



July 13, 2022

The Honorable Mayor and City Council
Doug Hewett, City Manager
Jay Toland, Chief Financial Officer
City of Fayetteville
433 Hay Street
Fayetteville, North Carolina 28301

Attention: City Council

This Arrangement Letter is to explain PB Mares, LLP (“PB Mares”, “we”, “us”, or “our”) understanding of the arrangements regarding our engagement to examine the City of Fayetteville’s (City) assertion that the census data provided via ORBIT into the Local Government Employees’ Retirement System (LGERs) for the year ended December 31, 2021 is materially correct, in accordance with attestation standards established by the American Institute of Certified Public Accountants. The specific procedures to be performed are described in Attachment B in the Testing of Census Data for Cost-Sharing Multiple-Employer Defined Benefit Plans Memorandum dated May 5, 2022 and revised June 3, 2022, issued by the North Carolina Office of the State Auditor (NCOSA). We are pleased to confirm our acceptance and our understanding of this examination engagement by means of this letter (“Arrangement Letter”).

Engagement Services

We will perform an examination of the census data being provided by the City via ORBIT in relation to established or stated criteria. Accordingly, we will perform such procedures as we consider necessary to evaluate the census data being provided by the City via ORBIT in relation to the established or stated criteria for the purpose of expressing positive assurance that the census data being provided by the City via ORBIT into the LGERs is materially correct.

At the conclusion of our engagement, we will submit a report in letter form outlining the procedures performed and our findings resulting from the procedures performed. . Our report will contain a statement that it is intended solely for the use of City of Fayetteville and the State of North Carolina Office of the State Auditor and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their purposes. We cannot guarantee that an unmodified opinion on the Assertion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion, or withdraw from the engagement.

Because of the inherent limitations of an examination engagement, together with the inherent limitations of internal control, an unavoidable risk exists that some material misstatements may not be detected, even though the examination is properly planned and performed in accordance with the attestation standards.

The services that we will perform are not designed and cannot be relied upon to disclose errors, fraud, or illegal acts, should any exist. However, we will inform the appropriate level of management of any material errors that come to our attention and any fraud or illegal acts that come to our attention, unless they are clearly inconsequential.

Furthermore, the services were not designed to provide assurance on internal control. However, we will communicate to management and the City Council any internal control deficiencies that become known to us during the course of the engagement.

We will maintain our independence in accordance with the standards of the AICPA.

City's Responsibilities

Management is responsible for:

1. The census data being provided by the City via ORBIT into the LGERS (the Assertion);
2. Selecting the Criteria for the purposes of evaluating the Assertion;
3. Determining that such stated or established Criteria is appropriate for the City's purposes;
4. Providing us with a written management representation letter confirming certain representations made during the course of the engagement;
5. The design, implementation and maintenance of internal control relevant to the preparation and fair presentation of the Assertion that is free from material misstatement, whether due to fraud or error;
6. Identifying and ensuring that the City complies with the laws and regulations applicable to its activities, and for informing us about all known material violations of such laws or regulations;
7. The design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the City involving management, employees who have significant roles in internal control, and others where the fraud could have a material effect on the Assertion; and
8. Informing us of its knowledge of any allegations of fraud or suspected fraud affecting the City received in communications from employees, former employees, analysts, regulators, short sellers or others.

Records and Assistance

During the course of our engagement, we may accumulate records containing data that should be reflected in the City's books and records. The City will determine that all such data, if necessary, will be so reflected. Accordingly, the City will not expect us to maintain copies of such records in our possession.

The assistance to be supplied by City personnel has been discussed and coordinated with Jay Toland, Chief Financial Officer. The timely and accurate completion of this work is an essential condition to our completion of our services and issuance of our report.

Parties' Understandings Concerning Situation Around COVID-19

PBMares and the City acknowledge that, at the time of the execution of this arrangement letter, federal, state and local governments, both domestic and foreign, have imposed certain restrictions on travel and/or the movement of their citizens due to the ongoing and evolving situation around COVID-19. In addition, like many organizations and companies in the United States and around the globe, PBMares may restrict its employees from certain travel and onsite work, whether at a client facility or PBMares facility, to protect the health of both PBMares' and its clients' employees. Accordingly, to the extent that any of the services described in this arrangement letter requires or relies on PBMares or the City personnel to travel and/or perform work onsite, either at the City's or PBMares' facilities, including, but not limited to, maintaining business operations and/or IT infrastructure, PBMares and the City acknowledge and agree that the performance of such work may be delayed, significantly or indefinitely, and thus certain services described herein may need to be rescheduled and/or suspended at either PBMares' or the City's sole discretion. PBMares and the City agree to provide the other with prompt written notice (email will be sufficient) in the event any of the services described herein will need to be rescheduled and/or suspended.

Fees

Our fees for the services described above are based upon the value of the services performed and the time required by the individuals assigned to the engagement plus directly billed expenses, including report processing, travel, meals, and fees for services from other professionals. Our fee for the services described above will not exceed \$9,000. Interim billings will be submitted as work progresses and as expenses are incurred. Billings are due upon submission.

Our fee and completion of our work are based upon the following criteria:

1. Anticipated cooperation from City personnel.
2. Timely responses to our inquiries.
3. Timely completion and delivery of client assistance requests.
4. Timely communication of all significant accounting and financial reporting matters.
5. The assumption unexpected circumstances will not be encountered during the engagement.

If any of the aforementioned criteria are not met, then fees may increase. Interim billings will be submitted as work progresses and as expenses are incurred. Billings are due upon submission. Amounts not paid within thirty days from the invoice date(s) will be subject to a late payment charge of 1.5% per month (18% per year).

Use of Third-Party Products

We may provide services to you using certain third-party hardware, software, software services, managed services (including, but not limited to, web hosting, data security, data back-up, email security, or similar services subject to direct end-user or subscription agreements), applications, and equipment (collectively, "Third-Party Products").

You acknowledge that your or our use of a Third-Party Product may involve the processing, input, disclosure, movement, transfer, and storage of information provided by you to us, including Personal Information and Confidential Information, within the Third-Party Product's infrastructure and not ours, and that the terms of use and service set forth in the end-user license, subscription, or other agreement with the licensor of such Third-Party Product, including, but not limited to, applicable laws, will govern all obligations of such licensor relating to data privacy, storage, recovery, security, and processing within such Third-Party Product's infrastructure, as well as, the service levels associated with such Third-Party Product. You hereby consent to the disclosure of your information, including your Confidential Information and Personal Information, to the licensors of such Third-Party Products for the purpose described herein.

You acknowledge that your or our use of Third-Party Products may be subject to limitations, delays, interruptions, errors, and other problems which are beyond our control, including, without limitation, internet outage or lack of availability related to updates, upgrades, patches, fixes, maintenance, or other issues. We will not be liable for any delays, delivery failures, or other losses or damages resulting from such issues. Nor will we be held responsible or liable for any loss, or unauthorized use or disclosure, of any information or data provided by you, including, without limitation, Personal Information provided by you, resulting from your or our use of a Third-Party Product.

Use and Ownership; Access to Documentation

The Documentation for this engagement is the property of PBMares. For the purposes of this Arrangement Letter, the term "Documentation" shall mean the confidential and proprietary records of PBMares' procedures performed, relevant evidence obtained, other related workpapers, and conclusions reached. Documentation shall not include custom-developed documents, data, reports, analyses, recommendations, and deliverables authored or prepared by PBMares for the City under this Arrangement Letter, or any documents belonging to the City or furnished to PBMares by the City.

Review of Documentation by a successor practitioner or as part of due diligence is subject to applicable PBMares policies, and will be agreed to, accounted for and billed separately. Any such access to our Documentation is subject to a successor practitioner signing an Access & Release Letter substantially in PBMares' form. PBMares reserves the right to decline a successor practitioner's request to review our workpapers.

In the event we are required by government regulation, subpoena or other legal process to produce our documents or our personnel as witnesses with respect to our engagement for the City, the City will, so long as we are not a party to the proceeding in which the information is sought, reimburse us for our professional time and expenses, as well as the fees and expenses of our counsel, incurred in responding to such requests.

Dispute Resolution

If any dispute other than fees arises among the parties hereto, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Rules for Professional Accounting and Related Services Disputes before resorting to litigation. The costs of any mediation proceeding shall be shared equally by all parties. You and we consent to personal jurisdiction, both for mediation and/or litigation, of the Federal District Court, Eastern District of Virginia, sitting in Newport News, Virginia, or the Newport News Circuit Court.

Participation in such mediation shall be a condition to either of us initiating litigation. In order to allow time for the mediation, any applicable statute of limitations shall be tolled for a period not to exceed 120 days from the date either of us first requests in writing to mediate the dispute. The mediation shall be confidential in all respects, as allowed or required by law, except our final settlement positions at mediation shall be admissible in litigation solely to determine the prevailing party's identity for purposes of the award of attorneys' fees.

The parties hereto both agree that any dispute over fees charged by the accountant to the client will be submitted for resolution by arbitration in accordance with the Rules for Professional Accounting and Related Services Disputes of the American Arbitration Association. Such arbitration shall be binding and final. The arbitration shall take place in Newport News, Virginia. Any award rendered by the Arbitrator pursuant to this Agreement may be filed and entered and shall be enforceable in the Superior Court of the County in which the arbitration proceeds. In agreeing to arbitration, we both acknowledge that, in the event of a dispute over fees charged by the accountant, each of us is giving up the right to have the dispute decided in a court of law before a judge or jury, and instead we are accepting the use of arbitration for resolution.

Confidentiality

PBMares and the City may, from time to time, disclose Confidential Information (as defined below) to one another. Accordingly, PBMares and the City agree as the recipient of such Confidential Information (the "Receiving Party") to keep strictly confidential all Confidential Information provided to it by the disclosing party (the "Disclosing Party") and use, modify, store, and copy such Confidential Information only as necessary to perform its obligations and exercise its rights under this Arrangement Letter and for no other purpose or use. Except as otherwise set forth herein, the Receiving Party may only disclose the Confidential Information of the Disclosing Party to its personnel, agents, and representatives who are subject to obligations of confidentiality at least as restrictive as those set forth herein and only for the purpose of exercising its rights and fulfilling its obligations hereunder. To avoid any doubt, PBMares is permitted to disclose the City's Confidential Information to PBMares' personnel, agents, and representatives for the purpose of maintaining compliance with applicable laws and professional, regulatory, and/or ethical standards.

As used herein, "Confidential Information" means, information in any form, oral, graphic, written, electronic, machine-readable or hard copy consisting of: (i) any nonpublic information provided by the Disclosing Party, including, but not limited to, all of its inventions, designs, data, source and object code, programs, program interfaces, know-how, trade secrets, techniques, ideas, discoveries, marketing and business plans, pricing, profit margins and/or similar information; (ii) any information that the Disclosing Party identifies as confidential; or (iii) any information that, by its very nature, a person in the same or similar circumstances would understand should be treated as confidential, including, but not limited to, this Arrangement Letter.

As used herein, the term "Confidential Information" will not include information that: (i) is publicly available at the time of disclosure by the Disclosing Party; (ii) becomes publicly available by publication or otherwise after disclosure by the Disclosing Party, other than by breach of the confidentiality obligations set forth herein by the Receiving Party; (iii) was lawfully in the Receiving Party's possession, without restriction as to confidentiality or use, at the time of disclosure by the Disclosing Party; (iv) is provided to the Receiving Party without restriction as to confidentiality or use by a third party without violation of any obligation to the Disclosing Party; or (v) is independently developed by employees or agents of the Receiving Party who did not access or use the Confidential Information.

The Receiving Party will treat the Disclosing Party's Confidential Information with the same degree of care as the Receiving Party treats its own confidential and proprietary information, but in no event will such standard of care be less than a reasonable standard of care. The Receiving Party will promptly notify the Disclosing Party if it becomes aware that any of the Confidential Information of the Disclosing Party has been used or disclosed in violation of this Arrangement Letter.

Notwithstanding the foregoing, in the event that the Receiving Party becomes legally compelled to disclose any of the Confidential Information of the Disclosing Party, or as may be required by applicable regulations or professional standards, the Receiving Party will use commercially reasonable efforts to provide the Disclosing Party with notice prior to disclosure, to the extent permitted by law.

Data Protection Compliance

Our Privacy Policy ("Privacy Policy") is located on our website at <https://www.pbmares.com/-are/privacy-policy>. Our Privacy Policy may be amended from time to time in our sole discretion and without prior notice, and is hereby incorporated by reference into this Arrangement Letter. You acknowledge that you have read and understand the Privacy Policy and agree to the practices as described therein.

We take reasonable steps to comply with all applicable privacy, cybersecurity, and data protection laws that may apply to Personal Information and Confidential Information we process on behalf of our clients. Upon written request, but not more than annually during the term of this Arrangement Letter, we will deliver to you a copy of our data security report evidencing the operating effectiveness of our Information Technology ("IT") control environment. We will also provide summaries of our IT security and disaster recovery policies and make our senior IT personnel reasonably available for discussion upon request. Our data security report and any information we disclose to you concerning our IT control environment shall constitute Confidential Information of PBMares and shall be subject to the confidentiality obligations set forth in this Arrangement Letter.

PBMares and the City acknowledge and agree that they may correspond or convey information and documentation, including Confidential Information and Personal Information, via various forms of electronic transmission, including, but not limited to, Third-Party Products, such as, email, FTP and cloud-based sharing and hosting applications (e.g., portals, data analytics tools, and helpdesk and support ticketing applications), and that neither party has control over the performance, operation, reliability, availability, or security of these electronic transmissions methods. Therefore, neither party will be liable for any loss, damage, expense, harm, disclosure or inconvenience resulting from the loss, delay, interception, corruption, unauthorized disclosure, or alteration of any electronic transmission where the party has used commercially reasonable efforts to protect such information. We offer our clients various platforms for the exchange of information. You hereby agree that you shall be bound by and comply with any and all user terms and conditions made available (whether by link, click-through, or otherwise) with respect to such platforms

Personal Information

As used herein, the term “Personal Information” means any personal information that directly or indirectly identifies a natural person as may be defined by applicable privacy, data protection or cybersecurity laws, and includes, but is not limited to, nonpublic, personally identifiable information such as Social Security numbers, Social Insurance numbers, driver’s license numbers or state- or province-issued identification card numbers, credit or debit card numbers with or without any required security code, number or passwords, health information, and other personal information as defined by applicable laws, whether of the City or the City’s customers or other third parties.

Each party agrees that it will not transmit to the other, in any manner, (i) Personal Information that is not needed to render the services hereunder, and (ii) Personal Information that has not been encrypted. In the event you transmit to us Personal Information in an unencrypted format or via unencrypted means, you agree that we have no obligation to notify you of the foregoing.

You represent and warrant that you have provided all notices and obtained all consents required under applicable data protection laws prior to your collection, use and disclosure to us or our Subcontractors of such Personal Information and shall take reasonable steps to ensure that such Personal Information does not include irrelevant or unnecessary information about individuals.

We will use all such City-provided Personal Information, if at all, only for the purposes described in this Arrangement Letter. The parties agree that as part of the performance of the services as described in this Arrangement Letter, and as part of the direct business relationship between the parties, we may, at our election, use the Personal Information to improve the services and for other similar internal and business purposes. We agree to maintain appropriate security measures to protect such Personal Information in accordance with applicable laws.

If we become aware of an unauthorized acquisition or use of City-provided Personal Information, we will promptly inform you of such unauthorized acquisition or use as required by applicable laws and, upon your written request, reasonably cooperate with you at your sole cost in support of any breach notification requirements as imposed upon you by applicable laws.

Retention of Records

We will return to you all original records you provide to us in connection with this engagement. Further, in addition to providing you with those deliverables set forth in this Arrangement Letter, we will provide to you a copy of any records we prepare or accumulate in connection with such deliverables which are not otherwise reflected in your books and records without which your books and records would be incomplete. You have the sole responsibility for retaining and maintaining in your possession or custody all of your financial and nonfinancial records related to this engagement. We will not host, and will not accept responsibility to host, any of your records. We, however, may maintain a copy of any records of yours necessary for us to comply with applicable law and/or professional standards. Any such records retained by us will be subject to the confidentiality obligations set forth herein and destroyed in accordance with our record retention policies.

Termination

Your failure to make full payment of any and all undisputed amounts invoiced in a timely manner constitutes a material breach for which we may refuse to provide deliverables and/or, upon written notice, suspend or terminate our services under this Arrangement Letter. We will not be liable to you for any resulting loss, damage or expense connected with the suspension or termination of our services due to your failure to make full payment of undisputed amounts invoiced in a timely manner.

In the event you terminate this engagement, you will pay us for all services rendered (including deliverables and products delivered), expenses incurred, and noncancelable commitments made by us on your behalf through the effective date of termination.

We will not be responsible for any delay or failure in our performance resulting from acts beyond our reasonable control or unforeseen or unexpected circumstances, such as, but not limited to, acts of God, government or war, riots or strikes, disasters, fires, floods, epidemics, pandemics or outbreaks of communicable disease, cyberattacks, and internet or other system or network outages. At your option, you may terminate this Arrangement Letter where our services are delayed more than 120 days; however, you are not excused from paying us for all amounts owed for services rendered and deliverables provided prior to the termination of this Arrangement Letter.

When an engagement has been suspended at the request of management or those charged with governance and work on that engagement has not recommenced within 120 days of the request to suspend our work, we may, at our sole discretion, terminate this Arrangement Letter without further obligation to you. Resumption of our work following termination may be subject to our client acceptance procedures and, if resumed, will require additional procedures not contemplated in this Arrangement Letter. Accordingly, the scope, timing and fee arrangement discussed in this Arrangement Letter will no longer apply. In order for us to recommence work, the execution of a new Arrangement Letter will be required.

We may terminate this Arrangement Letter upon written notice if: (i) we determine that our continued performance would result in a violation of law, regulatory requirements, applicable professional or ethical standards, or our client acceptance or retention standards; or (ii) you are placed on a verified sanctioned entity list or if any director or executive of, or other person closely associated with, you or any of your affiliates is placed on a verified sanctioned person list, in each case, including, but not limited to, lists promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. State Department, the United Nations Security Council, the European Union, or any other relevant sanctioning authority.

The parties agree that those provisions of this Arrangement Letter which, by their context, are intended to survive, including, but not limited to, payment, limitations on liability, dispute resolution, use and ownership, and confidentiality obligations, shall survive the termination of this Arrangement Letter.

Notices

Unless otherwise expressly agreed upon by the parties in this Arrangement Letter, all notices required to be given hereunder will be in writing and addressed to the party at the business address provided in this Arrangement Letter, or such other address as such party may indicate by a notice delivered to the other party. A copy of any legal notice (e.g., any claimed breach or termination of this Arrangement Letter) sent by the City to PBMares shall also be sent to the following address: Office of the General Counsel, PBMares, LLP, 701 Town Center Drive, Suite 900, Newport News, VA 23606. Except as otherwise expressly provided in this Arrangement Letter, notices hereunder will be deemed given and effective: (i) if personally delivered, upon delivery; (ii) if sent by registered or certified mail or by overnight courier service with tracking capabilities, upon receipt; and, (iii) if sent by electronic mail (without indication of delivery failure), at such time as the party that sent the notice receives confirmation of receipt, whether by read-receipt confirmation or otherwise.

Entire Agreement

This Arrangement Letter constitutes the complete and exclusive statement of agreement between PBMares and the City and supersedes all prior agreements, understandings, and proposals, whether oral or written, relating to the subject matter of this Arrangement Letter.

If any term or provision of this Arrangement Letter is determined to be invalid or unenforceable, such term or provision will be deemed stricken, and all other terms and provisions will remain in full force and effect.

This Arrangement Letter may be amended or modified only by a written instrument executed by both parties.

Electronic Signatures and Counterparts

Each party hereto agrees that any electronic signature of a party to this Arrangement Letter or any electronic signature to a document contemplated hereby (including any representation letter) is intended to authenticate such writing and shall be as valid, and have the same force and effect, as a manual signature. Any such electronically signed document shall be deemed (a) to be "written" or "in writing," (b) to have been signed and (c) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Each party hereto also agrees that electronic delivery of a signature to any such document (via email or otherwise) shall be as effective as manual delivery of a manual signature. For purposes hereof, "electronic signature" includes, but is not limited to, (a) a scanned copy (as a "pdf" (portable document format) or other replicating image) of a manual ink signature, (b) an electronic copy of a traditional signature affixed to a document, (c) a signature incorporated into a document utilizing touchscreen capabilities or (d) a digital signature. This Arrangement Letter may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement. Paper copies or "printouts" of such documents if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule.

Please sign and return a copy of this Arrangement Letter to indicate your acknowledgment of, and agreement with, the arrangements for the examination we are to perform with respect to the Assertion, including our respective responsibilities.

Acknowledgement and Acceptance

Each party acknowledges that it has read and agrees to all of the terms and conditions contained herein. Each party and its signatory below represents that said signatory is a duly authorized representative of such party and has the requisite power and authority to bind such party to the undertakings and obligations contained herein.

Sincerely,

PBMares, LLP



Robert E. Bittner III, CPA
Partner

Confirmed on behalf of the City of Fayetteville:

Mitch Colvin, Mayor

Date

Doug Hewett, City Manager

Date

Jay Toland, Chief Financial Officer

Date