

PROJECT FUND AGREEMENT

This PROJECT FUND AGREEMENT is dated as of June __, 2022 (the “Project Fund Agreement”), and is by and between the CITY OF FAYETTEVILLE, NORTH CAROLINA, a political subdivision of the State of North Carolina (the “Borrower”), and TRUIST BANK (“Truist”).

RECITALS

The Borrower is, simultaneously with the execution and delivery of this Project Fund Agreement, executing and delivering an Installment Financing Agreement, dated as of the date hereof (the “Agreement”), between the Borrower and Truist. The purpose of the Agreement is to provide for Truist’s advance of \$10,430,000 to the Borrower to pay the costs of the construction and equipping of a fire station (the “Project”) and to pay related financing costs. In partial consideration for Truist entering into the Agreement, the Borrower has agreed to provide for financing proceeds to be deposited and disbursed pursuant to this Project Fund Agreement.

NOW, THEREFORE, the parties agree as follows:

SECTION 1. DEFINITIONS.

In this Project Fund Agreement, the term “Project Costs” means all costs of the design, planning, constructing, acquiring, installing and equipping of the Project as determined in accordance with generally accepted accounting principles and that will not adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Installment Payments payable by the Borrower under the Agreement, including (a) sums required to reimburse the Borrower or its agents for advances made for any such costs, and (b) all closing costs or other costs related to the financing of the Project through the Agreement and all related transactions.

In addition, any capitalized terms used in this Project Fund Agreement and not otherwise defined shall have the meanings assigned thereto in the Agreement.

SECTION 2. PROJECT FUND.

2.1. Project Fund. On the date hereof (the “Closing Date”), Truist shall deposit \$10,422,500 (consisting of the \$10,430,000 amount advanced less a closing fee of \$7,500 to be paid directly by Truist to its legal counsel) into a special account of the Borrower at Truist Bank to be designated “2022-00003 City of Fayetteville Project Fund” (the “Project Fund”). The Project Fund shall be held separate and apart from all other funds or accounts of the Borrower. The Project Fund is the Borrower’s property, but the Borrower may withdraw amounts on deposit in the Project Fund only as provided in this Project Fund Agreement and only for application from time to time to the payment of Project Costs or otherwise as permitted by Section 2.3 hereof. Pending such application, such amounts shall be subject to a lien and charge in favor of Truist to secure the Borrower’s obligations under the Agreement.

2.2. Requisitions from Project Fund. The Borrower may withdraw funds from the Project Fund only after authorization from Truist. Truist shall authorize the disbursement of funds from the Project Fund only to the Borrower and only upon its receipt of one or more written requisitions in the form set forth in Exhibit A attached hereto signed by one of the designated Borrower Representatives named in Section 3.11 hereof. The Borrower shall submit its signed requisitions in pdf format by electronic transmission at the email address contained in the requisition form.

Upon receipt of a requisition from the Borrower, Truist shall undertake such review of the matters referred to in such requisition as it shall deem appropriate, and within seven (7) business days after such receipt shall notify the Borrower if it does not approve the requisition with the reasons for its disapproval. Truist has no obligation to make a review and any review by Truist is only for Truist's benefit. Truist shall not unreasonably withhold payment of any requisition.

2.3. Disposition of Project Fund Balance.

(a) ***Upon completion*** - Promptly after the Project has been completed to the point that the Project is suitable for carrying out substantially all the purposes it is to serve for the Borrower, and the Borrower has withdrawn from the Project Fund all of the funds needed to complete the Project, the Borrower shall deliver to Truist a written certificate of completion executed by a Borrower Representative stating that (i) the Project has been completed, (ii) there are no mechanic's or other liens against the Project for labor or materials furnished in connection with the Project, and (iii) no further funds will be requisitioned from the Project Fund to pay Project Costs. Truist may then withdraw any balance remaining in the Project Fund (and not required to be retained to pay Project Costs incurred but not yet paid) and apply such amount as provided in subsection (d) of this Section.

(b) ***Upon default*** - Upon the occurrence of an Event of Default, Truist may withdraw any balance remaining in the Project Fund and apply such amount as provided in subsection (d) of this Section.

(c) ***After delay or inactivity*** - If (i) more than three years have elapsed from the Closing Date or (ii) at least six months have elapsed from Truist's most recent receipt of a requisition for Project Costs, then Truist, upon 30 days' notice from Truist to the Borrower, may withdraw any balance remaining in the Project Fund and apply such amount as provided in subsection (d) of this Section.

(d) ***Application of Project Fund balance*** - Truist may apply any amounts withdrawn from the Project Fund pursuant to this Section in the following order: (i) to the payment of any additional payments then due to Truist under the Agreement, (ii) to the payment of any interest accrued to the Project Fund disposition date that is then due and payable, (iii) to the payment of any principal amount then due and payable, (iv) to the prepayment of principal and accrued interest in accordance with the prepayment provisions of the Agreement; and (v) to the payment of future Installment Payments in inverse order of maturity; provided, however, that (1) at the option of Truist, Truist may deliver funds held under this Project Fund Agreement to the Borrower to be applied to additional Project Costs or future debt service payments, and (2) in no

event will Truist apply any funds in the manner set forth herein if it is advised in an opinion of bond counsel provided by the Borrower that such a use of funds could adversely affect the exclusion from gross income for federal income tax purposes of the interest component of Installment Payments. Any prepayment hereunder shall not affect any other Borrower payment obligation under the Agreement. Truist shall notify the Borrower of any withdrawal from the Project Fund made under this Section, and in the notice shall describe its application of the funds so withdrawn.

2.4. Investment.

(a) The Borrower and Truist agree that money in the Project Fund will be continuously invested and reinvested in a public funds money rate savings account, as directed by Truist, that meets the requirements of Section 159-30 of the General Statutes of North Carolina, as amended.

(b) From and after the date that is three years from the Closing Date, the Borrower and Truist agree that money in the Project Fund will not be invested at a “yield,” as determined under the Code, in excess of the “yield” on the Borrower’s obligations under the Agreement, unless the Borrower has supplied Truist with an opinion of bond counsel to the effect that such investment will not adversely affect the exclusion from gross income for federal income tax purposes to which the interest components of Installment Payments would otherwise be entitled.

(c) Investment obligations acquired with money in the Project Fund shall be deemed at all times to be part of the Project Fund. The interest accruing thereon and any profit or loss realized upon the disposition or maturity of any such investment shall be credited to or charged against the Project Fund.

(d) All earnings on moneys in the Project Fund shall be used for Project Costs or otherwise applied in accordance with Section 2.3 hereof.

SECTION 3. MISCELLANEOUS.

3.1. Notices. Except as set forth in Section 2.2 hereof with respect to the delivery of requisitions to Truist, any notice or other communication required or contemplated by this Project Fund Agreement shall be deemed to be delivered so long as it is delivered by hand or on the date shown on a certified mail receipt, or a delivery receipt (or similar evidence) from a national commercial package delivery service, if addressed as follows:

(a) If intended for the Borrower, addressed to it at the following address: City of Fayetteville, North Carolina, 433 Hay St., Fayetteville, North Carolina, Attention: Chief Financial Officer.

(b) If intended for Truist, addressed to it at the following address: Truist Bank, 2320 Cascade Pointe Boulevard, Suite 600, Charlotte, North Carolina 28208, Attention: Governmental Finance.

Any party may designate a different or alternate address for notices by notice given under this Project Fund Agreement.

3.2. Survival of Covenants and Representations. All covenants, representations and warranties made by the Borrower in this Project Fund Agreement and in any certificates delivered pursuant to this Project Fund Agreement shall survive the delivery of this Project Fund Agreement.

3.3. Choice of Law. The parties intend that North Carolina law shall govern this Project Fund Agreement.

3.4. Amendments. This Project Fund Agreement may not be modified or amended unless such amendment is in writing and signed by Truist and the Borrower.

3.5. No Third-Party Beneficiaries. There are no parties intended to be or which shall be deemed to be third-party beneficiaries of this Project Fund Agreement.

3.6. Successors and Assigns. All of the covenants and conditions of this Project Fund Agreement shall be binding upon and inure to the benefit of the parties to this Project Fund Agreement and their respective successors and assigns.

3.7. Severability. If any court of competent jurisdiction shall hold any provision of this Project Fund Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Project Fund Agreement.

3.8. Counterparts. This Project Fund Agreement may be executed in any number of counterparts, including separate counterparts, each executed counterpart constituting an original but all together only one agreement. An executed copy of this Project Fund Agreement delivered by facsimile, email, or other electronic means will be deemed to have the same legal effect as delivery of a manual signed copy of this Project Fund Agreement. This Project Fund Agreement and related documents may be sent and stored by electronic means.

3.9. Termination. Except as otherwise provided in this Project Fund Agreement, this Project Fund Agreement shall cease and terminate upon payment of all funds (including investment proceeds) from the Project Fund.

3.10. E-Verify. Truist understands that “E-Verify” is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. Truist uses E-Verify to verify the work authorization of its employees in accordance with Section 64-26(a) of the General Statutes of North Carolina, as amended. Truist will require that any subcontractor that it uses in connection with the transactions contemplated by this Project Fund Agreement certify to such subcontractor’s compliance with E-Verify.

3.11. Designation of Borrower Representatives and Official Custodian. In accordance with the terms herein, the Borrower hereby designates the following persons as Borrower Representatives authorized to sign requisitions to withdraw funds from the Project Fund account:

Printed Name:

Signature:

Jay C. Toland, Chief Financial Officer

Douglas J. Hewett, City Manager

The Borrower may designate additional Borrower Representatives to sign requisitions upon written notification to Truist.

The Borrower designates the person listed below an “Official Custodian” for the purposes of the Federal Deposit Insurance Corporation. The person listed below is an officer, employee or agent of the Borrower who has plenary authority, including control, over funds owned by the Borrower. Control of public funds includes possession of, as well as the authority to establish, accounts in an insured depository institution and to make deposits, withdrawals and disbursements. The Official Custodian on the account is considered the insured depositor.

Printed Name:

Signature:

Last 4 Numbers of
SSN¹:

Date of
Birth:

Upon written notification to Truist, the Borrower may update the Official Custodian.

Note: The Official Custodian must provide a copy of his/her driver's license.

¹ The last 4 digits of the official custodian's social security number will be used only to differentiate the official custodian from other Truist account holders with the same name.

IN WITNESS WHEREOF, each of the parties has caused this Project Fund Agreement to be signed and delivered by a duly authorized officer, all as of the date first above written.

CITY OF FAYETTEVILLE,
NORTH CAROLINA

[SEAL]

By: _____
Name: Douglas J. Hewett
Title: City Manager

Attest:

Name: Pamela Megill
Title: City Clerk

TRUIST BANK

By: _____
Name:
Title:

[PROJECT FUND AGREEMENT SIGNATURE PAGE]

EXHIBIT A

[TO BE PREPARED ON BORROWER'S LETTERHEAD FOR SUBMISSION]

PROJECT FUND REQUISITION

[Date] _____

Email requisitions to: GFProjectfunds@bbandt.com

Requisition Team

Truist Bank

Direct Dial: (252) 296-0452 or (252) 296-0659

RE: Request for disbursement of funds from the Project Fund related to Contract No. 9933001293-00003 with the City of Fayetteville, North Carolina, dated June __, 2022

To Whom It May Concern,

Pursuant to the terms and conditions of the Project Fund Agreement, dated as of June __, 2022, the City of Fayetteville, North Carolina (the "Borrower"), requests the disbursement of funds from the Project Fund established under the Project Fund Agreement for the following Project Costs:

This is requisition number ____ from the Project Fund.

Disbursements will be to the City of Fayetteville, North Carolina.

Amount: \$_____

Attach copies of applicable vendor invoices or spreadsheet of expenditures to requisition when submitting.

Project Description: Construction of fire station

Location of Equipment/Project: 4210 Bragg Boulevard, Fayetteville, North Carolina

To receive funds via wire transfer please include:

ABA Routing Number:

Account Number:

Physical address of Borrower: City of Fayetteville, North Carolina, 433 Hay St., Fayetteville, North Carolina 28301

The Borrower makes this requisition pursuant to the following representations:

1. The Borrower has appropriated in its current fiscal year funds sufficient to pay the Installment Payments and estimated additional payments due in the current fiscal year.
2. The purpose of this disbursement is for partial payment of the cost of the Project provided for under the Agreement referenced above.
3. The requested disbursement has not been subject to any previous requisition.
4. No notice of any lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable herein to any of the persons, firms or corporations named herein has been received, or if any notice of any such lien, attachment or claim has been received, such lien, attachment or claim has been released or discharged or will be released or discharged upon payment of this requisition.
5. This requisition contains no items representing payment on account of any percentage entitled to be retained on the date of this requisition.
6. No Event of Default is continuing under the Agreement, and no event or condition is existing which, with notice or lapse of time or both, would become an Event of Default.
7. The Borrower shall allow Truist to deliver and file, or cause to be filed, any Uniform Commercial Code financing statements with respect to the Project or portion of the Project that Truist may request to evidence its security interest.
8. The Borrower has in place insurance on this portion of the Project that complies with the insurance provisions of the Agreement.
9. Each amount requested for payment in this requisition either (a) represents a reimbursement to the Borrower for a Project Cost expenditure previously made, and such reimbursement complies with the provisions of the Code (generally, an issuer may reimburse a prior expenditure out of tax-exempt bond proceeds if (i) the issuer has declared its “official intent” to reimburse the expenditure no later than 60 days after the date the expenditure is paid *and* (ii) the expenditure is being reimbursed no later than the end of the permitted “reimbursement period” of at least 18 months, and at most 3 years, from the date the expenditure was paid), or (b) will be used by the Borrower promptly upon the receipt of funds from Truist to make payments for Project Costs to third parties described in this requisition.

Capitalized terms used in this requisition have the meanings ascribed in the Project Fund Agreement.

Attached is evidence that the amounts shown in this requisition are properly payable at this time, such as bills, receipts, invoices, architects' payment certifications or other appropriate documents.

IF REQUEST IS FINAL REQUEST, CHECK HERE ☐.

CITY OF FAYETTEVILLE,
NORTH CAROLINA

By: _____

Printed Name: _____

Title: _____