

STATE OF NORTH CAROLINA

COUNTY OF CUMBERLAND

AGREEMENT FOR SERVICES
WITH FCCCC

THIS AGREEMENT, entered into this 1ST day of July, 2011, by and between the CITY OF FAYETTEVILLE, a municipal corporation organized and existing under the laws of the State of North Carolina (hereinafter the "CITY"), and FAYETTEVILLE CUMBERLAND COUNTY CHAMBER OF COMMERCE (hereinafter the "AGENCY");

WITNESSETH:

WHEREAS, CITY has contracted with AGENCY for economic development services since July 1, 2009;

WHEREAS, the most recent contract extension expires June 30, 2011 ("Prior Agreement"). It renews for an additional one (1) year term, however, unless terminated in writing prior to June 1, 2011;

WHEREAS, the CITY desires to revise and clarify a number of the terms of the Prior Agreement; and

WHEREAS, CITY and AGENCY are desirous of entering into a new agreement for economic development services replacing the Prior Agreement with this new services agreement.

NOW, THEREFORE, it is mutually agreed and understood between the parties as follows:

1. **TERM OF AGREEMENT:** This Agreement shall supersede and replace all prior agreements and commence July 1, 2011, and terminate June 30, 2012, (Anniversary Date) unless sooner terminated or renewed as provided for herein.

A. **EARLY TERMINATION:** The CITY, in its discretion, may terminate this Agreement at anytime prior to its normal expiration date upon sixty (60) days advance written notice to the AGENCY. If AGENCY shall at anytime breach any part of this Agreement, this Agreement shall immediately terminate upon receipt of written notice of the same, signed by the CITY, and AGENCY shall refund any unused funds to CITY within five (5) banking days. Unused funds shall mean, for the purposes of this Agreement, any FUNDS appropriated by CITY that are not needed to satisfy any outstanding indebtedness of the AGENCY associated with Section 2, Services to be Performed, as validated by CITY, on the date of breach and/or termination as provided herein.

B. **AUTOMATIC RENEWAL:** This Agreement shall renew automatically upon the Anniversary Date for up to two (2) additional one (1) year terms unless the CITY provides notice on intent not to renew at least thirty (30) days prior to the Anniversary Date.

2. **SERVICES TO BE PERFORMED:** AGENCY, in and for the consideration recited in Paragraph 3 herein, agrees to perform those services stated below. In general, the CITY agrees to contract with the AGENCY for the full range of services typically provided by nonprofit agencies engaged in economic development activities on behalf of a municipality in the State of North Carolina.

A. **ECONOMIC DEVELOPMENT EXAMPLE ACTIVITIES:**

i. Retention/expansion visits to existing companies.

- ii. Serve as a resource to existing and prospective companies for the full range of services typical to the Economic Development industry such as maintaining up to date demographics, market conditions, infrastructure availability, property availability, state and local assistance programs, workforce characteristics, etc..
- iii. Maintain thorough knowledge of federal, state, and local Economic Development tools available including workforce development, financial incentives, etc..
- iv. Devise and implement appropriate marketing and outreach strategies, activities, materials, and events to foster the increase of jobs, access to goods and services, and overall investment and economic activity in the CITY.
- v. Serve as consultant/advocate to assist firms with preparing Job Training Partnerships and other applications for benefits that lead to the retention, expansion, and/or upgrade of job opportunities in the CITY.
- vi. Participate in local, regional, statewide, and/or national events as appropriate to strategically and effectively network, market, and promote the decision of firms to locate and invest in the CITY.
- vii. Nurture a strong working relationship with state and local officials, utility companies, lenders, real estate professionals, and others to enable an efficient team approach to promoting investment in the CITY.
- viii. Periodically carry out formal or informal impediments analysis and make recommendations to the City of Fayetteville Public Works Commission (“Commission”) and the CITY to devise policies to take advantage of opportunities to become more competitive in retaining and attracting business investment desired by the CITY as identified in its Strategic Plan.
- ix. Prepare presentations and host site visits by investors, location consultants, and business officials to attract additional economic activity in the CITY.
- x. Collaborate with CITY staff to devise and implement strategies for development or redevelopment of high profile, high priority corridors and target sites.

B. REQUIRED ACTIVITIES: The following economic development activities will be performed consistently:

- i. Administration of the Fayetteville Cumberland County Economic Development program including:
 - a) Promoting the program to potential applicants;
 - b) Working with the CITY and Cumberland County to revise the program as necessary to clarify and/or improve its operation;
 - c) Process all applications for incentives under the program including the development of all necessary agreements and reports necessary to obtain approval from the CITY; and
 - d) Monitor Economic Development Incentive Agreements for compliance and submit all payment requests and documentation necessary for the CITY to meet its obligations under those agreements.
- ii. Work toward the completion of Annual Projects (Exhibit A). If the Agreement is extended then the CITY may update the Annual Projects Exhibit by providing AGENCY a revised Exhibit A prior to the Anniversary Date.

- iii. Convey to partner economic development service providers support payments as funded by the CITY consistent with the schedule included in the Economic Development Transfer Payments exhibit (Exhibit B). If the Agreement is extended then the CITY may update the Economic Development Transfer Payments exhibit by providing AGENCY a revised Exhibit B prior to the Anniversary Date.

3. **REPORTS AND DELIVERABLES:** At least annually, within thirty (30) days of Anniversary Date, the AGENCY shall communicate to the CITY its Action Plan for the following year. The Action Plan will include identification of the specific allocation of all financial resources provided through this agreement to support the services to be provided by the AGENCY. The Action Plan is subject to the approval of the CITY and may be modified by the AGENCY as conditions, opportunities, and circumstances arise. Changes in excess of ten percent (10%) of the total Agreement budget shall be submitted to the CITY for review and approval.

- A. The Action Plan shall include, at a minimum, the identification of the following:
 - i. The specific individual responsible for significant categories of work activities including associated payroll or similar expenses;
 - ii. The identification of specific positions assigned to work activities including associated payroll or similar expenses;
 - iii. Resources to be used for purchasing services or assets in support of work activities identified by expense category; and
 - iv. Resources to be allocated to overhead expenses such as rent or office support identified by expense category.
- B. **QUARTERLY REPORTS:** The AGENCY shall no less frequently than quarterly provide reports on the following activities with the level of detail determined by AGENCY taking into consideration confidentiality and related professional standards:
 - i. Actions taken toward completing the Annual Projects (Exhibit A).
 - ii. Number of retention visits and any noteworthy follow-ups/results.
 - iii. Number of site visits and noteworthy follow-ups/results.
 - iv. Referrals from state agencies.
 - v. Noteworthy successes from direct involvement by AGENCY staff for investment, new/expanded business, and jobs.
 - vi. Basic demographics, statistical, property availability, workforce data, etc., as used in presentation for hosting site visits. Highlight notable trends, changes, etc.
 - vii. General observations, recommendations, opportunities, and challenges on strategic positioning by Fayetteville if applicable.

4. **PAYMENT:** The CITY will provide financial support to the AGENCY on an annual basis paid in four (4) equal quarterly payments within twenty-one (21) days of receipt of payment request from the AGENCY which shall be submitted during the first ten (10) days of the quarter to the CITY's Finance Department. Payment shall be conditioned upon the satisfactory submission of all required reports and deliverables. The CITY's payment shall be that authorized by the City Council in the budget for the

relevant period (\$100,000 for the fiscal year beginning July 1, 2011). The COMMISSION will make payment under the same terms and conditions (\$315,000 for the fiscal year beginning July 1, 2011).

5. **FINANCIAL RECORDS AND REPORTS:** AGENCY shall maintain financial records of economic development activities separate and distinct from other services the AGENCY may provide.

A. Monthly financial activity reports shall be made available for review by the CITY.

B. Quarterly operational activity reports shall be presented to the City Council in a public forum in such detail as required by the CITY. Nonetheless, it is recognized that primary economic development functions of the AGENCY involve proprietary information that must be protected and released to the public only at appropriate times.

6. **AUDIT:** The AGENCY agrees that it will provide the CITY with a certified audit, a copy of the management letter, and management's response to the auditor recommendations, by independent auditors for the fiscal year period ending or including June 30, 2010. The audit will specifically state whether or not the CITY's funds were used exclusively for those purposes stated in Section 2. The audit will specifically describe any exceptions and the amount of exception. It is understood that such audits may not be available upon the commencement of this Agreement. The audit is due to the CITY ninety (90) days after the AGENCY year-end. If at any time the CITY determines the AGENCY is not in compliance with either this Agreement or N.C.G.S. Chapter 159, or any other federal, state, or local law, policy, or regulation affecting the expenditure of public funds, the AGENCY shall be notified in writing as to the nature of the deficiency. It is the responsibility of the AGENCY at its expense to rectify and/or reconcile any material deficiencies identified by audit or monthly review of financial activity by the CITY. Failure to cure a material deficiency in compliance with N.C.G.S. Chapter 159 or the terms of this Agreement within thirty (30) days of receipt of a written notice from the CITY shall constitute a default and may be cause for termination of this Agreement. At anytime the CITY deems it necessary or appropriate, the AGENCY agrees that an internal audit by the CITY may be made of the AGENCY's books or records to assess the current financial condition of the AGENCY and compliance with this Agreement.

7. **INDEPENDENT CONTRACTOR:** AGENCY is a non-profit corporation of the State of North Carolina and is an independent contractor. AGENCY is not an agent, officer, or employee of the CITY and shall have no authority to act as an agent of the CITY, nor enter any agreement for or on behalf of the CITY. AGENCY shall at all times provide CITY with satisfactory proof of its status as a non-profit corporation organized to do business in the State of North Carolina.

8. **ASSIGNMENT:** The AGENCY shall not assign its contract rights under this Agreement nor any part thereof, nor delegate or subcontract any performances hereunder in excess of ten percent (10%) of the total contract budget herein, without first obtaining the CITY's written approval thereof.

9. **AGENCY AND AUTHORITY:** The CITY hereby designates the City Manager or his/her designee as its exclusive agent with respect to this Agreement. The City Manager or his/her designee is authorized, on behalf of the CITY, to negotiate directly with the AGENCY on all matters pertaining to this Agreement. The AGENCY agrees that all of its dealings with the CITY in respect to the terms and conditions of this Agreement shall be exclusively with the City Manager or his/her designee. Further, the AGENCY specifically agrees that it shall not implement any requested modifications in the specifications of any of the services subject to this Agreement except in the manner described in the paragraph entitled MODIFICATION.

10. **MODIFICATION:** This Agreement may be modified only by an instrument duly executed by the parties or their respective successors.

11. **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,

IN WITNESS WHEREOF, the CITY and AGENCY have executed this Agreement and caused their seals to be affixed and attested as of the day and year first above written.

ATTEST:

FAYETTEVILLE - CUMBERLAND
COUNTY CHAMBER OF COMMERCE

Kenneth M. Gregory
Kenneth M. Gregory, Jr. Secretary

By: *Nirin Gierbolini* *Nirin Gierbolini*
for Doug Peters
DOUGLAS S. PETERS, President



ADJUTANT: *Benfield*
City Clerk

CITY OF FAYETTEVILLE

By: *Dale E. Iman*
DALE E. IMAN, City Manager

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

APPROVED AS TO FORM:

Lisa T. Smith 7/15/11
LISA T. SMITH, Chief Financial Officer

Karen M. McDonald
KAREN M. MCDONALD, City Attorney

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

J. Dwight Miller 7/19/11
J. Dwight Miller, CFO
Public Works Commission

Annual Projects:

1. **Hope VI Business Park:** The CITY is in the process of acquiring property situated at Gillespie Street, Blount Street and Chase Street as part of the Old Wilmington Road Hope VI Revitalization Grant program with the purpose of establishing, through a public/private partnership a development that creates job opportunities for residents of that project. The AGENCY will develop a plan for soliciting proposals to serve project objectives and, upon CITY concurrence, implement that plan.
2. **Murchison Road Corridor Redevelopment Plan:** The CITY has adopted a development plan for the Murchison Road corridor which includes a number of catalyst sites that are proposed for acquisition by the CITY in support of future public/private redevelopment projects. The AGENCY will work to identify and acquire target properties within these catalyst sites based upon resources provided by the CITY on an annual basis for this purpose. The objective of this project is to acquire, operate, and maintain properties in the catalyst site areas working toward a critical mass of property ownership in these areas over time sufficient to support and/or incent redevelopment consistent with the redevelopment plan.
3. **Economic Development Metrics:** The objective of this project is for the AGENCY to engage its economic development partners, including the CITY, in the exploration of performance metrics for future reporting purposes. The major objective is to achieve concurrence from the City Council on a consistent and supportive set of metrics to be tracked over a significant period of years into the future.
4. **All American City Marketing:** Work with the CVB to develop a marketing plan for the purpose of using the City's status as an "All American City" to promote business growth and to identify funding to implement that plan.
5. **PWC Sustainability Campus:** Work with COMMISSION, staff and the Sustainable Communities Foundation to generate or confirm a development plan for the Campus and a marketing plan to attract private or governmental partners to locate facilities and/or operations on the Campus. Implement that marketing plan.

Economic Development Transfer Payments:

- **CEED:**Center for Economic Empowerment and Development, Sylvia G. Ray, Founder/CEO, 230 Hay St., Fayetteville, NC 28301; to be funded in the total amount of \$28,125 in equal quarterly payments.