

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement (this “**Agreement**”), dated effective as of September 16, 2020 (the “**Effective Date**”), is by and between the City of Fayetteville (the “**City**”), North Carolina, and Bernhard Capital Partners Management, LP, a Delaware limited partnership (“**BCPM**”).

### Background

- A. BCPM is evaluating the possibility of entering into a business transaction with the City (the “**Transaction**”).
- B. During the course of such evaluations, BCPM may disclose and make available to the City certain Confidential Information.
- C. BCPM and the City intend to have confidential discussions concerning the Transaction and other matters related thereto (the “**Discussions**”).
- D. BCPM and the City desire to enter into this Agreement to set forth their understanding with respect to the Confidential Information and the Discussions related thereto.

### Agreement

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Background Section; Defined Terms.** The Background section of this Agreement as set forth above is hereby incorporated into this Agreement in its entirety and made a part hereof. Capitalized terms used but not defined herein have the meanings ascribed to them in Exhibit A to this Agreement.
2. **Term.** This Agreement is effective as of the Effective Date and shall terminate two (2) years after the Effective Date.
3. **Obligations of the City.** The City shall comply with the following obligations with regard to the Confidential Information and the Discussions:
  - (a) The City shall keep, and cause to be kept, confidential, in the same manner that the City keeps its own confidential information of a similar nature or to a standard utilizing its best efforts, whichever standard is higher, all Confidential Information disclosed to the City or its Representatives by BCPM or its Representatives;
  - (b) All Confidential Information shall be used by the City and its Representatives solely for the purposes of participating in the Discussions and/or evaluating the possibility of participating in the Transaction;
  - (c) The City shall not use the Confidential Information, or permit it to be accessed or used, to reverse engineer, disassemble, or decompile the proprietary services, products and/or confidential intellectual property of BCPM or any of BCPM’s Representatives;
  - (d) The City shall disseminate, and cause to be disseminated, Confidential Information only to its Representatives to whom disclosure of the Confidential Information is reasonably believed by the City to be necessary for the purposes of the City’s participation in the Discussions;

(e) The City agrees that, prior to dissemination of Confidential Information to any of its Representatives, it will inform those persons of the confidential nature of the information and the requirement that it not be used other than in furtherance of the purposes stated above;

(f) The City shall immediately notify BCPM of any unauthorized disclosure of the Confidential Information or other breaches of this Agreement by the City or any of its Representatives;

(g) The City has implemented and will continue to maintain reasonable security protocols to secure and protect the confidentiality of all Confidential Information in the possession or control of the City or any of its Representatives;

(h) The City shall fully cooperate with BCPM in any effort undertaken by BCPM to enforce its rights related to any unauthorized disclosure of the Confidential Information or other breaches of this Agreement; and

(i) The City shall, in any event, be responsible for any breach of this Agreement by any of its Representatives.

4. **Ownership and Return of Confidential Information.** All Confidential Information delivered by BCPM to the City pursuant to this Agreement shall be and remain the property of BCPM. Upon termination of this Agreement, or upon the request of BCPM, all Confidential Information disclosed hereunder that is in writing or other tangible form shall be returned to BCPM or destroyed by the City, at BCPM's option, and the City shall provide written confirmation of its destruction to BCPM if applicable. The City shall be responsible for retrieving all Confidential Information from its Representatives. All Confidential Information that has been provided orally shall be kept confidential as provided herein by the City and its Representatives.

5. **Non-Disclosure of Discussions.** Except as may be required by applicable Legal Process or as otherwise mutually agreed to in writing by the Parties, the City shall not, without the prior written consent of BCPM, disclose to any person, other than to the individual members of the City Council of the City of Fayetteville, the city attorney of the City of Fayetteville, and the Commissioners and the designated staff of the Fayetteville Public Works Commission who review confidential information produced by BCPM pursuant to a Non-Disclosure Agreement between BCPM and the Fayetteville Public Works Commission: (a) the fact that the Confidential Information has been made available to the City; (b) that the City has inspected any portion of the Confidential Information; (c) that the Discussions have taken, or are taking, place; or (d) any terms, conditions or other arrangements that are being discussed or negotiated between the Parties or their Representatives related to or associated with the Confidential Information or the Discussions.

6. **Compelled Disclosure.**

(a) Notwithstanding anything else in this Agreement to the contrary, the City or its Representatives may disclose Confidential Information if such disclosure of Confidential Information is compelled by Legal Process in the reasonable opinion of the City's counsel (any such disclosure, a "**Permitted Disclosure**").

(b) The City shall, to the extent not prohibited by Legal Process:

(i) Prior to any Permitted Disclosure of Confidential Information, provide BCPM immediate written notice of such anticipated disclosure, which notification shall

include the nature of the legal requirement and the extent of the required disclosure, sufficiently in advance of the anticipated deadline for the Permitted Disclosure to afford BCPM the opportunity to seek an appropriate protective order or other remedy to prevent or narrow the disclosure or to ensure that information will continue to be treated in as confidential a manner as possible; and

- (ii) Provide reasonable assistance to BCPM to preserve the confidentiality of such information, consistent with applicable law, including in opposing such disclosure or seeking a protective order or other limitations on disclosure to the extent allowed by law.

7. **No Warranty of Accuracy.** With respect to all Confidential Information, BCPM makes no representations or warranties, express or implied, as to the accuracy or completeness of the Confidential Information.

8. **Prevailing Party.** The prevailing Party in any litigation arising out of this Agreement shall be entitled to recover from the non-prevailing Party all reasonable costs (including reasonable attorneys' fees) incurred in connection with such litigation.

9. **No Transfer of Rights, Title or Interest.** BCPM hereby retains its entire right, title and interest, including all intellectual property rights, in and to all of its Confidential Information. Any disclosure of such Confidential Information hereunder shall not be construed as an assignment, grant, option, license or other transfer of any such right, title or interest whatsoever to the City or any of the City's Representatives.

10. **Relationship of Parties.** Neither Party: (a) shall be considered an employee, contractor, vendor, or partner of the other Party; (b) shall owe a fiduciary duty to the other Party; or (c) is capable, nor shall it hold itself out as capable, of binding the other Party to any obligation or liability without the prior written consent of the other Party.

11. **Severability.** If any term or provision of this Agreement is contrary to or conflicts with any requirement of applicable law, such term or provision shall be stricken from this Agreement and the remainder of this Agreement shall continue in full force and effect to the fullest extent possible, as if said term or provision was never part of this Agreement and shall bind the Parties in all other respects.

12. **Integration.** No prior or contemporaneous written or oral agreement(s) between the Parties with respect to the subject matter hereof shall be binding upon either Party. This Agreement constitutes the sole and entire understanding and agreement between the Parties with respect to the subject matter hereof. **This Agreement also applies, without limitation, to Confidential Information accessed through BCPM's electronic data room and supersedes any "click through" acknowledgement or agreement associated with any such electronic data room.**

13. **Modification.** This Agreement may be modified only in a writing signed by both Parties.

14. **No Waiver.** No waiver by a Party of any breach by the other Party of any condition or provision of this Agreement shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time, nor shall the failure of or delay by a Party in exercising any right, power or privilege hereunder operate as a waiver thereof to preclude any other or further exercise thereof or the exercise of any other such right, power or privilege.

15. **Notice.** Any and all notices and other communications that are required or permissible pursuant to this Agreement shall be in writing, and shall be deemed given: (a) upon the earlier of the sender's receipt

of electronic confirmation of transmission, if sent by email, facsimile or other electronic means; or (b) upon receipt if sent by registered mail (return receipt requested) or a nationally recognized overnight courier to the address of such Party designated below. If a Party sends a material notice via email, facsimile or other electronic means, the party shall also promptly send a written copy of such notice to the other party via mail or courier as set forth in subsection 15(b). The Parties may amend their contact information by notice to all other Parties, as provided in this paragraph.

The City:                   The City of Fayetteville  
Attention: Karen M. McDonald  
Address: 433 Hay Street  
Fayetteville, NC 28311  
Telephone: 910.433.1985  
Email: kmcdonald@ci.fay.nc.us

BCPM:                       Bernhard Capital Partners Management, LP  
Attention: Lucie R. Kantrow  
400 Convention Street, 10<sup>th</sup> Floor  
Baton Rouge, Louisiana 70802  
Telephone: 225.228.2500  
Email: lucie@bernhardcapital.com

16.     **CHOICE OF LAW; WAIVER OF JURY.** THIS AGREEMENT, AND ANY CLAIMS, DISPUTES OR CONTROVERSIES ARISING FROM OR RELATED TO THIS AGREEMENT, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NORTH CAROLINA. EACH PARTY FURTHER WAIVES RIGHT TO JURY TRIAL.

17.     **Remedies.** The City agrees that a breach of this Agreement could cause serious or irreparable harm and that it would be difficult or impossible to determine a monetary value with respect thereto, therefore, in addition to any other remedies at law or in equity to which BCPM may be entitled, BCPM is entitled to seek injunctive or other equitable relief in order to enforce the provisions of this Agreement. The City hereby waives any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim for equitable or injunctive relief. The foregoing equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages or other available forms of relief.


18.     **Counterparts; Facsimile or Electronic Execution.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original for all purposes. Facsimile or electronic execution and delivery of this Agreement constitutes legal, valid and binding execution and delivery hereof for all purposes.

19.     **NO OBLIGATION.** BCPM DOES NOT HAVE AN OBLIGATION TO DISCLOSE CONFIDENTIAL INFORMATION UNDER THIS AGREEMENT. THIS AGREEMENT IS NOT INTENDED TO, AND DOES NOT, (A) CONSTITUTE AN AGREEMENT OF EITHER PARTY TO PERFORM DUE DILIGENCE, NEGOTIATE, OR CONSUMMATE A TRANSACTION OR TO ENTER INTO ANY BINDING AGREEMENT OR COMMITMENT WITH RESPECT TO A TRANSACTION, OR (B) CONTAIN ALL MATTERS UPON WHICH AGREEMENT WOULD HAVE TO BE REACHED WITH RESPECT TO A TRANSACTION IN ORDER TO MAKE A BINDING AGREEMENT OR COMMITMENT. A BINDING AGREEMENT OR COMMITMENT WITH RESPECT TO A TRANSACTION, WILL RESULT IF AND ONLY IF THE PARTIES EXECUTE A DEFINITIVE WRITTEN AGREEMENT, AND EACH OF THE PARTIES MAY

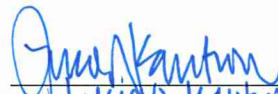
**DECLINE TO EXECUTE SUCH AN AGREEMENT FOR ANY OR NO REASON, IN EACH PARTY'S SOLE AND ABSOLUTE DISCRETION.**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**CITY OF FAYETTEVILLE**

By:   
Name: Karen M. McDonald  
Title: City Attorney

**BERNHARD CAPITAL PARTNERS  
MANAGEMENT, LP**

By:   
Name: Amber R. Kauffman  
Title: General Counsel

**EXHIBIT A**  
**DEFINITIONS**

“**Affiliate**” means, with respect to a Party, any corporation, company, partnership, association or other business entity which directly or indirectly controls, is controlled by, or is under common control with the subject Party.

“**Confidential Information**” means all information disclosed before, on, or after the Effective Date, by BCPM or any of BCPM’s Representatives to the City or any of its Representatives, whether disclosed orally, or disclosed or accessed in written, electronic or other form media, that:

1. Constitutes a trade secret;
2. Is disclosed or furnished to the City in connection with BCPM’s proposal regarding the business transaction contemplated in this Agreement; and
3. Is designated or indicated as "confidential" or as a "trade secret" by BCPM or those acting on its behalf at the time of its initial disclosure to the City.

For the avoidance of doubt, trade secrets of BCPM may include:

- (a) non-public information concerning the past, present and future business affairs of BCPM and BCPM’s Representatives, including, without limitation, financial information, customer information, supplier information, products, services, organizational structure and internal practices, forecasts, sales and other financial results, records and budgets, and business, marketing, development, sales and other commercial strategies;
- (b) unpatented inventions, ideas, methods and discoveries, know-how and other confidential intellectual property of BCPM and its Representatives;
- (c) designs, specifications, documentation, images, drawings, protocols, processes and other visual depictions, in whole or in part, of any of the items listed in subsections (a) or (b), above;
- (d) other information that would reasonably be considered trade secrets given the nature of the information and the businesses of BCPM and its Representatives; and
- (e) notes, analysis, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations and other materials prepared by or for the City or its Representatives that contain, are based on, or otherwise reflect, or are derived, in whole or in part, from any of the foregoing.

Notwithstanding the foregoing, “Confidential Information” shall not include information that:

- (i) at the time of disclosure, is or becomes generally available to the public or generally known to the general public, other than as a result of a disclosure by the City or any of its Representatives in breach of this Agreement;
- (ii) was known by, or was in the possession of, the City or any of its Representatives, as established by documentary evidence, prior to being disclosed by or on behalf of BCPM pursuant to this Agreement;

(iii) was or later is developed independently by the City or any of its Representatives, as established by documentary evidence, without reference or use of, in whole or in part, the Confidential Information; or

(iv) at the time of disclosure is, or thereafter becomes, available to the City or its Representatives, in either case, on a non-confidential basis from a third party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information to the City by any legal, fiduciary or contractual obligation.

**“Legal Process”** means a deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process, or by operation of law, including but not limited to securities law or tax law.

**“Party”** means either the City or BCPM individually.

**“Parties”** means the City and BCPM collectively.

**“Representatives”** shall include a Party’s Affiliates, and a Party’s and each of its Affiliates’ respective officers, directors, managers, principals, employees, agents, advisors, consultants (including, without limitation, financial, accounting and legal consultants), actual or potential financing sources, and actual or potential joint venturers, partners, co-owners or suppliers, contractors or subcontractors retained by a Party.