the Facility hired pursuant to this Agreement, including (but not limited to) health insurance coverage, with the Company paying at least (_____%) of the cost for such coverage.

3.3 Facility Direct Investment. The Company shall make Direct Investments in building renovations or construction and equipment equal to _____ (\$_____). The taxable property resulting from these Direct Investments shall remain located in the City subject to ad valorem tax assessments for the full five (5) year term of this Agreement. The Company may make Direct Investments over a period of time on a phased basis; however, the Company must make such phased Direct Investments within two (2) years of the Effective Date.

a. The Company shall bear sole responsibility for any improvements to the Facility funded under this Agreement. The Company shall cause all improvements to be carried out in accordance with all State and local laws and regulations.

b. The Company shall bear sole responsibility for all taxes, utility charges, and other costs associated with the Facility.

3.4 Business Planning, Training, and Seminars. The Company shall consistently engage in recurring business planning, training programs, and seminars, as shown in Exhibit C and incorporated herein by reference, throughout the Growth Assessment Period.

3.5 Company Certification. The Company shall certify its attainment of the Performance Requirements quarterly. The Company shall submit its Certification of Performance Requirements to the Foundation within sixty (60) days of the close of each financial quarter (the “Certification Deadline”), beginning on the first Certification Deadline following the quarter containing the Effective Date. The Foundation may, in its sole discretion, require other documentation to verify the attainment of these Performance Commitments.

At the end of the Growth Assessment Period, the Foundation shall conduct a Final Verification to ensure the Company fulfilled and maintained its Performance Obligations and shall issue notice of its determination to the Company, including in its determination the Foundation’s final decision on repayment forgiveness of the Incentive. The Company shall assist the Foundation in its completion of the Final Verification by providing information reasonably requested by the Foundation. Information provided by the Company will at least include of the same type information contained in the prior Certifications of Performance Commitments, covering the period of time from the last-submitted Certification of Performance Commitments through the end date of the Growth Assessment Period.

3.6 Ineligible Uses. The Company shall not use the Grant for any purpose other than those approved by the Can Do Program and in the approved Development Budget, including, but not limited to, contributions to a rainy day fund, financial reserves, or similar funds; payment of interest or principal on outstanding debt instruments; and the satisfaction of any obligation arising under a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding.

3.7 Repayment in Event of Non-Compliance. The Company shall repay any Grant funds to the Foundation at the time the Project becomes non-compliant with the Can Do Program or the terms of this Agreement.

3.8 Security Interest. The Company shall execute for the benefit of the Foundation any documents the Foundation deems necessary to secure its interest in real estate or improvements acquired using Can Do Program funds. The additional documents may include a promissory note, deed of trust, or other security instrument.

ARTICLE IV CONDITIONS PRECEDENT TO DISBURSEMENT

4.1 Conditions Precedent to Disbursement. The Foundation shall not be obligated to disburse any proceeds of the Grant unless and until all of the following conditions have been satisfied, provided that the Foundation and its counsel may waive such items in their discretion:

a. Organizational Documents. Certified copies of the Company’s organizational documents including without limitation a copy of the Certificate of Existence for the Company dated within thirty (30) days of closing.

b. Tax Identification Letter. A fully executed letter from the Company

disclosing its federal tax identification number.

c. Insurance. Insurance policies or evidence thereof as required by Article VII of this Agreement or by any of the Grant Documents.

d. Grant Documents. The Foundation shall have received a fully executed set of Grant Documents.

e. No Event of Default. No uncured Event of Default, as hereafter defined, shall exist, and no event shall have occurred which, with the giving of notice, the passage of time, or both, shall constitute an Event of Default.

f. Other Financing Documents. The Company shall provide to the Foundation, for its review and approval, which approval shall not be unreasonably withheld, delayed, or conditioned, copies of any and all loan documentation and equity financing documents related to other sources of financing as described in the Development Budget.

g. Project Documents (Unique to each project).

ARTICLE V
CONDITIONS PRECEDENT TO DISBURSEMENTS
FOLLOWING THE FIRST DISBURSEMENT

5.1 Conditions Precedent to Second and Subsequent Disbursements. The Foundation shall not be obligated to make any Grant disbursements after the first disbursement and prior to the final disbursement unless and until all the following conditions have been satisfied at the time of and with respect to each such disbursement:

a. No lien or other interest shall have been permitted to attach to the Property except (i) for taxes for the current year, if not then due and payable, (ii) mechanics' liens, to the extent that the Company has contested such lien and the lien has been discharged pursuant to North Carolina General Statute §44-48; and (iii) other matters accepted by the Foundation as Permitted Encumbrances. Upon request, the Company shall have the title policy insuring the Foundation's lien on the Property brought up to date upon a disbursement of issuance of an endorsement to the title policy. Any such endorsement shall indicate that since the effective date of said policy (or the effective date of the last such endorsement, if any) there has been no change in the status of title to the Property as set out in said policy unless otherwise permitted pursuant to the terms of the Grant Documents, and have the effect of increasing the coverage under the "pending disbursement" clause of the title policy by an amount equal to the advance then being made;

b. At the time of each disbursement (i) the Foundation is reasonably satisfied with the qualify and progress of Company's performance of the Performance Requirements; and (ii) in the reasonable judgment of the Foundation, the estimated remaining cost of construction of the Project does not exceed an amount which the Foundation reasonably believes can be funded from the remaining Grant proceeds plus any

and all other funds; and

c. All warranties, representations, and covenants referred to in Article IX are true and correct.

5.2 Conditions Precedent to Final Grant Disbursement. The Foundation shall not be obligated to make a final Grant disbursement until all conditions in Section 5.1, and all of the following conditions have been satisfied.

- a. (Determined based on the individual project.)
- b. (Determined based on the individual project.)
- c. (Determined based on the individual project.)

ARTICLE VI INSURANCE AND RESTORATION

6.1 Insurance. The Company shall, during the Compliance Period, maintain or cause to be maintained the insurance listed below:

a. Property Coverage. Upon completion of construction and at all other times, insurance against loss or damage by fire and other casualties and hazards by insurance written on an “all risks” basis with coverage limits no less than the replacement costs thereof. Coverage shall include protection from malicious mischief, loss of rents, and business interruption. Said policy shall name the Foundation as an additional insured and mortgagee. If written on a master policy that includes multiple locations, such coverage shall have a blanket limit for replacement of buildings and contents calculated to be equal to ninety percent (90%) of the total replacement costs for all locations and a blanket limit for loss of rents calculated to be equal to ninety percent (90%) of the total loss of rents/business interruption loss for all locations.

b. Workers Compensation. Workers compensation insurance sufficient to comply with the applicable laws of the State of North Carolina.

c. Commercial General Liability Insurance. Commercial General Liability Insurance or equivalent with per project limits of not less than \$1,000,000.00 per occurrence, and \$2,000,000.00 aggregate for bodily injury, personal injury, and property damage liability. Coverage extensions shall include the following: subcontractors, cross liability, broad form property damage, environmental liability, and blanket contractual liability. The Foundation is to be named as an additional insured for any liability arising directly or indirectly for the services contemplated by this Agreement.

6.2 Related Insurance Requirements.

- a. The insurance companies providing the coverage set out above must be

written by companies with a minimum A.M. Best rating of (A-) with a financial category of VII. The insurance companies must be licensed to do business in North Carolina and must be acceptable to the Foundation.

b. The Company shall furnish to the Foundation original Certificates of Insurance evidencing the required coverages to be in force, and Renewal Certificates of Insurance, or such similar evidence, if the coverage has an expiration or renewal date occurring during any period where funds remain due under the Note. The receipt of any Certificate does not constitute a determination by the Foundation that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the Certificate are in compliance with all requirements under this Agreement and other Grant Documents. The failure of the Foundation to obtain Certificates or other insurance evidence from the Company shall not be deemed to be a waiver by the Foundation.

c. Upon request, the Company must provide the Foundation with certificates of coverage relevant to the Company's obligations under this Agreement.

d. All insurance policies shall be in a form, provide coverage, and, to the extent not specified above, be in amounts reasonably satisfactory to the Foundation.

e. The Company shall purchase such insurance, pay all premiums, and shall deliver a certificate of insurance along with evidence of premium payment as long as any amounts owing pursuant to the Grant Documents remain unpaid.

f. At least thirty (30) days prior to the expiration of each such policy, the Company shall furnish the Foundation with evidence satisfactory to the Foundation that such policy has been renewed, replaced, or is no longer required hereunder.

g. The insurance shall provide that the insurance company will endeavor to provide thirty (30) days prior written notice to the Foundation in the event coverage is substantially changed, canceled, or non-renewed.

h. The Company expressly acknowledges and agrees that any coverage and limits furnished by the Company shall in no way limit the Company's liabilities and responsibilities specified within the Grant Documents or by law.

i. In the event the Company fails to provide, maintain, keep in force, and furnish to the Foundation certificates of insurance required by this Section, the Foundation may, in its sole discretion, procure such insurance or single-interest insurance in such amounts (but consistent with the terms hereof), at such premium, for such risks and by such means as the Foundation chooses, at the Company's expense, provided however, the Foundation shall have no responsibility to obtain any insurance. If the Foundation chooses to obtain any such insurance, the Foundation shall have no responsibility to assure that the insurance obtained shall be adequate or provide any protection to Company.

ARTICLE VII
RECORDS, AUDITS, INSPECTIONS, AND OPERATIONS

7.1 Records, Reports, and Audits. In order to permit the making of audits, examinations, excerpts, and transcriptions by the Foundation, any agency providing funds to the Foundation, the Comptroller of the United States, or any of their duly authorized representatives, the Company agrees to maintain, or caused to be maintained, all records and supporting material with respect to the Grant and the Project for a period of five (5) years following the Compliance Period or for any longer period of time as may be required by the Foundation.

7.2 Right of Inspection. The Foundation shall have the right, from time to time, during normal business hours, with reasonable notice to Company, to examine the records, books, and accounts of the Company, to make copies or extracts thereof as the Foundation may desire, and to enter upon, access, and inspect the Project.

7.3 Representations and Covenants Regarding Operation of the Project. The Company hereby acknowledges and agrees that the Foundation is entering into this transaction for the purpose of stabilizing the Company against harms caused by the pandemic, increasing the value of taxable property within the Fayetteville-area QCT, and providing increased employment opportunities for low- and moderate-income residents of the City. To this end the Company hereby represents and covenants with the Foundation as follows:

- a. (Determined based on the individual project.)
- b. (Determined based on the individual project.)
- c. The Company shall not assign any of its obligations under this Agreement without the prior written consent of the Foundation (such consent not to be unreasonably withheld, conditioned, or delayed).

ARTICLE VIII
INDEMNIFICATION

The Company hereby agrees to indemnify, protect, and save the Foundation, and any member, director, officer, agent, or employee thereof, harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs, and expenses (including reasonable attorneys' fees) arising out of or resulting directly or indirectly from the Facility or any transaction or occurrence related to this Agreement. The indemnification arising under this Section shall survive the expiration of this Agreement.

ARTICLE IX
BORROWER'S COVENANTS AND AGREEMENT

The Company covenants, represents, and warrants to the Foundation as follows:

9.1 Payment, Commencement of Work, and Additional Documents. On demand of the

Foundation, the Company shall do any act or execute, or cause to be executed by the appropriate parties, any additional documents reasonably required by the Foundation to secure the Grant or to comply with this Agreement.

9.2 Commencement of Direct Investment Project. The Company shall begin construction of the Project as soon as reasonably practicable, but in no event later than thirty (30) days after closing of the construction financing for the Project and shall continue conscientiously to complete the construction of the Project. Construction work constituting the Project shall be carried out and the Project shall be utilized in such manner as to conform with this Agreement, the Plans, and all regulations, ordinances, and requirements of all governmental authorities having jurisdiction over the Project, and all necessary permits, licenses, consents, and permissions have been obtained as of the date of execution of this Agreement or shall be obtained prior to the commencement of construction of the Project.

9.3 Notice of Nonpayment. The Company shall advise the Foundation immediately in writing if the Company receives any notice, written or oral, from any professional, laborer, contractor, or material furnisher to the effect that the professional, laborer, contractor, or material furnisher has not been timely paid for any professional services, labor, or materials furnished to, on, or in the Project.

9.4 Correction of Defects; Changes to Plans. The Company, at the Company's sole cost and expense, from funds other than the Grant proceeds, shall correct any defects in the Project or any material departure from the Plans not previously approved by the Foundation or otherwise permitted hereunder, whether such defects or departures are discovered before or after the disbursement of any Grant proceeds relating thereto. The Company shall not change, alter, or amend in any material respect either the Plans or construction of the Project without the prior written consent of the Foundation (which consent shall not be unreasonably withheld, conditioned, or delayed) and shall not permit any material deviations by any contractor(s) from the Plans.

9.5 Subcontractors. If applicable, the Company shall deliver to the Foundation, upon request, the names of persons with whom the Company or the General Contractor has contracted or intends to contract for the construction of the Project or for the furnishing of services, labor, or materials.

9.6 Inspection by the Foundation, Company to Furnish Plans, Receipts. The Company shall permit the Foundation and its authorized agents to enter upon the Project during normal working hours with reasonable notice to the Company and as often as the Foundation desires, for the purpose of inspecting the construction of the Project and all materials used or to be used in the construction thereof; provided however, the Foundation and its authorized agents, as applicable, shall be required to comply with any and all reasonable rules and regulations in place at the Property during such entry. When requested, the Company shall furnish to the Foundation detailed plans, drawings, and specifications that relate to the Project. The Company shall cooperate, and shall cause all contractors and architects to cooperate, with the Foundation and its authorized agents during such inspections (including making available to the Foundation working copies of the Plans and other related materials and documents). Failure of the Foundation or its authorized agents to undertake any authorized inspections, to discover any defects, or to reject materials or

workmanship during any such inspection shall not make it liable to the Company or to any other person or relieve any obligations of the Company hereunder, nor shall any prior failure constitute a waiver of the Foundation's right subsequently to inspect and to reject any such workmanship or materials. The Company acknowledges that neither the Foundation's Inspector nor any other agent of the Foundation shall have any obligation or responsibility whatsoever to the Company, General Contractor, or any of their agents or employees. Upon request by the Foundation (if there is no Event of Default, such request shall in no event be more than one (1) time during any thirty (30) day period), Company shall furnish to the Foundation proof that all bills for labor and materials have been paid, except those which shall be paid from the current request for advance, any applicable retainage related thereto, and any invoices which are being disputed by Company.

9.7 Payment of the Foundation's Expenses.

9.8 Contract with General Contractor and Additional Contractors.

9.9 Application of Grant Proceeds. The Company shall use the proceeds of the Grant solely for the purposes of the Performance Requirements and the Direct Investment eligible under the Can Do Program.

9.10 Books and Records. The Company shall maintain accounting records as set forth in Section 7.1. The Company acknowledges that the purpose of this provision is to facilitate the determination of costs incurred with reference to the Project and the obligations of the Company in respect thereof. The Company agrees that the Foundation shall, upon at least three (3) days prior notice to Company from the Foundation, at any reasonable time during Company's normal business hours, have access to and the right to examine all accounting records of the Company (at the location where Company maintains such records), which relate directly or indirectly to the Project.

ARTICLE X EVENTS OF DEFAULT

10.1 Events of Default. An "Event of Default" under the terms of this Agreement shall be the occurrence of any of the events listed below and the continuance of that event for the period(s) of time noted in Section 10.2.

a. Failure to Meet Program Requirements. The Company's failure to fulfill any obligation undertaken in this Agreement.

b. Reporting Obligations. The Company fails to satisfy reporting obligations under the Certification of Performance Commitments., such that it has an unapproved Change in Use at the Facility during the term of this Agreement,

c. Change in Use of Facility. The Company engages in a Change in Use of the Facility without the prior approval of the Foundation.

d. Abandonment of Operations. The Company abandons operations as

defined above.

e. Default Under Grant Documents. The occurrence of any material default under any of the Grant Documents.

f. Breach of Covenant. The Company's material breach or failure to perform, observe, or meet any covenant, agreement, or condition made in this Agreement or any of the other Grant Documents.

g. False Representation or Warranty. The Company's representations and warranties, or any of them individually, related to or arising under the Grant Documents, the Project, or the Property are or become materially false or misleading at any time.

h. Receivership or Levy. The Company, the Project, or the Property is made subject to a levy imposed under any process, a receivership, or a custodianship.

i. Voluntary Bankruptcy. The Company's filing of a voluntary petition seeking the protection of the bankruptcy court under any chapter or section of the Federal Bankruptcy Code or the Company's filing of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal, state, or other statute, law, or regulation relating to bankruptcy, insolvency, or other relief for debtors.

j. Involuntary Bankruptcy. The Company has an involuntary petition filed against it under any chapter or section of the Federal Bankruptcy Code or has a petition filed or proceeding brought against it under any other present or future federal, state, or other statute, law, or regulation relating to bankruptcy, insolvency, or other relief for debtors and such petition or proceeding is not dismissed within ninety (90) days of its filing or commencement.

k. Assignment for the Benefit of Creditors. The Company makes a general assignment for the benefit of creditors.

l. Money Judgments Against the Company. If any final judgment for the payment of money is rendered against the Company; or if any order, judgment, decree, or consent halts, purports to halt, or otherwise affects materially the operation of the Project; and such judgment for payment of money, order, judgment, decree, or consent is not discharged, bonded, stayed, or vacated within ninety (90) days of the date of entry.

m. Injunction. Any court of competent jurisdiction (including without limitation the United States Bankruptcy Courts) enjoins or prohibits the Company, the Foundation, or either of them from performing this Agreement or any of the other Grant Documents, and such proceedings are not discontinued or such decree is not vacated within ninety (90) days after the granting thereof.

n. Uninsured Destruction. Substantial destruction of the Project by an

uninsured casualty.

o. Attachment or Assertion of Liens. The attachment of any lien or claim of lien against the Property or the Project after the Effective Date, which is not specifically authorized pursuant to the Grant Documents or consented to in writing by the Foundation, which lien or claim of lien is not discharged, bonded, stayed, or vacated within forty-five (45) days from the date of attachment.

p. Transfer of Property or Interest in Company. The Company transfers any interest in the Property, Project, or any membership or other interest in itself, without the prior written consent of the Foundation.

q. Deviation from Plans; Defective Workmanship. Without the prior written approval of the Foundation, Company materially deviates from the Plans in the methods, materials, fixtures, or articles used in the construction of the Project, including by creating the reasonable appearance of materially defective workmanship or materials used in the construction of the Project.

r. Insurance Policies. The Company neglects, fails, or refuses to obtain and to keep in full force and effect any insurance policies required by the Foundation pursuant to the terms of the Grant Documents or any required governmental permit or approval with respect to the construction of the Project and fails to apply for the restoration of such insurance or such approval or permit within fifteen (15) days after written notice from the Foundation.

s. Invalidity or Questioning of Permit or Compliance with Other Legal Requirements. An applicable governmental authority revokes or invalidates any permit, approval, or consent relating to the Property, the Project, or the operation thereof and Company has not applied for the restoration of such permit or approval within thirty (30) days after written notice from the Foundation to the Company.

t. Dissolution, etc. of Company. The Company or any member of the Company is dissolved, wound up, liquidated, or otherwise terminated, or the Company is a party to any merger or consolidation without the written consent of the Foundation.

u. Failure to Complete Project. The Project has not reached completion within the time period established by this Agreement.

10.2 Extensions of Time to Cure Defaults. For any default with a thirty (30) day cure period that cannot be cured within the initial thirty (30) day period, the Foundation shall provide an additional sixty (60) days to cure the default so long as the Company demonstrates prior to the conclusion of the initial thirty (30) day period that the Company is diligently attempting to cure the default and that the default shall be cured during the subsequent sixty (60) day period. Under no circumstances shall the period to cure a default exceed ninety (90) days without the prior written consent of the Foundation. Any periods of grace or notice provided for the benefit of the Company in this Agreement and in the other Grant Documents shall run concurrently and not consecutively.

10.3 Limitations on Foundation's Notice Requirements. No notice requirement or right to cure shall exist in connection with the institution of voluntary bankruptcy, insolvency, or receivership actions, the giving of any material false or fraudulent representations to the Foundation, the failure to keep the Project or Property free and clear of consensual liens not approved in writing in advance by the Foundation, or the dissolution of the Company. For all other events of default, the Foundation shall give the Company written notice of the Event of Default. The Foundation shall have no timeframe within which it must issue such written notice.

10.4 Notification of Default. The Company shall notify the Foundation of any and all defaults under any of the Grant Documents of which the Company becomes aware, promptly upon obtaining knowledge or awareness of such default. Failure by the Company to notify the Foundation of such Default shall, in and of itself, constitute an Event of Default under this Agreement and the Grant Documents.

ARTICLE XI REMEDIES

Subject to the limitations set forth in Article X, the Foundation shall have the following rights and remedies:

11.1 No Additional Advances. The Foundation may terminate its obligation to advance any further principal of the Grant pursuant to this Agreement by notice to the Company.

11.2 Clawback. The Foundation shall have the right to demand immediate repayment of all Grant funds issued to the Company upon any Event of Default.

11.3 Event of Default Constitutes Default Under Other Grant Documents. The Company agrees that an Event of Default under this Agreement shall, at the option of the Foundation, constitute a default under each of the other Grant Documents, thereby entitling the Foundation (a) to exercise any or all of the various remedies provided in the other Grant Documents, including the acceleration of the indebtedness evidenced by the Note and the foreclosure of the Deed of Trust or sale of the Project under the powers contained therein; and (b) cumulatively to exercise all other rights, options, and privileges provided by law or in equity.

11.4 Possession and Performance by Foundation.

11.5 No Release or Waiver; Remedies Cumulative and Concurrent.

11.6 No Liability of the Foundation. Whether or not the Foundation elects to employ any or all remedies available to it upon an Event of Default, the Foundation shall not be liable for payment of any expense incurred in connection with the exercise of any remedy available to the Foundation or for the performance or non-performance of any other obligation of the Company.

ARTICLE XII
TERMINATION

12.1 Expiration. If not terminated sooner, this Agreement shall expire five (5) years from the Effective Date.

12.2 Termination by Foundation. The Foundation may terminate this Agreement upon thirty (30) days written notice to Company if the Company engages in an unauthorized Change in Use or Abandonment of Operations.

12.3 Termination by Company. The Company may terminate this Agreement upon thirty (30) days written notice to Foundation if (a) prior to receiving any Grant funds, Company abandons the Project, or (b) reimburses Foundation for any Grant funds received by Company.

ARTICLE XIII
NON-DISCRIMINATION

The Company acting through its affiliates, subsidiaries, agents, officials, employees, directors, or servants shall not discriminate in any manner on the basis of age, disability, sex, race, color, creed, sexual orientation, gender identity, religious affiliation, or national origin (including limited English proficiency) with reference to the subject matter of this Agreement, no matter how remote. The Company also certifies that it and its subsidiaries and affiliates have established a policy and shall adhere to it in the hiring and promoting of employees and officers without regard to age, race, color, creed, religious affiliation, sexual orientation, disability, or national origin.

ARTICLE XIV
GENERAL CONDITIONS

14.1 No Partnership or Joint Venture. Nothing in this Agreement nor the acts of the parties pursuant to it shall be construed to create a partnership or joint venture between the Company and the Foundation.

14.2 Assignment by the Company. All assignments shall require the Foundation's prior written consent. In the event of any assignment hereof by the Company, the Foundation shall be entitled to make advances to such assignee and such advances shall be evidenced by the Note and secured by the liens and security interests granted in the Deed of Trust.

14.3 Entire Agreement. This Agreement together with the Grant Documents constitutes the entire agreement between the Company and the Foundation with respect to the Grant.

14.4 Notices. All notices required to be given hereunder, or under any Grant Document, shall be in writing and shall be deemed served at the earlier of (i) receipt; (ii) the business day following deposit with a naturally recognized overnight courier service, postage prepaid for overnight delivery and addressed to the parties at their applicable addresses; or (iii) four (4) business days after deposit in registered, certified or first-class United States mail, postage pre-paid, return receipt requested and addressed to the parties at their applicable addresses. For

purposes of notice, the following addresses, or such other addresses as may from time to time be designated by written notice given as herein required shall be the parties' applicable addresses:

To the Company:

With a copy, which in and of itself shall not constitute notice, to:

To the Foundation:

Community Development Foundation
201 Hay Street, Suite 401A
Fayetteville, NC 28301
Attn: Robert Van Geons, COO

With a copy, which in and of itself shall not constitute notice, to:

The Banks Law Firm, P.A.
4309 Emperor Boulevard
Winchester Place, Suite 110
Durham, North Carolina 27703
Attn: Howard Rhodes
Email: hrhodes@banksfirm.com

Rejection or other refusal to accept shall also constitute receipt. No notice of change of address shall be effective until the date it is received.

14.5 Successors and Assigns Included in Parties. Whenever in this Agreement any party is named or referred to, the heirs, executors, legal representatives, successors, and assigns of such parties shall be included, and all covenants and agreements contained in this Agreement by or on behalf of the Company or by or on behalf of the Foundation shall bind and inure to the benefit of their respective heirs, executors, legal representatives, successors-in-title, and assigns, whether so expressed or not; provided, however, that nothing contained in this Section shall or shall be deemed to limit, or act in derogation of any restriction on transfer or assignment impressed upon the Company in any of the Grant Documents.

14.6 Invalid Provisions to Affect No Others. If, at the time performance of any of the provisions of this Agreement are due, fulfillment of any provisions or any transaction related to them shall involve exceeding the limits of validity prescribed by any applicable usury statute or any other applicable law with regard to obligations of like character and amount, then the obligations to be fulfilled shall be reduced to the limit of such validity; and if any clause or provisions contained in this Agreement operates or would prospectively operate to invalidate this Agreement in whole or in part, then such clause or provision only shall be held for naught, as though not a part of this Agreement, and the remainder of this Agreement shall remain operative and in full force and effect.

14.7 Number and Gender. Whenever the singular or plural number, or the masculine, feminine, or neuter gender is used in this Agreement, it shall equally include the other.

14.8 Amendments. Neither this Agreement nor any provision contained in it may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

14.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. Any legal action or proceeding arising out of this Agreement shall be instituted and prosecuted only in the courts of the County of Cumberland or in the federal district courts for the Eastern District of North Carolina. Each party to this Agreement consents to the personal jurisdiction of said courts and waives any right or defense relating to such jurisdiction. Each party further agrees that venue is properly laid in Cumberland County, North Carolina.

14.10 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature pages and this Agreement may be executed by the affixing of the signatures of each of the managers to one of such counterpart signature pages; all of such signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

14.11 Iran Divestment Act Requirements. As of the Effective Date, Company certifies that it is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 147-86.58. The Company further certifies that it will not utilize any subcontractor on the list.

14.12 E-Verify Requirements. The Company certifies that it is in compliance with all applicable provisions of Article 2, Chapter 64 of the North Carolina General Statutes, which generally provides that each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. The Company agrees that during the term of this Agreement it shall comply and shall require all subcontractors to comply with any and all applicable provisions of Article 2, Chapter 64 of the North Carolina General Statutes, and the Company agrees to incorporate in all further contracts or subcontracts for the Project a provision requiring compliance with Article 2, Chapter 64 of the North Carolina General Statutes

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by authority duly given as of the date first above written.

[SEAL]

[NAME OF APPLICANT]
CORPORATION

By _____

ATTEST:

Secretary

[SEAL]

COMMUNITY DEVELOPMENT
FOUNDATION

ATTEST:

By _____

Secretary

Exhibits

- A – Facility/Site description
- B – Map of Qualifying Census Areas
- C – Business Planning, Training, and Seminar Criteria

EXHIBIT A

FACILITY/SITE DESCRIPTION

(Legal description of facility/site to be inserted)

EXHIBIT B

MAP OF QUALIFYING CENSUS AREA

(Insert Map)

EXHIBIT C

BUSINESS PLANNING, TRAINING, AND SEMINAR CRITERIA

(Insert Copy of Criteria from Current Program Guidelines)

Federal and State Contract and Purchasing Requirements

The following terms and conditions apply to subrecipients of the City of Fayetteville and all subrecipients of subrecipients of the City of Fayetteville and all contractors or vendors hired by the subrecipient, according to the City's Award Terms and Conditions; by ARPA and its implementing regulations; and as established by the Treasury Department.

1. **Equal Opportunity.** Contractor shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by EO 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
2. **Minority and Women Business Enterprises (if applicable to this Contract)**
Contractor hereby agrees to comply with the following when applicable: The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise), *when applicable*. Accordingly, the Contractor hereby agrees to take affirmative steps to assure that women and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:
 - a) Including qualified women's business enterprises and small and minority businesses on solicitation lists;
 - b) Assuring that women's enterprises and small and minority businesses are solicited whenever they are potential sources;
 - c) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small and minority business, and women's business enterprises;
 - d) Where the requirement permits, establishing delivery schedules which will encourage participation by women's business enterprises and small and minority business;
 - e) Using the services and assistance of the Small Business Administration, and the U.S. Office of Minority Business Development Agency of the Department of Commerce; and
 - f) If any subcontracts are to be let, requiring the prime Contractor to take the affirmative steps in a through e above.

For the purposes of these requirements, a Minority Business Enterprise (MBE) is defined as an enterprise that is at least 51 percent owned and controlled in its daily operation by members of the following groups: Black, Hispanic, Asian or Pacific Islander, American Indian, or Alaskan Natives. Women Business Enterprise (WBE) is defined as an enterprise that is at least 51 percent owned and controlled in its daily operation by women.

3. **Suspension and Debarment. (applies to all purchases.)** (A) This contract is a covered transaction for purposes of 2 CFR pt. 180 and 2 CFR pt. 3000. As such, the Contractor is required to verify that none of Contractor's principals (defined at 2 CFR § 180.995) or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935). (B) The Contractor must comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. (C) This certification is a material representation of fact relied upon by the City of FAYETTEVILLE. If it is later determined that the contractor did not comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. (D) The Contractor agrees to comply with the requirements of 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.
4. **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended. (Applies to all purchases.)** Contractor certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of

Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Contractor shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Purchases over \$100,000 - Contractors must sign the certification on the last page of this addendum

5. Access to Records. (applies to all purchases.)

- A. The Contractor agrees to provide the City of FAYETTEVILLE, the U.S. Department of Treasury, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means or to copy excerpts and transcriptions as reasonably needed and agrees to cooperate with all such requests.
- B. The Contractor agrees to provide the Treasury Department or authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- C. No language in this contract is intended to prohibit audits or internal reviews by the Treasury Department or the Comptroller General of the United States.

6. Rights to Inventions Made Under a Contract or Agreement.

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any applicable implementing regulations.

7. Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 333) (applies only to purchases over \$100,000, when laborers or mechanics are used.)

Where applicable, all contracts in excess of \$100,000 that involve the employment of mechanics or laborers shall include a provision for compliance with 40 U.S.C. 3702 and 3704 of the Contract Work Hours and Safety Standards Act, as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 3702 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The requirements of 40 U.S.C. 3704 are applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

8. Clean Air Act & Federal Water Pollution Control Act (applies to purchases of more than \$150,000.)

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- B. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- C. The Contractor agrees to report each violation of the Clean Air Act and the Water Pollution Control Act to the City of FAYETTEVILLE
- D. and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- E. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

9. Prohibition on certain telecommunications and video surveillance services or equipment (Huawei and

ZTE)

Contractor is prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
 2. Extend or renew a contract to procure or obtain; or
 3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by **Huawei Technologies Company or ZTE Corporation** (or any subsidiary or affiliate of such entities).
- I. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - II. Telecommunications or video surveillance services provided by such entities or using such equipment.
 - III. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

10. Buy USA - Domestic Preference for certain procurements using federal funds.

Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section:

1. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

11. Procurement of Recovered Materials: (applies only if the work involves the use of materials)

- A. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
 - I. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - II. Meeting contract performance requirements; or
 - III. At a reasonable price.
- B. Information about this requirement, along with the list of EPA - designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- C. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

12. Publications.

Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."

13. Increasing Seat Belt Use in the United States.

Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is encouraged to adopt and enforce on-the-job seat belt policies and programs for your employees when operating company-owned, rented or personally owned vehicles.

14. Reducing Text Messaging While Driving.

Pursuant to Executive Order 13513, 74FR 51225 (Oct. 6, 2009), Contractor is encouraged to adopt and enforce policies that ban text messaging while driving, and establish workplace safety policies to decrease accidents caused by distracted drivers.

15. Iran Divestment Act.

Pursuant to the North Carolina General Assembly (S.L. 2015-118; SB455), The Iran Divestment Act is to implement the authority granted to states by federal law to impose state-level sanctions against companies that engage in certain investment activities in the energy sector of Iran.

Additional Federal Regulations Applicable to ARPA (is hereby incorporated by reference):

1. **Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200**, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
2. **Universal Identifier and System for Award Management (SAM)**, 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference
3. **Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170**, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
4. **OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)**, 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
5. **Recipient Integrity and Performance Matters**, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
6. **Governmentwide Requirements for Drug-Free Workplace**, 31 C.F.R. Part 20.
7. **New Restrictions on Lobbying**, 31 C.F.R. Part 21.
8. **Uniform Relocation Assistance and Real Property Acquisitions Act of 1970** (42 U.S.C. §§ 4601-4655) and implementing regulations.
9. **Generally applicable federal environmental laws and regulations.**

Statutes and regulations prohibiting discrimination applicable to ARPA awards include, without limitation, the following:

1. **Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.)** and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

2. **The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.)**, 4 which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
3. **Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794)**, which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
4. **The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.)**, and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and

Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

Federal Lobbying Certification

This form is required to be signed by all contractors of the subrecipient only for purchases of more than \$100,000 -
31 CFR Part 21- New Restrictions on Lobbying - CERTIFICATION
REGARDING LOBBYING

The undersigned certifies, to the best of their knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit [Standard Form-LLL](#), "Disclosure Form to Report Lobbying," in accordance with its instructions .
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all contractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Ch. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Date: _____

Signature of Contractor's authorized official

AGREEMENT FOR CAN DO ECONOMIC INCENTIVE PROGRAM

THIS AGREEMENT is entered into on the last date shown by the signatures of the parties, to be effective _____, by and between the CITY OF FAYETTEVILLE, a municipal corporation located in Cumberland County, North Carolina (hereinafter referred to as “City”), and COMMUNITY DEVELOPMENT FOUNDATION, a corporation organized under the North Carolina Nonprofit Corporation Act (hereinafter referred to as “CDF”).

WHEREAS, City Council, at a Special Meeting held on December 28, 2022, approved funding an economic incentive program administered by CDF in the amount of two million five hundred thousand dollars (\$2,500,000); and

WHEREAS, CDF’s Can Do Performance Financing Program is designed to accomplish the City’s mission of strengthening the recovery of small businesses in the Fayetteville-area Qualified Census Tract (“QCT”), growing the City’s tax base, and increasing employment opportunities for low- and moderate-income residents;

WHEREAS, CDF’s Board of Directors has adopted and presented to City the attached description of the Program which describes the intended use of City funds in accordance with the American Rescue Plan Act and N.C.G.S. § 158-7.1(a); and

WHEREAS, City has agreed to fund CDF for this public purpose, and in exchange for this funding, CDF has agreed to administer the Program for the benefit of qualifying small businesses in the Fayetteville-area QCT.

To facilitate this funding and pursue the goals of the Program, the parties agree as follows:

1. **TERM OF CONTRACT:** This agreement shall begin _____, and end December 31, 2031, unless sooner terminated. CDF shall issue to Program participants all funds provided by the City by December 31, 2026. In the event CDF does not issue all

funds by December 31, 2026, CDF shall return any unused funds to the City. CDF shall continue to administer the Program, and ensure participant compliance with its rules, until the conclusion of the five-year compliance period which applies to all Program participants or December 31, 2031, whichever is later. The City Council may terminate this agreement at any time prior to its expiration date upon 60 days' prior written notice to CDF.

2. SERVICES TO BE PERFORMED: CDF, in and for the consideration recited in Paragraph 3 below, shall perform those services stated in **Exhibit 1– Program Description and Scope of Services** in accordance with the budget expenditures stated in **Exhibit 2 - Project Budget**. Each exhibit is attached hereto and incorporated herein by reference. CDF shall notify the City Manager in writing immediately of any change in the type or level of services to be performed, and if City agrees to the change, an amendment to this Agreement must be signed by each party prior to any changes or modifications taking effect. If the City does not agree to the change, the City may terminate this Agreement in accordance with Section 1 above.

3. PAYMENT:

A. City will fund CDF in an amount not to exceed Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000) for CDF's use in providing grants and forgivable loans to small businesses participating in the Program. The amount of City funding is conditioned on CDF securing all other funding provided by the State of North Carolina identified in the Project Budget set out in **Exhibit 2**. The City shall issue payment of these funds to CDF by _____, 2024. The City shall issue payment to CDF in accordance with CDF's written instructions. CDF shall

provide these written instructions to the City's Finance Office prior to any funds being transferred.

B. All monies received by CDF from the City under this Agreement that CDF does not spend by December 31, 2026 shall be returned to the City's Finance Office within 60 days.

C. CDF shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five (5) years after the expiration of this Agreement. Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

4. INDEPENDENT CONTRACTOR: CDF is a nonprofit corporation registered with the North Carolina Secretary of State and is an independent contractor. CDF is not an agent, officer, or employee of City and shall have no authority to act as an agent of City in any capacity.

5. NON-APPROPRIATION: Notwithstanding any other provisions of this Agreement, the parties agree that the City's payments due under this Agreement are from City appropriations. In the event the City does not have sufficient appropriations to issue full payment under the terms of this Agreement, then this Agreement shall terminate immediately without further obligation of City.

6. **ASSIGNMENT:** CDF shall not assign all or any part of its rights to receive funding under this Agreement, nor delegate any performance, nor subcontract any performance without first obtaining City's written approval thereof.
7. **AGENCY AND AUTHORITY:** City designates the City Manager as its exclusive agent with respect to this Agreement. The City Manager is authorized to negotiate directly with CDF on City's behalf on all matters pertaining to this Agreement and CDF shall deal exclusively with the City Manager or his designee with respect to the terms and conditions of this Agreement. Regardless of any negotiations between the City Manager and CDF, any modification of the terms of this Agreement, including the services to be provided, shall only be effective upon the parties executing a written amendment to this Agreement and obtaining approval from City's City Council.
8. **NOTICES:** Any notices to be given by either party to the other under the terms of this Agreement shall be in writing and shall be deemed to have been sufficiently given if delivered by hand with written acknowledgment of receipt; by electronic mail with the receiving party acknowledging receipt of the sending party's email by reply email; or by certified mail, return receipt requested. Any notice shall be personally delivered, emailed, or mailed to the office, email address, or mailing address of the person or office shown for each party below or to such other person and address as either party hereafter from time to time designates in writing to the other for the receipt of notice:

AGENCY:

Robert Van Geons
201 Hay Street, Ste 401A
Fayetteville, NC 28301
(910) 500-6464
robert@fcedc.com

CITY:

Douglas J. Hewett
City Manager
City of Fayetteville
433 Hay Street
Fayetteville, NC 28301
DouglasHewett@FayettevilleNC.gov

Such notice, if mailed, shall be deemed to have been received by the other party on the date contained in the receipt or acknowledgement of receipt.

9. CHANGES IN AGENCY'S STATUS: In the event of any change in CDF's organizational structure or nonprofit status, CDF shall immediately notify the City Manager.

10. CERTIFICATION:

- A. The City certifies that the funds stated in Paragraph 3 above are available for CDF's use consistent with the terms of this Agreement.
- B. CDF, by its officer's signature below, certifies that it has complied, or will comply, with all requirements of this Agreement required to be complied with before applying for funds, and further agrees that City is not obligated to pay any funds until such requirements have been met.

11. OTHER TERMS AND CONDITIONS:

- A. CDF shall provide City with a report prepared by independent auditors in accordance with City's agreed upon procedures, and management's response to the auditor's recommendations, if applicable, for each fiscal quarter during the term of this Agreement. The report shall specify whether City's funds were used exclusively for those purposes stated in **Exhibit 1**. The report shall specify any exceptions and the amounts thereof. CDF acknowledges that City's agreed-upon procedures may not be determined upon the commencement of this Agreement. The audit report shall be delivered to the City Manager no later than ninety (90) days after the close of each financial quarter.

- B. Upon execution of this Agreement, CDF shall provide City the following documents:
- (i) A copy of its latest financial statement, to include a balance sheet as of the end of its most recent fiscal year and a statement of operations for that year;
 - (ii) A copy of CDF's most recently filed IRS Form 990, Form 990-EZ, or its Form 990-N submittal confirmation; and
 - (iii) A copy of the declarations pages or certificates of insurance for general liability and worker's compensation insurance policies maintained by CDF.
- C. If City deems it necessary or appropriate, CDF agrees that City may conduct an internal audit of CDF's books or records to assess CDF's then-current financial condition.
- D. Upon the termination of this agreement, CDF shall return all unused funds, if any, to City.

- 12. STATUTORY FUNDING AUTHORIZATION:** Funding in support of CDF's services described in **Exhibit 1** is authorized by N.C.G.S. § 158-7.1(a).
- 13. E-VERIFY:** As a condition of payment for services rendered under this Agreement, CDF shall comply with the E-Verify compliance requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Furthermore, if CDF performs any services described in **GExhibit 1** through a subcontractor, CDF shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes as well. CDF shall verify, by affidavit, compliance of this section upon request by City.
- 14. IRAN DIVESTMENT ACT CERTIFICATION:** As of the effective date of the Final Divestment list created by the State Treasurer pursuant to N.C.G.S § 147-86.58, CDF

certifies that it is not on that list. CDF's officer signing this Agreement further certifies that he or she is authorized by CDF to make the foregoing statement.

15. MORALITY CLAUSE: If, in the sole opinion of the City, at any time CDF 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 or are scandalous or inconsistent with community standards or good citizenship or may adversely affect the City's finances, public standing, image, or reputation or are embarrassing or offensive to the City or may reflect unfavorably on the City or are derogatory or offensive to one or more employee(s) or customer(s) of the City, the City may immediately upon written notice to CDF terminate this Agreement, in addition to any other rights and remedies that the City may have hereunder or at law or in equity.

16. ATTACHMENTS: CDF shall provide the following documents which are attached to this Agreement and incorporated herein by reference:

- A. **Exhibit 1 – Program Description**, describing the services or purposes for which City funding will be used.
- B. **Exhibit 2 - Project Budget**, describing the specific expenditures of City funds.
- C. **Exhibit 3 – Can Do Program Incentive Agreement**

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date indicated with each signature by their respective duly authorized representatives.

ATTEST:

CITY OF FAYETTEVILLE

PAMELA J. MEGILL, City Clerk

By: _____
DOUGLAS J. HEWETT, ICMA-CM
City Manager

Dated Signed: _____

ATTEST:

**COMMUNITY DEVELOPMENT
FOUNDATION**

JOHN MCCAULEY, Chairman
Board of Directors

By: _____
ROBERT VAN GEONS, Agent

Dated Signed: _____

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

Approved for legal sufficiency upon execution by the parties.

JEFFREY YATES, Assistant City Manager/
Interim Chief Financial Officer

LACHELLE H. PULLIAM, City Attorney

**PUBLIC HEARING AND ACTION BY THE CITY COUNCIL OF
THE CITY OF FAYETTEVILLE, NORTH CAROLINA
DECEMBER 28, 2022 – SPECIAL MEETING**

On December 28, 2022, the City Council of Fayetteville held a Special Meeting to consider a request for Additional Funding for the Community Development Foundation's Economic Equity Fund.

After receiving a presentation regarding the request, Council Member Benavente moved to authorize the City Manager to execute a contract with the CDF to support the Economic Equity Venture Capital Fund in the amount of \$2.5 million, which includes \$1.25 million previously approved by Council, and direct staff to work with the City Attorney to ensure the contract is compliant with State law. This was seconded by Council Member Thompson.

Vote: Unanimous (8-0)

A copy of the draft minutes for this meeting is attached hereto. Official minutes of this meeting will be adopted at a future City Council Meeting. A video of the Special Meeting and the Council's actions can be found using the following link: https://youtu.be/bHjcw_AINxM?t=305

Attest:

I, Pamela Megill, certify that the foregoing accurately reflects the actions taken by the Fayetteville City Council with regard to this matter, Item 5.01 on the December 28, 2022, City Council Special Meeting Agenda.

Witness my hand this the 29th day of DEC, 2022.



Pamela Megill
Name
City Clerk
Title

5.01 Request for Additional Funding to match NC State allocation for the "Economic Equity Fund"

Mr. Robert Van Geons, FCEDC, CEO, presented this item and stated we greatly appreciate the City Council's approval of \$1.25 M to support the Economic Equity Fund, at your December 12th meeting.

The Economic Equity Fund is designed to overcome the hurdles of traditional lending models by providing non-interest-bearing capital. Targeting small minority-owned companies, the Fund's goal is to grow 10 firms, by 10 or more employees each, within 5 years.

As we shared during our presentation, the State of North Carolina appropriated \$2.5 million to the Community Development Foundation (CDF) to launch the Fund, contingent on it securing an equal amount of matching funds by December 31, 2022. At the time of our request to the Council, we believed we would be able to secure the remaining funds from another source. Ultimately, we were not successful in that effort.

Any funds not matched by December 31, 2022, will revert back to the State. We are asking Council to consider increasing your support for the Economic Equity fund from \$1.25 million to \$2.5 million, which will be matched by an equal amount of funding from the State (\$5 million in total).

Should you wish to take such action, we ask that you "Authorize the City Manager to execute a contract with the CDF to support the Economic Equity Venture Capital Fund in the amount of \$2.5 million, which includes \$1.25 million previously approved by Council, and direct staff to work with the City Attorney to ensure the contract is compliant with State law.

Discussion ensued.

MOTION: Council Member Benavente moved to authorize the City Manager to execute a contract with the CDF to support the Economic Equity Venture Capital Fund in the amount of \$2.5 million, which includes \$1.25 million previously approved by Council, and direct staff to work with the City Attorney to ensure the contract is compliant with State law.

SECOND: Council Member Thompson

VOTE: UNANIMOUS (8-0)

**PUBLIC HEARING AND ACTION BY THE CITY COUNCIL OF
THE CITY OF FAYETTEVILLE, NORTH CAROLINA
DECEMBER 12, 2022 - REGULAR MEETING**

On December 12, 2022, the City Council of Fayetteville held a Public Hearing for the following request:

In accordance with North Carolina General Statute §158-7.1(c), the purpose of the hearing is to receive public comments on the proposed allocation of funds for economic development. The Council shall consider a request to appropriate \$1,250,000 to the "Community Development Foundation" to support the creation of an "Economic Equity Fund". The intent of this program is to support job creation and expansion by locally owned companies operating in or employing residents of census tracts designated as low-moderate income. In order to receive funding, companies will be required to meet performance criteria including job creation and financial reporting. Failure to do so will require repayment.

After receiving a presentation regarding the request and holding the Public Hearing, Council Member Hondros moved to authorize the City Manager to execute a contract with the CDF to support the Economic Equity Venture Capital Fund in the amount of \$1.25 million, and direct staff to work with the City Attorney to ensure the contract is compliant with State law. This was seconded by Council Member Thompson

Vote: Unanimous (9-0)

A copy of the draft minutes for this meeting is attached hereto. Official minutes of this meeting will be adopted at a future City Council Meeting. Agenda packets, minutes, and video recordings of the City Council meetings can be accessed via the City of Fayetteville's website www.cityoffayetteville.com. Additionally, a video of the public hearing (1:06:00) and the Council's action (1:24:22) can be found using the following link: <https://cityoffayetteville.legistar.com/Calendar.aspx#>

Attest:

I, JENNIFER L. AYRE, certify that the forgoing accurately reflects the actions taken by the Fayetteville City Council with regard to this matter, item 9.01 on the December 12, 2022 City Council Regular Meeting Agenda.

Witness my hand this the 21ST day of DECEMBER 2022.



[Signature]
Name
DEPUTY CITY CLERK
Title

Draft minutes from the December 12th meeting, Item 9.01.

9.01 Public Hearing on the City of Fayetteville Support for Economic Equity Venture Capital Fund with American Rescue Plan Funds

Mr. Robert Van Geons, FCEDC CEO, presented this item and stated during the 2021 Session of the North Carolina General Assembly, the Community Development Foundation (CDF), a local 501c3 nonprofit, was awarded up to \$2.5 million in State funding to develop an Economic Equity Venture Capital Fund. The funding is contingent on the CDF raising matching funds. Mr. Robert Van Geons is the Executive Officer of the CDF as well as the Chief Executive Officer and President of the Fayetteville-Cumberland Economic Development Corporation. Council is requested to hold an Economic Development public hearing and authorize the City Manager to execute a contract with the CDF to support the Economic Equity Venture Capital Fund in the amount of \$1.25 million. City Economic Development and Legal staff will ensure program compliance by reviewing and approving all investments undertaken by the CDF.

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

Discussion ensued.

MOTION: Council Member Hondros moved to authorize the City Manager to execute a contract with the CDF to support the Economic Equity Venture Capital Fund in the amount of \$1.25 million, and direct staff to work with the City Attorney to ensure the contract is compliant with State law.

SECOND: Council Member Thompson

VOTE: UNANIMOUS (9-0)