

This MEMORANDUM OF AGREEMENT, made and entered into by and between the City of Fayetteville, North Carolina (hereinafter referred to as "City"), and the Cumberland County Board of Education (hereinafter referred to as "Board").

PREMISES

WHEREAS, the Board and the City mutually recognize the benefits to the citizens of Fayetteville, North Carolina, and particularly to the students of the public school system of Cumberland County, North Carolina, derived from the assignment of officers to provide Traffic Control Officers (TCOs) and their services to the public schools located within the City.

WHEREAS, pursuant to N.C. Gen. Stat. § 20-114.1, the Chief of Police (Chief) of the City is authorized to appoint Traffic Control Officers;

WHEREAS, the Board desires to have the City provide officers to serve as TCOs to and for designated schools located within the municipal boundaries of the City under the covenants, terms, and conditions set out in this Agreement;

WHEREAS, the City pursuant to the terms of this Agreement, is willing to provide TCOs to and for designated schools in the City;

WHEREAS, it is in the best interest of the citizens of Fayetteville as well as the Board, and the City, to establish the services as hereinafter described; and

NOW, THEREFORE, in consideration of the promises and covenants of the parties hereto herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Board and the City do hereby agree as follows:

1. Term.

1.1 Effective Dates and Renewal. The initial term of this Agreement shall be effective from July ____, 2024 through June 30, 2025. This Agreement may be renewed for subsequent, additional terms upon the mutual written agreement of the parties. In the event either party does not wish to renew this Agreement with the same scope and terms for FY 2025-2026, the party not wishing to renew shall provide written notice to the other party no later than April 15, 2025.

1.2 Non-Appropriation Contingency. Notwithstanding any other provision of this Agreement, all obligations under this Agreement shall terminate if sufficient funds for continuation are not appropriated. Notwithstanding any other provisions of this

Agreement, the parties agree that payments made by the City to comply hereunder are from appropriations and monies from the City Council and other governmental entities. In the event sufficient appropriations or monies are not made available to the City to make payments to comply with the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the City.

1.3 Termination; Amendment; Modification.

- 1.3.1** Notwithstanding the provisions of sections 1.1 and 1.2 above or any other provision of this Agreement, either party to this Agreement, either with or without cause, upon notice being served in writing to the other party of not less than 90 days prior to the effective date of such termination, may terminate this Agreement either with or without announcing the cause for such termination. This Agreement may be terminated immediately for breach, by written notice which documents the specific grounds for the breach, to the other parties. Payment for services shall continue up to the date of termination as specified in the notice of termination. In the event of such termination, then the obligations of each party under the terms of this Agreement shall cease and become unenforceable as of the effective date of the termination. Unless otherwise expressly provided, an amendment, modification, or agreed alteration of this Agreement shall not operate as nor shall it be interpreted as a termination of this Agreement.
- 1.3.2** In any event, this Agreement contemplates the TCO staffing described in Schedule 2, attached hereto and incorporated by reference, being subject to the availability of Board funding, City funding, state funding, and state grant funding, as well as the availability of qualified officers, and in the event that the Board shall suffer a shortfall, decrease, or denial of anticipated funding, or the City is unable to meet the staffing requirements of Schedule 2, whether during an initial start-up phase or thereafter, the Board and the City agree that the number of officers actually assigned shall reflect the available funding and/or staffing so as to maintain the highest possible level of service and coverage, subject to and within the then-existing funding and staffing constraints, and in such event, termination of this Agreement shall not be necessary. Upon reaching an agreement as to the level of officer coverage available in light of funding and/or staffing, an addendum to Schedule 2 shall be executed, adopted and incorporated into this Agreement and such modification shall not operate as a termination of this Agreement.
- 1.3.3** Notwithstanding the foregoing, in the event funding is not available for the continuation of this Agreement, the non-funded party will notify the other party, and this Agreement will terminate at the end of the last fiscal year for which funds were appropriated and neither party will, under any circumstances, be in default.

- 1.3.4 This Agreement may be modified or amended by mutual consent of both parties as long as the amendment is executed in the same fashion as this Agreement. The parties anticipate that this Agreement may be amended periodically and, particularly in light of the potential funding, hiring, and retention of additional TCOs. Unless otherwise specifically agreed in writing such amendment shall not operate as or be interpreted to be a termination of this Agreement, and it shall continue in effect except as necessarily or expressly modified through such amendment.
- 1.3.5 Over the next eight (8) months, the City and Board and will meet to review and revise this Agreement to be more comprehensive and similar to the agreement utilized in Wake County, NC. The parties agree that a revised agreement will be developed to allow both the Board and the Fayetteville City Council to consider the documents well before the beginning of the 2025-2026 academic year and the adoption of the City's fiscal year 2025-2026 annual budget.

2. Purpose and Scope of Agreement. This Memorandum of Agreement formalizes the relationship between the Board and the City in order to foster an efficient and cohesive program that will build a positive relationship between City of Fayetteville Police Officers and the students in the Cumberland County Schools (CCS).PrincipalPrincipalPrincipalPrincipalPrincipalPrincipalPrincipalPrincipalPrincipalPrincipal

3. Traffic Control Officer Program. The City will create a Traffic Control Officer (TCO) Program, to be operational by August 26, 2024, to provide at a maximum the TCOs identified on Schedule 2. The Board shall reimburse the City for the actual hourly cost of each TCO. The TCO Program shall strive to provide safe and orderly traffic and pedestrian flow to, from, and surrounding the schools identified in Schedule 2. However, the Chief may, based upon an analysis of traffic flow and other data, deviate from the list on Schedule 2, and assign TCOs to other schools based upon needs of the Department.

4. Agreement and Duties of Each Party. The duties and responsibilities of the parties are delineated as follows:

4.1 The Board will be responsible for:

- 4.1.1** communicating the needs and expectations of the school system for the services of TCOs;
- 4.1.2** providing periodic evaluation and feedback regarding performance and quality of service to the appropriate contact person for the Fayetteville Police Chief (Chief);
- 4.1.3** providing the payment of the funds provided under the terms of this Agreement for purposes of the conduct and operation of the TCO Program;

4.1.4 providing TCOs with appropriate facilities and support to successfully accomplish the mission of the TCO Program;

4.1.5 consulting with the Chief or the Chief's designees in determining additional traffic control needs and to the extent possible, implementing such control measures;

4.1.6 requesting and advocating for funding to support the TCO Program; and

4.1.7 to the extent permitted by law, defending, indemnifying and holding harmless the City and its elected officials, employees, agents, successors, and assigns, from any and all liability and claims for any injury or damage caused by any act, omission or negligence of the Board, its agents, servants, employees, contractors, licensees, or invitees. Indemnification of the City by the Board does not constitute a waiver of the City's governmental immunity in any respects under North Carolina law.

4.2 The Chief, and individual TCO, as appropriate, will be responsible for:

4.2.1 aiming to assign TCOs to designated schools, providing equipment, and scheduling the TCOs' work weeks (in compliance with the Fair Labor Standards Act), and notifying the school contact person with any changes in assignment as soon as possible;

4.2.2 providing safe and orderly traffic and pedestrian flow to, from, and surrounding the designated schools;

4.2.3 providing assistance in implementing the school crisis plan, so long as it relates to traffic control, when requested by the Principal;

4.2.4 serving on appropriate committees and conferring with the Principal as needed to fulfill the goals and the contemplated operation of the TCO Program;

4.2.5 coordinating activities through the school Principal;

4.2.6 supervising the TCOs, who shall remain employees (with full rights, benefits, and opportunities) of the City and responsive to the chain of command of the Chief;

4.2.7 assigning a replacement in the event that a TCO is unable to perform his or her duties due to illness, in-service training, other assignments, etc., for a period of three (3) consecutive days or longer; and

4.2.8 maintaining a high standard of professional performance and quality of work of the TCOs while delivering services described.

5. Employment Status of Traffic Control Officers.

5.1 The TCOs are and shall remain exclusively the employees of the City, in the Fayetteville Police Department, and shall not be employees of the Board. Selection of personnel for assignment as TCOs is made by the Chief. The Chief may dismiss or

reassign a TCO based upon the Fayetteville Police Department's Rules, Regulations, Policies, General Orders, and Procedures and when it is determined that such assignment, reassignment, or dismissal is appropriate under said policies, procedures, or directives for the efficient and proper operations of the Police Department or when it is in the best interest of the Board.

5.2 In the event a school Principal rationally determines that a TCO is not effectively performing his or her duties or responsibilities and should be replaced, the Principal shall submit a request in writing to the Superintendent that the TCO be replaced, citing the reasons for the request. The Superintendent shall review the request and, if the Superintendent determines that the request has merit, shall forward the request to the Chief for consideration.

5.3 The Police Department may utilize the TCO during the designated workday and term of this Agreement for duties other than set forth herein in the event of emergencies as determined by the Chief or his/her designee. The Board agrees that it will notify the Police Department during school holidays and when a TCO is not needed at the assigned school, during which periods the Board acknowledges that the TCO may be used as the Chief deems necessary.

5.4 In the event of the resignation, dismissal, or reassignment of a TCO, the Chief shall, to the extent feasible, provide a replacement for TCO within a reasonable period of time, not to exceed ninety (90) days, or if a replacement is not available within 90 days, the City shall provide the Board and Superintendent with notice of such unfeasibility and an estimate of when such a replacement may reasonably be anticipated. During such interim period, if feasible in the exercise of the Chief's sound discretion, the Chief may assign an alternate officer to carry out the duties of the TCO until a replacement can be secured.

6. Payment. The Board will appropriate and remit to the City all actual hourly costs as described in Section 3 for the TCOs described in Schedule 2. Remittances will be made to the City based on quarterly invoices submitted to the Board. Invoices shall reflect actual staffing levels during the subject period. The Board shall remit payment within 30 days after the City sends the invoice to the Board.

7. Notices and Designation of Contact. Any notice, consent or other communication in connection with this Agreement shall be in writing and may be delivered in person, by mail or by facsimile transmission (provided sender confirms notice by written copy). If hand-delivered, the notice shall be effective upon delivery. If by facsimile copy, the notice shall be effective when sent. If served by mail, the notice shall be effective seven (7) business days after being deposited in the United States Postal Service by certified mail, return receipt requested, addressed appropriately to the intended recipient as follows:

For the Board:

Cary Young
Office of Safety & Security
810 Gillespie Street -
Fayetteville, NC 28306

Telephone: (910) 678-7006
Facsimile: (910) 678-2379

For the City:

Chief Kemberle Braden
Fayetteville Police Department
-467 Hay Street -
Fayetteville, NC 28301

Telephone: (910) 433-1529
Facsimile: (910) 433-1019

Further, the Board will designate a point of contact at each school campus and inform the assigned TCO and the Chief.

8. Performance. Each party to this Agreement shall perform the duties, covenants and obligations expressed and may perform those implied or constructive conditions reasonably inferred from the purposes, terms and responsibilities expressed in this Memorandum of Agreement. Each party shall fully and in good faith execute such duties, obligations, covenants and conditions and shall act in good faith in providing timely, effective, and efficient performance. The City shall monitor, assist and direct the Cumberland County Board of Education with regard to the subject matter, substantive and procedural aspects of performance under this Agreement to assure compliance with all pertinent laws, rules, regulations of the governmental and non-governmental commissions or agencies whose standards the Chief has adopted or to which the Police Department adheres, particularly those of PREA. In the event that the Chief or his designee shall discover non-compliance, it shall be the obligation of the Chief to give notice and to seek remediation and to make report thereof to the appropriate agency or authority.

9. Applicability of Law. This Agreement shall be governed by the laws of the State of North Carolina. Without limiting the generality of the provisions of law, the parties acknowledge that the requirements of N.C. Gen. Stat. §115C-332.1 apply to this Agreement. The Chief shall conduct an annual check of the law enforcement officers assigned as TCOs on the North Carolina Sex Offender and Public Protection Registration Program, the North Carolina Sexually Violent Predator Registration Program, and the National Sex Offender Registry. The Board and the City agree that no individual may provide services to the Board under this Agreement if he or she appears on any of the sex offender registries.

10. Relationship of the Parties; Extra Duty Details. The City and the Board shall be independent contractors, and nothing herein shall be construed as creating a partnership or joint venture; nor shall any employee of either party be construed as employees, agents, or Principals of the other party hereto, and, therefore, shall be responsible for the actions of their own employees. Such independent contractor status is fully recognized by the parties, and further, in the event that the Board or any entity or persons acting under its auspices seeks to engage officers who are or may be TCOs or other officers for after-school functions such as athletic events, dances, meetings, etc., such engagements (hereinafter referred to as Extra Duty Details) shall be made separately from this Agreement with such officers who shall be independently

contracted and who shall not be deemed for any purpose to be an employee and shall be timely paid independently for such work or services, and any such independent agreement or contract shall not be deemed to be a function contemplated under the services of a TCO in or derived from this Agreement and shall not be subject to the overtime rules, regulations, or the like, particularly including, but not limited to those established under the FLSA.

11. Forum Selection. The venue for initiation of any action arising under, through, or by virtue of this Agreement or related to the Agreement, shall be in the Superior Court of Cumberland County, North Carolina, and no other place, venue, or court.

12. Compliance with Law, Regulations, Policies, Standards, and Directives. Having due regard to the foregoing, parties to this Agreement shall comply with all laws, regulations, and ordinances, directives, executive orders, or other requirements of any governments or agencies thereof which may govern its performance under this Agreement, including, but not limited to, the provisions of Chapters 14, 15A, 122C, 153A and 160A of the North Carolina General Statutes, and, in particular, but without limitation, Article 3 of Chapter 114 of the North Carolina General Statutes; and all equal employment laws, and other applicable law as well as all applicable State and Federal laws and regulations as well as applicable ordinances of local government, especially those of the County of Cumberland, and particularly including, but not limited to DCI, CJIS, and related provisions of law as well as the policies, directives of the Chief of Police and applicable standards, specifically including, but not limited to its CJIS policies and directives, and shall cause to be executed any further assurances, and the like, requisite to compliance with the same.

13. E-verify Compliance. The City shall comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes and the terms of N.C. Gen. Stat. § 143-133.3. Without limiting the generality of the foregoing, the City as an employer shall comply with and certify that continued compliance with the provisions of N.C. Gen. Stat. § 64-26, and verify the work authorization of the employee through E-Verify. Further, the City shall retain the record of the verification of work authorization required by such provision of law while the employee is employed and for one year thereafter, and shall make such certification and offer such proof of compliance as may reasonably be required by the other party to this Agreement. The failure of the other party to this Agreement to comply with this section of this Agreement or with the requirements of Article 2 of Chapter 64 of the General Statutes is and shall be a material breach of this Agreement, and shall subject the breaching party to the payment of damages to the aggrieved party or to specific performance or other injunctive relief as well as the recovery of damages, costs, and counsel fees.

14. ADA Compliance/Non-Discrimination/Anti-Retaliation. Without limiting the generality of the foregoing, the parties shall comply with Title VI and VII of the Civil Rights Act of 1964, Section 504, of the Rehabilitation Act of 1973, and the Americans With Disabilities Act of 1990 (ADA), Chapter 168 of the North Carolina General Statutes and all requirements imposed by the requisite Federal regulations, rules, and guidelines issued pursuant to these Titles with respect to the personnel employed or deployed pursuant to this Agreement, and shall conform to and comply with the anti-retaliation policies adopted by the City.

15. No Derivative Right or Liability. There shall be no third-party beneficiary or any right to any person or entity other than the named parties to this Agreement. Neither any officer or employee of the City, or any employee, agent or any other person or entity affiliated with the Board is or shall be a beneficiary of this Agreement nor have any right or standing to enforce this Agreement or to receive any damages, compensation or benefits derived from or as a result of the terms, covenants or conditions of this Agreement.

16. Partial Invalidity. In the event that any provision of this Agreement shall be invalid, illegal or otherwise unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

17. Other and Further Assurances. In order to give effect to the purposes and terms of this Agreement, the parties agree to promulgate and execute such other document or other and further assurances, certificates, agreements, memoranda, or the like which may reasonably be required to give effect to this Agreement, its terms, conditions, covenants, and purposes upon request and within a reasonable time following such request.

18. Binding Effect. The Agreement reflected or contemplated under this Memorandum and any documents contemplated under it shall supercede all prior agreements with respect to the terms and conditions of this Agreement.

19. Counterparts; Signatures. This Agreement may be executed in counterparts and electronic, scanned, or facsimile signatures shall be effective to bind the parties hereto.

THE REMAINDER OF THIS PAGE INTENTIONALLY HAS BEEN LEFT BLANK
FOR SIGNATURE AND PRE-AUDIT CERTIFICATION PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Agreement.

For the Cumberland County Board of Education

By: Deanna Jones
Deanna Jones, Board Chairwoman

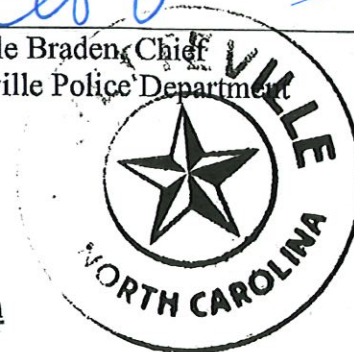
Attest: Dr. Marvin Connelly, Jr.
Dr. Marvin Connelly, Jr., Superintendent

For the City of Fayetteville

By: Douglas J. Hewett
Douglas J. Hewett, City Manager

Attest: JENNIFER L. AICE
JENNIFER L. AICE, DEPUTY CITY CLERK

Kemberle Braden
Kemberle Braden, Chief
Fayetteville Police Department



Pre-Audit Certification

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

[Signature]
Cumberland County Schools Finance Officer

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

Jeffrey Yates
JEFFREY YATES, Assistant City Manager/
Interim Chief Financial Officer

Schedule 2 – Schools Designated for Traffic Control Officer Assignments

<u>High Schools</u>	<u>Number of TCO's</u>
Alger B. Wilkins	*
Douglas Byrd	1
E.E. Smith	1
Massey Hill Classical	*
Ramsey Street School	2
Reid Ross Classical	4
Seventy-First	1
Terry Sanford	1
Westover	1

<u>Middle Schools</u>	<u>Number of TCO's</u>
Anne Chesnutt	2
Douglas Byrd North	1
Douglas Byrd South	1
Howard Learning Academy	*
Lewis Chapel	1
Max Abbott	2
New Century International	*
Luther "Nick" Jeralds	2
Seventy-First Classical	*
Westover	1

<u>Elementary Schools</u>	<u>Number of TCO's</u>
Alma Easom	1
Ashley	*
Benjamin Martin	4
Bill Hefner	2
Brentwood	2
Cliffdale	2
College Lakes	*
Cumberland Road	1
E.E. Miller	2
Ferguson Easley	*
Glendale Acres	*
J.W. Coon	2
Lake Rim	1
Lloyd Auman	2

Long Hill	<u>4</u>
Lucille Souder	<u>2</u>
Margaret Willis	<u>1</u>
Mary McArthur	<u>2</u>
Montclair	<u>2</u>
Morganton Road	<u>2</u>
New Century International	<u>*</u>
Ponderosa	<u>2</u>
Sherwood Park	<u>3</u>
Vanstory	<u>1</u>
W.T. Brown	<u>*</u>
Walker Spivey	<u>2</u>
Warrenwood	<u>1</u>
Westarea	<u>2</u>
William H. Owen	<u>2</u>

* The parties believe that the school does not need a TCO at this time.

