

Salisbury City Council Agenda Item Request Form



Please Select Submission Category: ☐ Public ☒ Council ☐ Manager ☐ Staff

Requested Council Meeting Date: September 20, 2022

Name of Group(s) or Individual(s) Making Request: Staff

Name of Presenter(s):

Requested Agenda Item: Council to consider entering into a funding agreement with the Rowan Economic Development Commission for allocation of special project funds.

Description of Requested Agenda Item: Funding agreements have been established for special project funds allocated to non-profits. Council has previously approved funding agreements for other non-profit agencies and still needs to approve an agreement with the Rowan Economic Development Commission. Following approval, funds for this special project non-profit will be paid on a quarterly basis.

Attachments: ☒ Yes ☐ No

Fiscal Note: (If fiscal note requires approval by finance department because item exceeds \$100,000 or is related to grant funds, please fill out signature blocks for finance at bottom of form and provide supporting documents)

Action Requested of Council for Agenda Item: Council to consider entering into a funding agreement with the Rowan Economic Development Commission for allocation of special project funds.

. Please note if item includes an ordinance, resolution or petition)

Contact Information for Group or Individual:

☐ **Consent Agenda** (item requires no discussion and will be voted on by Council or removed from the consent agenda to the regular agenda)

☒ **Regular Agenda** (item to be discussed and possibly voted on by Council)

FINANCE DEPARTMENT INFORMATION:

Finance Manager Signature

Department Head Signature

Budget Manager Signature

*****All agenda items must be submitted at least 7 days before the requested Council meeting date*****

For Use in Clerk's Office Only

☐ **Approved**

☐ **Delayed**

☐ **Declined**

FUNDING AGREEMENT

This funding agreement (the "Agreement") is made and entered into this ____ day of July 2022, by and between the **City of Salisbury**, a North Carolina municipal corporation (the "**City**"), and **Rowan Economic Development Council**, a joint economic development commission created pursuant to Chapter 158 of the North Carolina General Statutes (the "**EDC**") (collectively, the "Parties").

For and in consideration of the mutual promises set forth in the Agreement, the parties do mutually agree as follows:

1. Acknowledgments.

- a. The EDC has requested funding from the City to carry out one or more of its programs.
- b. The City has reviewed the EDC's request for funding and has determined that funding the program(s) in the amount set forth in this Agreement serves a public purpose and is in the best interest of the citizens of the City.
- c. The Parties desire to enter into this Agreement to memorialize their understanding related to the funding and the programming.

2. Obligations of EDC.

- a. Services. Under this Agreement, the EDC shall perform economic development work for the City as more particularly set forth in the EDC's request letter to the City dated March 4, 2022, which is incorporated into this Agreement by reference (the "Services"). EDC shall, at its own sole cost and expense, perform and provide all the labor, services, materials, equipment, supplies, plans, and equipment necessary to complete the Services within the time specified and in accordance with the terms, conditions, and provisions of this Agreement.
- b. Annual report and inspection. The EDC shall provide to the City an annual written report of all Services performed pursuant to this Agreement. At the request of the City, the EDC shall make an oral presentation to the City Manager or to the City Council on the Services performed pursuant to this Agreement. In addition, the City reserves the right to inspect the Services performed under this Agreement at reasonable times and with reasonable frequency.
- c. Qualifications of EDC. EDC, and all agents or employees of EDC who will provide services under this Agreement, shall be fully qualified, possess any requisite licenses, and otherwise be legally entitled to perform the services provided, and shall exercise the skill and care customarily exercised by duly licensed and qualified agencies of the same or similar services.
- d. Records Maintenance. EDC shall maintain written documentation of any services provided, including any required documentation meeting the requirements of applicable federal, state, and local laws and regulations.

3. Obligations of the City.

- a. Funding. The City agrees to fund EDC in the amount of **\$114,088.00** ("Funding Amount") as set forth in this paragraph.
 - b. Terms and Method of Payment. The City will make quarterly payments representing one-fourth (1/4 or 25%) of the total Funding Amount after the City receives necessary documentation from the EDC. In the discretion of the City, the EDC shall submit copies of paid invoices, receipts, or other documentation reasonably required by the City prior to receiving any payment.
4. Term. The Services will be provided from the date this Agreement is entered into until June 30, 2023, unless sooner terminated as herein provided.
5. Termination. If the EDC fails to perform its obligations under this Agreement or if the EDC violates any provision of this Agreement, the City may immediately terminate this Agreement by giving written notice of termination to the EDC. The EDC shall refund to the City on a prorated basis any payment made prior to termination. In addition, the City may terminate this Agreement at any time at its complete discretion upon thirty (30) calendar days' notice in writing from the City to the EDC prior to the date of termination. In the event of termination, all finished or unfinished documents and other materials produced by EDC pursuant to this Agreement shall, at the request of the City, be turned over to it and become its property.
6. Agreement Funding. It is understood and agreed between EDC and the City that the City's payment obligation under this Agreement is contingent upon the availability of appropriated funds from which payment for Agreement purposes can be made.
7. Taxes. EDC shall pay all federal, state and FICA taxes for all employees participating in the provision of services under this Agreement.
8. Monitoring and Auditing. EDC shall cooperate with the City, or with any other person or EDC as directed by the City, in monitoring, auditing, or investigating activities related to this Agreement. EDC shall permit the City to evaluate all activities conducted under this Agreement as dictated by the City. EDC shall provide auditors retained by the City with access to any records and files related to the provision of services under this Agreement. The City agrees that its auditors will maintain the confidentiality of any identified and actual trade secrets of EDC accessed during an audit conducted under this Agreement.
9. Compliance with Applicable Laws. EDC shall comply with all applicable laws and regulations in providing services under this Agreement. In particular, EDC represents that it is authorized by federal law to work in the United States. EDC represents and warrants that it is aware of and in compliance with the Immigration Reform and Control Act and North Carolina law (Article 2 of Chapter 64 of the North Carolina General Statutes) requiring use of the E-Verify system for employers who employ twenty-five (25) or more employees and that it is and will remain in compliance with these laws at all times while providing services pursuant

to this Agreement. EDC is responsible for compliance with the Affordable Care Act and accompanying IRS and Treasury Department regulations.

10. Indemnification. To the maximum extent allowed by law, EDC shall indemnify and hold harmless the City and its agents and employees from and against all claims, actions, demands, costs, damages, losses, and/or expenses of any kind whatsoever proximately resulting from the omission or commission of any act, lawful or unlawful, by EDC or its agents and/or employees, including but not limited to court costs and attorney's fees, incurred in connection with the defense of said matters. The parties agree that this indemnification clause is an "evidence of indebtedness" for purpose of N. C. Gen. Stat. § 6-21.2.
11. Relationship of Parties. EDC shall be an independent contractor of the City, and nothing herein shall be construed as creating a partnership or joint venture; nor shall any employee of EDC be construed as an employee, agent, or principal of the City.
12. Restricted Companies List. EDC represents that as of the date of this Agreement, EDC is not included on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. EDC also represents that as of the date of this Agreement, EDC is not included on the list of restricted companies determined to be engaged in a boycott of Israel created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.81.
13. Nondiscrimination. By signing this Agreement, EDC, for itself, its agents, officials, and employees, certifies that it does not and will not discriminate in any manner on the basis of race, color, national origin, ethnicity, religion, creed, age, disability, sex, sexual orientation, gender identity or expression, pregnancy, marital or familial status, National Guard or veteran status, or any other status protected by federal, state, or local law, in its employment or business practices, and with respect to the subject matter of this Agreement, except where such actions are otherwise excepted from or allowed by federal nondiscrimination law, including, but not limited to, Title VII of the Civil Rights Act of 1964. The EDC further agrees to comply with the provisions and intent of City of Salisbury Ordinance No. 2021-52. That Ordinance is incorporated into this Agreement for the benefit of the City of Salisbury and its residents. To ensure compliance with this provision, EDC further agrees that it will promptly respond to reasonable requests for information from the City. Failure to respond to requests for information or failure comply with the requirements of this provision shall constitute a breach of the Agreement. This provision shall be binding on the successors and assigns of the EDC with reference to the subject matter of this Agreement.
14. Conflicts of interest. By signing this Agreement, the Parties acknowledge that they are in compliance with their own Conflicts of Interest policies and with other applicable law related to conflicts of interest, including but not limited to G.S. § 14-234.3.
15. No assignment. EDC shall not assign, subcontract, or otherwise transfer any interest in this Agreement without the prior written approval of the City.

16. Amendments in writing. This Agreement may be amended only in writing and signed by both parties.
17. Governing law. North Carolina law will govern the interpretation and construction of the Agreement.
18. Entire agreement. This Agreement, including the purchase order, if any, used in connection herewith and any other document(s) expressly incorporated by reference as a part of this Agreement, constitutes and expresses the entire agreement and understanding between the parties concerning its subject matter. This Agreement supersedes all prior and contemporaneous discussions, promises, representations, agreements and understandings relative to the subject matter of this Agreement. To the extent there may be any conflict between the four corners of this Agreement and other documents incorporated by reference herein, the terms of this Agreement will control.
19. Severability. If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.
20. Counterparts and execution. This Agreement may be executed in any number of counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. The Parties agree that computer scanned and/or faxed signatures or copies of this Agreement will have the same validity and force as an "original."
21. Authority to Enter Agreement. The person(s) executing this Agreement on behalf of EDC have authority to do so as an official, binding act of EDC.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first indicated above.

CITY OF SALISBURY

EDC

BY: _____

TITLE: _____

DATE: _____

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

March 4, 2022

The Honorable Karen Alexander
Mayor of the City of Salisbury
via email: Kelly Baker, Administrative Services Director kbake@salisburync.gov
PO Box 479
Salisbury, NC 28145

Re: Funding Request of the Economic Development Commission for Fiscal Year 2022-23

Dear Mayor Alexander,

On behalf of the Rowan EDC, I'd like to thank you and your fellow members of the Salisbury City Council for your outstanding support of our organization. We have been able to accomplish much in moving the economy of Salisbury forward with the support provided by your body and its two appointees to our board.

We would like to continue those efforts to bring greater prosperity to all residents of Salisbury and so are respectfully requesting that you continue the same level of funding as you have in the past four years in the amount of \$114,088 during FY 2022-23.

Your past support of the Rowan EDC has yielded a positive return on investment. The past year has seen an unprecedented level of development activity that will positively impact every community across Rowan County. In addition to this elevated developer interest, we also received a record number of leads from companies interested in locating in our area. With new product coming to market and a great number of prospects, we expect a high level of new investment and job creation over the next several months.

At the beginning of this year, we entered the third year of our Forward Rowan campaign which has secured \$1.4 million in commitments from the private sector to assist our growth efforts. The guiding principles of Forward Rowan are reducing poverty, increasing prosperity, and improving the quality of life for all residents of Rowan County. This will be accomplished through the four strategies of targeted economic growth, talent attraction and development, brand identity and storytelling, and service delivery excellence.

We hope that you agree that your investment in our organization is worthy of your continued support. We would be happy to answer any questions and go into greater detail about our activities and programs. We look forward to continuing to work with you to bring economic growth and prosperity to Rowan County.

Sincerely,



Rod Crider
President & CEO

cc: Brian Hiatt, Interim City Manager