

**Fayetteville Advertising and  
Promotion Commission  
July 26th, 2021 2:00 p.m.**

Location: Fayetteville Town Center, 15 West Mountain, Fayetteville AR

Commissioners: Katherine Kinney, Chair, Tourism & Hospitality Representative  
Todd Martin, Tourism & Hospitality Representative  
Chrissy Sanderson, Tourism & Hospitality Representative  
Elvis Moya, Tourism & Hospitality Representative  
Andrew Prysby, Commissioner at-large  
Matthew Petty, City Council Representative  
Sarah Bunch, City Council Representative

Staff: Molly Rawn, Chief Executive Officer; Jennifer Walker, Vice President of Finance; and Hazel Hernandez, Vice President of Marketing and Communications

**Agenda**

- I. Call to order at 2:00 p.m.
- II. Old Business
  - A. Review and approval of June 2021 minutes
- III. New Business
  - A. CEO Report, Molly Rawn
  - B. Financial Report from Jennifer Walker, Vice President of Finance
  - C. Presentation of 2020 Audit, BKD, Cynthia Burns.
  - D. Marketing Report presented by Hazel Hernandez, Vice President of Marketing and Communications
  - E. Vote. Budget Amendment, Dickson Street Art Court. *Staff is seeking permission to adjust the budget to reflect the revenue from the Tyson Family Foundation Grant and the associated art court expenses.*
  - F. Vote. Spartan Agreement and budget adjustment. *Staff is seeking authority to enter into an Agreement with Spartan to host the Spartan U.S. Trail Running World Championships in Fayetteville and to make the associated budget adjustment.*
  - G. Vote. Fayetteville Town Center tower repair quotes and Budget Amendment. *Seeking authorization to accept a bid from Nabholz Construction for \$54,900 and to make the associated budget adjustment.*
  - H. Vote. Walton Family Personal Philanthropy Group amendment to Cyclo-cross grant. *Vote to accept an amendment of \$1,400,000 to the original Cyclo-cross grant due to revised expenses and scope.*
  - I. Vote. Cyclo-cross Vendor payments and Contract request. *A vote authorizing a limited amendment to the Financial Policies permitting the Experience Fayetteville CEO to execute Cyclo-cross grant contracts and payments on an individual basis prior to Commission approval with a summary reporting to the Commission in December 2021 and March 2022.*

J. Recommendation to the City of Fayetteville to develop a matching funds program for employers who incentivize employee vaccinations. *Commissioner Petty is bringing forward this item for discussion and possible vote, due to the ongoing public health crisis and the risks posed by low vaccination rates.*

K. Agenda Additions. Additions to the agenda may be added upon request from a majority of commissioners.

IV. Announcements

V. Adjourn

Fayetteville Advertising and Promotion Commission  
Minutes from June 28, 2021  
Fayetteville Town Center

Commissioners Present: Katherine Kinney, Chair, Chrissy Sanderson, Elvis Moya, Sarah Bunch, Todd Martin

Commissioners Absent: Andrew Prysby and Matthew Petty

Staff: Molly Rawn, Chief Executive Officer; Jennifer Walker, Vice President of Finance; and Hazel Hernandez, Vice President of Marketing and Communications

I. Chairperson Kinney called the meeting to order at 2:01 p.m.

II. Old Business

A. Commissioner Bunch motioned to approve the May 2021 minutes with Commissioner Moya seconding. The minutes were unanimously approved.

III. New Business

A. CEO Report, Molly Rawn

Hotel occupancy up 74% in May 2021 versus May 2020 and is up 20% YTD compared to 2020. Restaurant collections for May have nearly doubled from last year.

April was a good month for Fayetteville with 13 home Razorback baseball games. This HMR data does not include regionals or super regionals but does capture the Oz Trails Pro Cup presented by Experience Fayetteville.

Visitors in Visitors Center: 685 for May, which is down from 2018, however, at the end of May we opened back up on Saturdays. We sold more than \$1,000 in Pride merchandise in May; all of these sales will go to NWA Equality.

Additionally, we've heard estimates of 22,000 people at the Pride Parade. Our sales team, Tina and Julie, brought Lace, Grace and Gears, a women's motorcycle event, to Drake Field.

The Fayetteville Town Center hosted 27 meetings/events in May. We continue to operate at 2/3 capacity for events and hope to offer you a sneak peek at our next meeting of some ballroom renovations.

Two full time openings at Fayetteville Town Center have been filled. Griffin Stroupe has been hired to be our Sales Manager and Madison Hurley is serving as our Event Services Manager. The town center has many events scheduled for the fourth quarter.

Upcoming events: We are partnering with Latinas en Bici for the Tour de Frida, a cycling event on July 17 to honor Frida Kahlo's life and the anniversary of her passing. The route goes along many pieces of public art.

The Joe Martin Stage Race and Experience Fayetteville Criterium is August 26<sup>th</sup> to 29<sup>th</sup> and the Spartan Trail Running Championship is October 31<sup>st</sup>.

Commissioner Moya asked when we planned to go back to full capacity events at the town center. Rawn answered we currently have the ability to do so, but the events being booked are below our full capacity. We continue to evaluate booking requests as they come in.

**B. Financial Report, Jennifer Walker, Vice President of Finance**

Our target for budget is 42% for the end of May. Our revenues are at 39% and expenditures are at 35%.

Looking more specifically at HMR tax revenue, we are exceeding our YTD budget by 1%. On our balance sheet, you will see that cash and investments are just over three million dollars.

We have now expended all of our PPP funds, with a breakdown included in the meeting packet. We are working on the loan forgiveness application and might have that for commission's review at an upcoming meeting.

**C. Marketing Report presented by Hazel Hernandez, Vice President of Marketing and Communications**

Through May our website numbers are up significantly from last year. Especially our landing page views, up 107% which shows the efforts of our increased advertising.

Interesting website traffic trends: 89% of traffic to the website are new visitors, with increasing percentages of international site visitors. This is to be expected as cyclo-cross is very popular in Europe.

Hernandez showed the top content draws from our website thus far with /visitfayetteville being the highest, followed by /46-things-to-do, /guide, /experience/events and then /eat.

We served 56,000 paid search impressions in May with 5,358 clicks to the Experience Fayetteville website, for an overall CTR of 9.5%. Top search phrase was "Festivals Fayetteville."

**D. **Vote.** Approving a quote from Multi-Craft Contractors for replacement of a Town Center roof top HVAC unit.**

Rawn shared that we've been working since 2017 to replace each of the 7 RTUs at the town center and are on track to do that. The quote of \$45,760 is from Multi-Craft Contractors. As the commission approved a maintenance contract with MCC, giving us competitive pricing, we do not seek multiple bids. Commissioner Moya made a motion to accept the bid with Commissioner Martin seconding it. It passed unanimously.

**E. Presentation on the Dickson Street Art Court from Jordan Garner, Tyson Family Foundation**

Rawn introduced Jordan Garner to discuss the 227 Dickson Street art project, formerly known as the Dickson Street Theater. Garner showed a picture of the outside and the inside, stated that this is an adaptive use project, utilizing existing elements when possible to create an experience for the public. Garner stated that they are asking to enter into a three-year partnership with Experience Fayetteville on this project to attract even more people to downtown.

Rawn continued the discussion by commending Garner and the foundation for doing this project. This yet-to-be named space will be a short-term basketball space with Experience Fayetteville providing daily maintenance, oversight, and promotion. As the city looks to do more programming in the Cultural Arts Corridor space, this is a good test to see what works and how it works. We have found that people are looking for outdoor activity space. Rawn asked for questions.

Commissioner Bunch asked how the building's structure would be changed. Rawn said that three walls would remain with the front wall being open and the front courtyard will be completely redone. Commissioner Moya asked about the open-air concept as it relates to how security will be handled. Rawn answered that we intend to have a gate to secure it and do not plan for it to be open all night. Commissioner Bunch asked Jordan Garner how the concept was decided upon. Garner replied that this idea came up from the Project Public Spaces conference and referenced the Pigalle basketball court in Paris. Commissioner Moya asked if Rawn envisioned new staff members coming on board. Rawn answered that it may create opportunities for more part time or contract team, but not additional full time.

Commissioner Sanderson asked what the completion timeline is with the answer being hopefully this fall. Rawn continued that this will open as a space that is not formally programmed; she wants to see how the space is used before we layer in anything more formal like reservations or events.

- F. Vote to accept a grant for \$236,566 from the Tyson Family Foundation over a three-year period to support communications and operations of the space. Experience Fayetteville is asking the commission for permission to accept the funds so that we can go forward with planning, marketing and working with the partners on this project.

Commissioner Bunch made a motion for Experience Fayetteville to accept the funds for the intended use and Commissioner Moya seconded it, it passed unanimously via a roll call vote.

- G. CEO Rawn closed out the meeting with an announcement that she has been asked to chair a subcommittee of the city's Economic Recovery and Vitality Steering Committee which will focus on revitalization of the hospitality industry. She and Tyler Wilson are assembling a group to talk about pertinent issues, including third party restaurant delivery providers. Commissioner Sanderson is on the steering committee and Rawn plans to ask Commissioner Martin for input.

- H. Commissioner Kinney adjourned the meeting at 2:37pm.

Minutes submitted by Amy Stockton, Director of Operations, Experience Fayetteville.

**Fayetteville A&P Commission**  
**CEO's Report**  
**July 22, 2021**

**HMR**

Growth over 2020 YTD 26%  
Growth over 2019, YTD 1.4%

June lodging collections: Down approximately 18% from 2019  
June restaurant collections: Up approximately 10% from 2019

**Lodging Data**

Occupancy % June 2020 – 66.0%  
Occupancy % June 2021 – 38.6% - Occupancy is up approximately 71%

ADR (Average Daily Rate) June 2021 is up approximately 41% over last year

Year-to-date Occupancy % 2020 – 41.8%  
Year-to-date Occupancy % 2021 – 54.5%

January – June 2021 we have collected more than \$28,438K from our agreement with AirBnb  
January – June 2020 \$11,880  
January – June 2019 \$14,398

**Visitor Center Sales and Attendance**

- VC saw 1325 visitors in June 2021
  - Up 93% from May 2021 (685 visitors)
  - Up 23% from (last historical data) June 2018 (1077 visitors)
- VC had \$8709 in sales in June 2021
  - Up 33% from May 2021 (\$5769)
  - Up 75% from (last historical data) June 2018 (\$2196)
- NWA Equality: we were happy to be their bricks and mortar store front for almost 5 weeks and are going to be writing them a check for \$2,075 total for all PRIDE merch sales.

**Fayetteville Town Center**

- We hosted two external events, including Connie Edmonston's retirement party and three internal events. Connie served as the city's Parks and Recreation Director and retired July 8<sup>th</sup> after 35 years with the city.
- We have finalized the airwall punch list, and the airwall project is now complete.

- We are taking advantage of our light event bookings in July to make facility upgrades and repairs including an inventory of the fixtures and furniture to determine what requires repair or replacement.
- We have met with Chris McNamara, Sustainability Facilities Project Manager for the City of Fayetteville, on getting an energy audit for the facility to determine what future projects can lower energy costs and the carbon footprint of the facility.
- We are currently working with Justin Clay in the city's Parking department to renew the parking deck lease for the FTC parking deck
- We have had water intrusion continue in the FTC tower (entrance) area. As a result, we have received quotes for necessary repairs to repair and seal the roof of the Tower.
- We are continuing to help facilitate clients who want to host masked events and maintain a two-thirds capacity limit with minimal client displacement due to this limitation.

### **Experience Fayetteville Sales**

- In the last month as planners confidence has risen, Experience Fayetteville sales team has secured two new conferences: Stronger Together: NWA Expedition and U of A International Alumni. Both will arrive this fall and bring with them between 150-200 people for an average of 2 days. Estimated EI per group is \$50K.
- As of this last (June 2021) Fayetteville hosted multiple sporting events each weekend. Sports is/ has been stated to be the fastest road to recovery in tourism.
- June 21st – 24th, Experience Fayetteville assisted w/ the 2021 KPMG Stacy Lewis Junior All-Star Invitational put on alongside the American Junior Golf Association at The Blessings Golf Course. This event hosted the top 56 Junior golfers seeking to advance to the Symetra Tour.
- June 26th – one day event Experience Fayetteville in conjunction with Arkansas State Tourism, our partners at Drake Field, AR Air & Military Museum and Pig Trail Harley hosted 300+ women motorcyclist in Fayetteville from for the 1st annual parade of sisters supporting women veterans.
- We just launched our new attractions and itinerary sheets with planners, which we trialed on a recent group of association executives. With the addition of Pedal Pub and Big Box Karaoke we have received an overwhelming amount of positive feedback about the downtown experiences. We are excited for these future groups coming to Fayetteville.

## **Cycling**

- Arkansas Enduro Series hosted a two-day mountain bike event at Centennial Park and Kessler Mountain July 9-10. The Fayetteville Enduro sold out with 300 participants and estimated 500 in total attendance.
- Experience Fayetteville partnered with Latinas en Bici for the *Tour de Frida!* a ride combining cycling and public art in a celebration of artist Frida Kahlo. This event has been rescheduled to July 31
- August 26-29<sup>th</sup>: the 44th Annual Joe Martin Stage Race culminates in Downtown with Stage 4, The Experience Fayetteville Criterium.
- September 14<sup>th</sup>: in partnership with the City and Fayetteville Chamber, Experience Fayetteville is planning to host another Bicycle Friendly Business Bootcamp targeting Fayetteville businesses. This successful partnership has led to Fayetteville amassing 30 designated Bicycle Friendly Businesses including several restaurants and hotels – 6<sup>th</sup> most in the United States.

## **Community Engagement**

- Community Engagement this month has been focused on the upcoming First Thursday season to be launched Thursday, August 5<sup>th</sup>.
  - We have been in regular contact with the city's public health officer and are working to secure a mobile vaccine unit at some or all of the events
  - This year's events will be weather dependent; due to COVID-19, we will not move inside in case of rain
  - Staff, despite being fully vaccinated, will be masked when in close proximity to others
  - We have approximately 70% of our First Thursday revenue pledged in sponsorship dollars. Thanks to Adventure Subaru, First Security Bank, Cox Communications, and Startup Junkie for their financial support
- Molly is chairing the hospitality sub-committee as part of the city's economic development steering committee. The first meeting is next week.

May Activity

**\$41,418** + **\$293,844**  
Lodging                      Restaurant

**\$24,552**

Prior Dues Collected

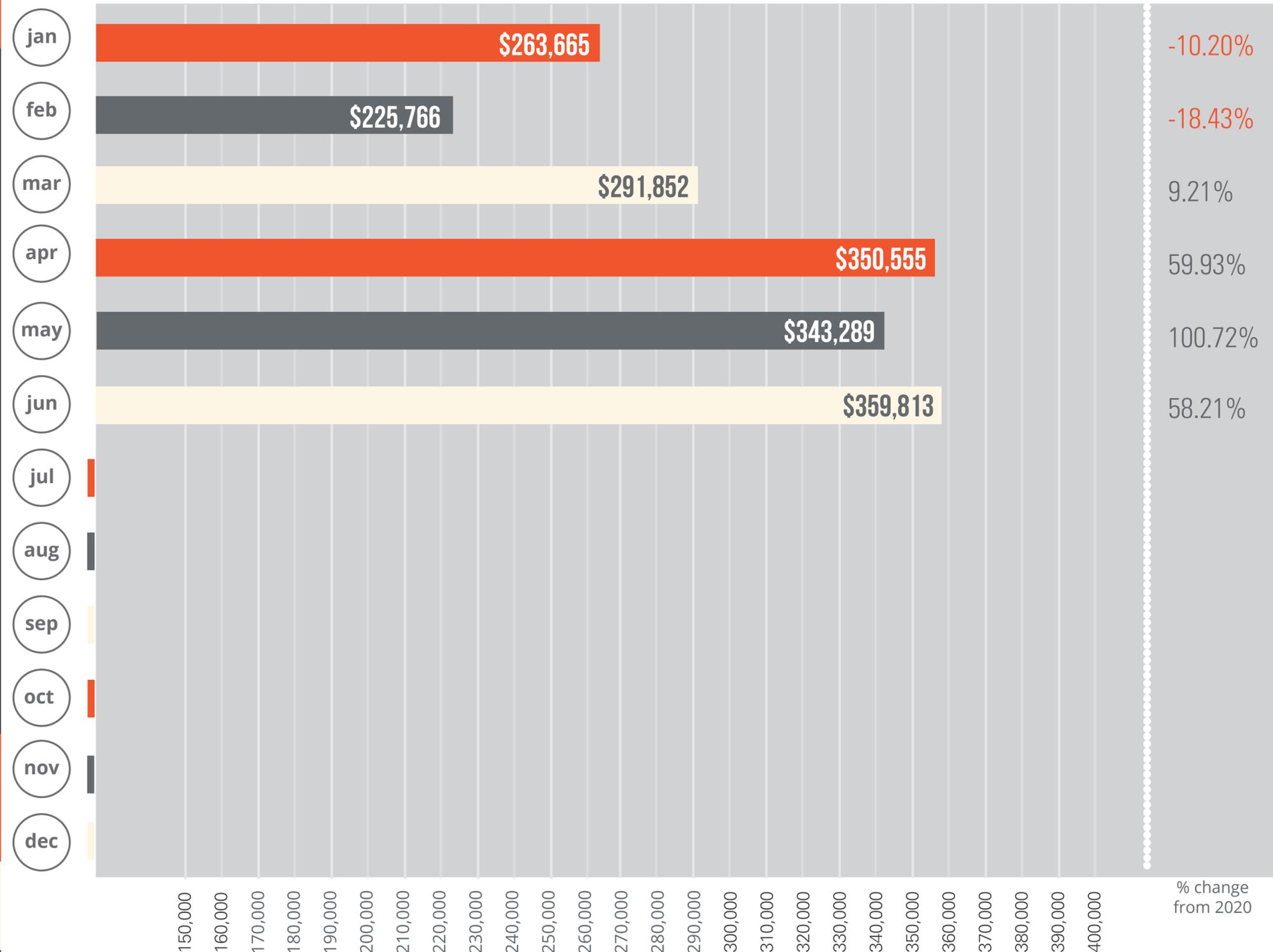
**\$359,813**

Total HMR Collected

Previous YTD (Jan-June) HMR A&P Tax Collection Totals

2017	2018	2019	2020	2021
\$1,662,691	\$1,744,138	\$1,808,921	\$1,455,289	<b>\$1,834,940</b>
3.42%	4.90%	3.71%	-19.55%	<b>26.09%</b>
% change over previous year				

Monthly A&P Tax Collections 2021\*\*



\*\* This represents one half of the total HMR collections. The other half supports the Parks and Recreation department.

# Memo



**To:** Molly Rawn, CEO, Experience Fayetteville  
Fayetteville Advertising & Promotion Commissioners

**From:** Jennifer Walker, VP Finance, Experience Fayetteville

**Date:** July 12, 2021

**Re:** Financial Statements – June 2021

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This packet contains Experience Fayetteville Financial Statements for the month ended June 30, 2021. The following reports are included in the packet:

- Summary P&L Financials for month ended June 30, 2021
- Balance Sheet for month ended June 30, 2021

Target Budget June – 50%

- Revenue target 50% of budget or higher by the end of June 2021.  
Expenditures target 50% or lower at June 2021.

Total Revenue YTD: \$1,919,264 or 48.3%; We are running 2% below target.

Tax Receipts - \$1,834,940

Town Center - \$46,205 (note \$145k+ unearned revenue on Balance Sheet)

Other - \$38,119

Total Operating Expenditure YTD: \$1,699,726 or 42.8%; 7% below budget target.

EF Main - \$1,433,403

Town Center - \$266,323

Overall, HMR tax continued to rebound in June Collections (May activity), and YTD collections now exceed budget expectations by 3% and more than \$100,000. We are not meeting overall revenue budget targets due to the Town Center shortfalls, but spending is very well positioned with an Operating Net Income of \$219,538 year to date.

**Fayetteville A and P Commission**  
**Statement of Budget, Revenue and Expense**  
**Year-to-Date @ June 30, 2021**

	<b>CONSOLIDATED</b>			
	Year-to-Date			
	Actual	Budget	Over/(Under) Budget	% of Budget
<b>Revenue</b>				
Hotel, Motel, Restaurant Taxes Revenue	1,834,940	3,460,576	(1,625,636)	53.0%
Rental Revenue	46,205	350,250	(304,045)	13.2%
Event Revenue	5,252	37,500	(32,248)	14.0%
Visitor Center Store Revenue	18,352	45,258	(26,906)	40.5%
Parking Revenue	6,040	21,500	(15,460)	28.1%
Advertising Revenue	200	8,000	(7,800)	2.5%
Other Revenue	2,918	-	2,918	0.0%
WFF Cycling Coordinator Grant	-	31,190	(31,190)	0.0%
Interest and Investment Revenue	5,356	21,500	(16,144)	24.9%
<b>Total Revenue</b>	<b>1,919,264</b>	<b>3,975,774</b>	<b>(2,056,510)</b>	<b>48.3%</b>
<b>Expenses</b>				
<b>Operating Expenses</b>				
Rental Expenses	8,322	68,690	(60,368)	12.1%
Event Expenses	13,769	73,800	(60,031)	18.7%
Visitor Center & Museum Store	22,051	41,560	(19,509)	53.1%
Personnel	558,365	1,329,680	(771,315)	42.0%
Sales & Marketing	375,371	961,675	(586,304)	39.0%
Office and Administrative	266,351	593,369	(327,018)	44.9%
Bond Payments	350,497	707,000	(356,503)	49.6%
Clinton House Museum	5,000	-	5,000	0.0%
TheatreSquared Contribution	100,000	200,000	(100,000)	50.0%
<b>Total Operating Expenses</b>	<b>1,699,726</b>	<b>3,975,774</b>	<b>(2,276,048)</b>	<b>42.8%</b>
<b>Net Operating Income/(Loss)</b>	<b>219,538</b>	<b>-</b>	<b>219,538</b>	<b>0.0%</b>
<b>Other Income</b>				
Unrealized Gain/(Loss) on Investments	365,340			<b>0.0%</b>
<b>Other Expenses</b>				
FFE & Improvements	82,462	155,000	(72,538)	53.2%
Depreciation Expense	70,000			0.0%
Cost of Goods Sold	(4,130)			0.0%
<b>Net Income/(Loss) (without Cyclocross Grants)</b>	<b>436,547</b>	<b>(155,000)</b>	<b>226,206</b>	<b>-281.6%</b>
<b>Net Income/(Loss) for Cyclocross Events</b>	<b>(283,707)</b>			
<b>Total Net Income/(Loss)</b>	<b>152,840</b>			

**Fayetteville A and P Commission**  
**Statement of Budget, Revenue and Expense**  
**Year-to-Date @ June 30, 2021**

	<b>Experience Fayetteville</b>			
	Year-to-Date			
	Actual	Budget	Over/(Under) Budget	% of Budget
<b>Revenue</b>				
Hotel, Motel, Restaurant Taxes Revenue	1,834,940	3,460,576	(1,625,636)	53.0%
Event Revenue	5,997	26,500	(20,503)	22.6%
Visitor Center Store Revenue	18,352	45,258	(26,906)	40.5%
Advertising Revenue	200	8,000	(7,800)	2.5%
WFF Cycling Coordinator Grant	2,918	31,190	(28,272)	9.4%
Interest and Investment Revenue	4,731	19,000	(14,269)	24.9%
<b>Total Revenue</b>	<b>1,867,139</b>	<b>3,590,524</b>	<b>(1,723,385)</b>	<b>52.0%</b>
<b>Expenses</b>				
<b>Operating Expenses</b>				
Event Expenses	12,037	62,800	(50,763)	19.2%
Visitor Center & Museum Store	22,051	41,560	(19,509)	53.1%
Personnel	417,845	910,718	(492,873)	45.9%
Sales & Marketing	374,847	942,375	(567,528)	39.8%
Office and Administrative	151,125	302,799	(151,674)	49.9%
Bond Payments	350,497	707,000	(356,503)	49.6%
Clinton House Museum Contribution	5,000	-	5,000	0.0%
TheatreSquared Contribution	100,000	200,000	(100,000)	50.0%
<b>Total Operating Expenses</b>	<b>1,433,403</b>	<b>3,167,252</b>	<b>(1,733,849)</b>	<b>45.3%</b>
<b>Net Income/(Loss) Before Other Revenue and Expenses</b>	<b>433,736</b>	<b>423,272</b>	<b>10,464</b>	<b>102.5%</b>
<b>Other Income</b>				
Unrealized Gain/(Loss) on Investments	365,340	-	365,340	0.0%
<b>Other Expenses</b>				
FFE & Improvements	-	15,000	(15,000)	0.0%
Depreciation Expense	37,667			
Cost of Goods Sold	(4,130)			
<b>Net Income/(Loss)</b>	<b>765,540</b>	<b>408,272</b>	<b>(8,072)</b>	<b>187.5%</b>

**Fayetteville A and P Commission**  
**Statement of Budget, Revenue and Expense**  
**Year-to-Date @ June 30, 2021**

	<b>Town Center</b>			
	Year-to-Date			
	Actual	Budget	Over/(Under) Budget	% of Budget
<b>Revenue</b>				
Rental Revenue	43,778	350,250	(306,472)	12.5%
Event Revenue	1,682	11,000	(9,318)	15.3%
Parking Revenue	6,040	21,500	(15,460)	28.1%
Interest and Investment Revenue	625	2,500	(1,875)	25.0%
<b>Total Revenue</b>	<b>52,125</b>	<b>385,250</b>	<b>(333,125)</b>	<b>13.5%</b>
<b>Expenses</b>				
<b>Operating Expenses</b>				
Rental Expenses	7,122	68,690	(61,568)	10.4%
Event Expenses	2,931	11,000	(8,069)	26.6%
Personnel	140,520	418,962	(278,442)	33.5%
Sales & Marketing	524	19,300	(18,776)	2.7%
Office and Administrative	115,226	290,570	(175,344)	39.7%
<b>Total Operating Expenses</b>	<b>266,323</b>	<b>808,522</b>	<b>(542,199)</b>	<b>32.9%</b>
<b>Net Income/(Loss) Before Other Revenue and Expenses</b>	<b>(214,198)</b>	<b>(423,272)</b>	<b>209,074</b>	<b>50.6%</b>
<b>Other Expenses</b>				
FFE & Improvements	82,462	140,000	(57,538)	41.1%
Depreciation Expense	32,334			
<b>Net Income/(Loss)</b>	<b>(328,994)</b>	<b>(563,272)</b>	<b>234,278</b>	<b>58.4%</b>

**Fayetteville A and P Commission**  
**Statement of Budget, Revenue and Expense**  
**Year-to-Date @ June 30, 2021**

	<b>Cyclocross Events</b>			
	Year-to-Date			
	Actual	Budget	Over/(Under) Budget	% of Budget
<b>Revenue</b>				
<b>Other Revenue</b>				
Cyclocross Grant Funds	150,000	675,000	(525,000)	22.2%
Cyclocross Events Revenue	-	288,500	(288,500)	0.0%
Interest and Investment Revenue	942	3,000	(2,058)	31.4%
<b>Total Revenue</b>	<b>150,942</b>	<b>966,500</b>	<b>(815,558)</b>	<b>15.6%</b>
<b>Expenses</b>				
<b>Operating Expenses</b>				
Marketing	1,448	-	1,448	0.0%
Office and Administrative Expenses	17,374	2,500	14,874	694.9%
Cyclocross Events	415,827	1,342,089	(926,262)	31.0%
<b>Total Operating Expenses</b>	<b>434,649</b>	<b>1,344,589</b>	<b>(909,940)</b>	<b>32.3%</b>
<b>Net Income/(Loss)</b>	<b>(283,707)</b>	<b>(378,089)</b>	<b>94,382</b>	<b>75.0%</b>
<b>Grant Carry-Forward</b>	<b>766,069</b>			
<b>Cumulative Net Income / (Loss)</b>	<b>482,362</b>			

# Fayetteville A&P Commission

## Balance Sheet

As of June 30, 2021

### ASSETS

#### Current Assets

Cash		1,967,509
Investments		1,208,336
Accounts Receivable		383,233
Prepaid Expenses		40,255
Deposits		30,617
Visitors Guide Trade		3,402
Inventory Asset		16,196

**Total Current Assets** 3,649,549

#### Other Assets

Capital Assets		
Furniture & Fixtures	96,641	
Equipment	498,597	
EF/CVB Building	940,410	
EF/CVB Land	198,621	
Building Additions	971,952	
Walker-Stone House	1,167,218	
Accumulated Depreciation	(1,291,281)	

**Total Other Assets** 2,582,158

**TOTAL ASSETS** 6,231,706

### LIABILITIES AND EQUITY

#### Current Liabilities

Accounts Payable	41,177	
Unearned Revenue	145,275	
PPP Loan Payable	245,900	

**Total Liabilities** 432,351

#### Equity

Unreserved Fund Balance	3,280,660	
Operating Reserve	1,000,000	
Capital Reserve	1,000,000	
Temporarily Restricted Funds	365,855	
Net Revenue		
Gain/(Loss) on Investments	365,340	
Net Revenue without Cyclocross	70,163	
Net Revenue for Cyclocross	(282,664)	152,840

**Total Equity** 5,799,355

**TOTAL LIABILITIES AND EQUITY** 6,231,706

# Memo



**To:** Molly Rawn, CEO, Experience Fayetteville  
Fayetteville Advertising & Promotion Commissioners

**From:** Jennifer Walker, VP Finance, Experience Fayetteville

**Date:** July 15, 2021

**Re:** Presentation of the 2020 Audit Report

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The Fayetteville A&P Commission has engaged the audit firm BKD, LLP to perform an annual financial audit for the fiscal year ending December 31, 2020. This audit work was completed Spring 2021 and the final audit report and financial report is now available for review and publication.

BKD Director Cynthia Burns will present the 2020 auditor's report. The completed 2020 Independent Auditor's Report, Financial Statements, and Management Letter are attached for reference.

# EXPFAY.COM - NEW & RETURNING VISITORS

JAN-JUNE 2020 VS  
JAN-JUNE 2021



**New Visitors**

Up: **+58%**



**Returning Visitors**

Up: **+40%**

# EXPFAY.COM - TOP RANKED STATES & CITIES

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## JAN-JUNE 2020 VS JAN-JUNE 2021

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Arkansas - **Up 47%** (Fayetteville)  
Texas - **Up 53%** (Dallas)  
Oklahoma - **Up 95%** (OKC)  
Missouri - **Up 15%** (Kansas City)  
Colorado - **Up 662%** (Denver)  
Kansas - **Up 116%** (Coffeyville)  
Tennessee - **Up 35%** (Nashville)  
Illinois - **Up 23%** (Chicago)  
California - **Up 55%** (Roseville)  
North Carolina - **Up 95%** (Charlotte)



# EXPFAY.COM - TOP AGE GROUPS

JAN-JUNE 2020 VS  
JAN-JUNE 2021



25-34 Down 6%



45-54 Up 21%



35-44 Up 18%



18-24 Up 23%

# EXPFAY.COM - USER INTERACTION

**JAN-JUNE 2020** VS  
**JAN-JUNE 2021**

## First Interaction

Guide - Up 59%  
Events - Up 84%  
Eat - Up 8%



## Second Interaction

Guide - Up 66%  
Events - Up 41%  
Eat - Up 12%

**OPEN**

# Experience Fayetteville 2021 Budget Adjustment

**7/26/2021**

Commission Meeting Date - Agenda Item Only  
N/A for Non-Agenda Item

Jennifer Walker  
Submitted By

7/1/2021  
Submitted Date

EF - ADMIN  
Department

### Action Recommendation:

A&P Commission approved a grant proposal between Tyson Family Foundation and Experience Fayetteville to manage Basketball Art Court on Dickson Street at the June 2021 meeting. Tyson Family Foundation proposes to fund the maintenance and management costs of the court. 2021 Estimated Funding and Costs are detailed below.

### Budget Impact:

TOTAL	<u>91,230.00</u>	<u>(91,230.00)</u>		
	Increase	/	Decrease	
Account Number	Expense		Revenue	Class      Account Name
77330	2,500.00			DSAC      Water and Trash
77310	1,500.00			DSAC      Electric
77200	2,500.00			DSAC      Internet
76100	500.00			DSAC      Insurance
77400	26,000.00			DSAC      Repairs and Maint
61000	40,000.00			DSAC      Wages
62000	4,370.00			DSAC      Taxes
71300	13,860.00			DSAC      Marketing
48501			(91,230.00)	DSAC      Grant Revenue

Molly Rawn, CEO

Approved By

Approval Signature

7/1/2021

Approval Date

# **Fayetteville Advertising & Promotion Commission**

## **Memo**

**To:** Molly Rawn, CEO, Fayetteville Advertising and Promotion Commission;  
Fayetteville Advertising and Promotion Commissioners

**From:** Tina Archer-Cope, VP of Sales

**Date:** July 20, 2021

**Re:** Spartan Race

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### **Background:**

Staff has been working to bring the 2021 Spartan Trail U.S. Championships to Fayetteville this October to coincide with the U.S. Trail Running Association annual conference. Spartan is a global experiential sport and wellness brand with 250 events across more than 40 countries on six continents. Fayetteville will be a new location for Spartan Trail and has potential to grow over the next three years.

We expect a spend on room nights of approximately \$50,000, exceeding our investment through lodging costs alone. In addition, the Spartan Race organization spends an average of \$125,000 directly through staff lodging and meals, volunteer meals, sourcing local materials and equipment, employing local contractors, venue fees, sales tax on registrations and merchandise sold. This does not include spending by registrants beyond lodging. On the marketing front, Spartan's combined social media channels have over 6 million followers, which broadens our reach.

There is also the potential to directly recover some of the investment for Experience Fayetteville if we are able to secure sponsorships.

October 31. Runners can choose to sign up for a 10k night run, a 10K morning run, a Half Marathon (Trail Run Championship) and 50k (Trail Ultra Championship).

### **Recommendation:**

Staff is recommend we execute a contract with Spartan Race, Inc. in the amount of \$45,000 to secure Fayetteville as the host location for the 2021 World Championship Trail Run.

# Experience Fayetteville 2021 Budget Adjustment

**7/26/2021**

Commission Meeting Date - Agenda Item Only  
N/A for Non-Agenda Item

Jennifer Walker

7/1/2021

EF - SPORTS

Submitted By

Submitted Date

Department

## Action Recommendation:

Staff recommends approval of a budget transfer to move funding for Spartan Race sponsorship to the Sports Line for spending. This budget transfer supports the proposed agreement for Spartan Race sponsorship at the July 2021 meeting.

## Budget Impact:

Account Number	TOTAL		Class	Account Name
	Expense	Revenue		
71110	(45,000.00)		EF	Agency Advertising
72400	45,000.00		EF	Sports and Cycling

Molly Rawn, CEO

Approved By

Approval Signature

7/1/2021

Approval Date

**Agreement for Sponsorship and Advertising  
2021 Spartan Trail US Championship**

This Agreement for Sponsorship and Advertising ("Agreement") is dated this 8th day of June, 2021 ("Effective Date"), and is by and between **Spartan Race, Inc.**, a Delaware corporation with a principal business address of 234 Congress Street, 5<sup>th</sup> Fl., Boston, MA 02110 ("Spartan") and **Fayetteville Advertising and Promotion Commission**, d.b.a. Experience Fayetteville, a governmental agency established by Ordinance No. 2310 of the City of Fayetteville pursuant to Arkansas law (Ark. Code Ann. § 26-75-605), with a principal address of 21 South Block Ave, Suite 100, Fayetteville, ~~AK-AR~~ 72701 ("Sponsor") (each a "Party" and together, the "Parties").

Spartan organizes an annual series ("Season") of timed races for adults known as the "Spartan Sprint", "Spartan Super", "Spartan Beast", or "Spartan Trail" (each a "Race"), each featuring a variety of exhibitions, displays and related marketing and promotional elements. A Season shall commence with the first Race of a calendar year and conclude on the last Race of that calendar year. Through this Agreement, the Parties desire to establish a sponsorship and advertising relationship in connection with the Fayetteville Spartan Trail U.S. Championship at in Fayetteville, Arkansas October 30 and 31, 2021 (the "Event"). Furthermore, Spartan may be in a partnership with a broadcasting partner ("Media Partner") in connection with exhibiting the Races (each such exhibition, a "Program").

The Parties hereby agree as follows:

1. **Term.** The term of this Agreement shall begin on the Effective Date and expire on December 31, 2021, unless terminated earlier as provided herein (the "Term").
2. **Sponsorship Benefits.**
  - a. Commencing at the beginning of the Term, and subject to the performance of Sponsor's obligations under this Agreement, Spartan is to provide (or cause to be provided, as the case may be) the sponsorship and promotional benefits described in "Exhibit A" attached hereto for each Event (collectively, the "Sponsorship Benefits").
  - b. Sponsor shall be solely responsible for all production costs, clearances, and licenses related to any commercial units provided hereunder. Furthermore, all activation costs and other expenses related to any exhibition of Sponsor's products and services at each Event shall be the sole responsibility of Sponsor, including the cost of tents, signage, personnel to set up staff-designated activation areas, flyers, transportation costs and product costs (for samples or otherwise).
  - c. The form, content, and presentation of all Sponsorship Benefits (including, without limitation, advertising creative or any material to be designed, constructed, distributed, exhibited, or otherwise published or displayed) is subject to the prior written approval of Spartan, the standard terms and conditions of the platforms on which they are exhibited, the rules and regulations of any relevant governing body or regulatory agency having jurisdiction over the activities or sporting events referenced in this Agreement, Spartan's brand standards and guidelines, and all laws and governmental rules and regulations of any nature as they presently exist or as they will exist in the future, including any modifications or amendments. Approval of the form, content, and presentation of the Sponsorship Benefits will be rendered by Spartan no later than ten (10) days after submission by Sponsor. Failure by Spartan to communicate approval within ten (10) days shall constitute disapproval.

d. During the Term of this Agreement, Sponsor will provide (or cause to be provided, as the case may be) to Spartan the marketing and trade support labeled as “Co-Marketing & Trade Support” set forth in Exhibit A attached hereto for each Event.

3. **Sponsorship Fees.** The Sponsors shall pay to Spartan the fee (“Sponsorship Fees”), to be paid as set forth in the attached Exhibit B. Sponsorship Fees will be paid to Spartan without deduction or set-off of any kind whatsoever, including, without limitation, deductions for advertising agency fees or commissions.
4. **Unavailable Benefits.** Due to events or circumstances beyond the control of a Party, or due to the rules, regulations, or laws of any city, state, country, or other relevant governing body or regulatory agency having jurisdiction over the activities, sporting events, or media platforms referenced in this Agreement, it may be or become impossible or impractical for Spartan to provide Sponsor with all of the rights and benefits contemplated herein (“Unavailable Benefit”). The occurrence of an Unavailable Benefit will not be deemed a breach of this Agreement and, as Sponsor’s sole remedy, the Parties will cooperate, in good faith, to ensure that their respective rights and obligations will be fulfilled by rescheduling, substitution, alternative performance or similar means of comparable value.
5. **Intellectual Property.**

a. Sponsor hereby grants to Spartan a limited, non-exclusive license to use any service marks, logos, trademarks, word marks, symbols, emblems, trademark designs, indicia provided by Sponsor (“Sponsor Marks”) to Spartan solely for the purpose of exercising their rights or carrying out their obligations set forth herein or any other purpose expressly approved by Sponsor. Spartan shall not acquire any proprietary or other right, title, or interest in or to the Sponsor Marks, or any goodwill associated with the Sponsor Marks, except the right to use the Sponsor Marks as provided hereunder. The Sponsor Marks shall be used only in the form, size and type prescribed and approved by Sponsor without deviation from Sponsor’s style guide. Spartan’s use of any trade names, logos, trademarks, service marks and other marks of Sponsor are subject to Sponsor’s prior written approval. Sponsor will communicate a decision to Spartan no later than ten (10) days after Spartan’s request. Failure by the Sponsor to communicate disapproval within that ten (10)-day period shall constitute approval. Any goodwill arising out of the use thereof shall inure to the benefit of the Sponsor.

b. Spartan, in its sole discretion, may re-exhibit or authorize the re-exhibition (via any and means and forms of media distribution (now known or hereafter devised) and via any and all devices (now known or hereafter devised)) of any Sponsorship Benefits in any replay, photograph, or video footage of any sporting event or other programming or content in which such Sponsorship Benefits appear. Sponsor acknowledges and agrees that nothing in this Agreement shall preclude the appearance of the Sponsor Marks in photographs, video footage, or programs of the Races, in perpetuity, when used for any reason in any and all forms of media whether now or hereafter developed.

c. As between Spartan on the one hand and Sponsor on the other hand, the copyrights, service marks, logos, trademarks, word marks, symbols, emblems, trademark designs, indicia, uniforms, identifications, and other intellectual property of Spartan, (collectively, the “Spartan Marks”) (the Spartan Marks together with the Sponsor Marks, collectively referred to as “Marks”) are the property of Spartan and nothing in this Agreement is intended to convey to Sponsor any ownership rights or, except for the limited license granted in this Section 5(c), other interest in or to the Spartan Marks, whether by implication, estoppel or otherwise, even if such Spartan Marks are included in or on items owned or produced by Sponsor. Subject to the terms and conditions set

forth in this Agreement, Spartan hereby grants Sponsor a non-exclusive, non-transferable, non-sub-licensable license to use the Spartan Marks and related designations as provided to Sponsor by Spartan solely in connection with the pre-approved Sponsorship Benefits set forth in Exhibit A or as otherwise agreed amongst the Parties. Sponsor shall not display or otherwise use such Spartan Marks or related designations under any circumstances without the prior written consent of Spartan in each instance. The Spartan Marks shall be used only in the exact form, size, style, and type prescribed and approved by Spartan without deviation. Sponsor shall not, nor shall Sponsor permit others to, use the Spartan Marks in combination with any other trademark, service mark, logo, prefix, suffix or other modifying words, designs, or symbols without the prior written approval of Spartan. E-mail notification (as it relates to Spartan, from an officer having an Executive Vice President title or higher) shall suffice for any written consents or approvals required under this subsection. Sponsor agrees that: (i) any use of the Spartan Marks shall be in accordance with the approvals provided by Spartan without change, (ii) each use of the Spartan Marks will not disparage, denigrate, tarnish or reflect adversely on the Spartan, or their businesses, officers, directors, executives, employees, events, activities, suppliers and/or products, and (iii) Sponsor shall not use, nor shall Sponsor authorize others to use, the Spartan Marks or any marks confusingly similar thereto for any unauthorized use or in any unauthorized manner. Sponsor shall not transfer, assign, or sublicense any of the rights granted under this Section without Spartan's express prior written consent. Sponsor agrees not to apply for any state, federal or foreign trademark or service mark registration pertaining to or including any Spartan Marks or any confusingly similar trademarks. Unless Sponsor receives Spartan prior written approval, Sponsor shall not depict Spartan, and/or the Spartan Marks in any manner that would suggest and/or indicate endorsement of any product or services by Spartan or any of their affiliated or related entities. Sponsor warrants and represents that Sponsor will not infringe Spartan's right, title, or interest in or to the Spartan Marks or any other form of Spartan's intellectual property.

d. Sponsor shall not be permitted to use Program footage or images unless Spartan provides its prior written consent which may be withheld in its sole discretion. If such consent is granted, Sponsor shall be solely responsible for obtaining any third-party licenses, consents, and/or releases that are required at any time in connection with Sponsor's use of such footage or images. Additionally, any permitted use of footage or images by Sponsor pursuant to this Agreement is subject to the standard usage and duration guidelines of the Media Partner (if any) as they currently exist or may be modified from time to time. If applicable, Spartan, in its sole discretion, may require execution of a separate Footage Agreement between the Media Partner and Sponsor, with the understanding that Sponsor will not have to pay any additional monetary consideration to the Media Partner under such Footage Agreement. Notwithstanding the foregoing, Sponsor specifically acknowledges that: (i) any use of the names, likenesses or other intellectual property of athletes, musicians, broadcast announcers or spectators which might be construed to constitute an endorsement of Sponsor's products (either express or implied) will require Sponsor to negotiate for such rights separately with each such Party or their agent, and that payment for any such negotiated rights will be the sole responsibility of Sponsor, and (ii) any reuse of music incorporated into the television broadcasts of the Programs will require Sponsor to obtain clearance for the use of such music in the context and media contemplated by Sponsor and payment for such usage will be the sole responsibility of Sponsor.

**6. Territory; Local and Re-Exhibition Commercial Inventory; Athletes; Non-Compete.**

a. The Sponsorship Benefits shall be provided solely in the Territory. For purposes hereof, the "Territory" (x) as it relates to Media Benefits shall mean the United States, its possessions, and territories and (y) as it relates to any other Sponsorship Benefits shall mean the continental United States. The appearance of any signage, content, features, and other Sponsorship

Benefits in any exhibition of the Programs shall be limited to the exhibition of such Programs in the Territory, and Sponsorship Benefits may be removed, obscured covered over or replaced during distribution of the Programs outside the Territory, at the sole discretion of Spartan or its Media Partner.

b. Any exclusivity provided herein shall apply only within the Territory and shall not apply to: (i) any contractually allotted advertising inventory allocated to distribution and/or broadcast affiliates (the “Local Commercial Inventory”) of any network or other platform on which the sporting events or other activities referenced this Agreement may be exhibited or re-exhibited, or (ii) advertising inventory during any re-exhibition of or any Program following the initial exhibition (“Re-Exhibition Commercial Inventory”). Spartan shall have no liability to Sponsor as a result of the sale of Local or Re-Exhibition Commercial Inventory even if sold to advertisers that compete with Sponsor and such occurrence shall not be deemed an Unavailable Benefit.

c. Spartan is not granting Sponsor any right to use the names, signatures, photographs, footage, or likenesses of any athlete or other Race participants in connection with any Sponsorship Benefit, and any use by Sponsor must be approved by the individual athlete or Race participant in each instance. Sponsor expressly understands and agrees that any athlete or other Race participant has the right to use, accept, or endorse any product from anyone in competition with Sponsor.

7. **Termination.** In addition to any other rights and remedies which may be available to the Parties, this Agreement may be terminated by Spartan or Sponsor if the other Party materially breaches this Agreement. If such a breach occurs, the non-breaching Party shall provide the breaching Party with written notice of the breach, including specific details regarding the nature of the breach. The non-breaching Party’s obligations under this Agreement may be suspended when such notice is provided and will not be resumed until the breach is cured; provided, however, that all payments under this Agreement which were due before or on the date of receipt of the written notice of breach, shall be made. If the breaching Party does not cure the breach within thirty (30) days of receipt of notice of the breach, then the non-breaching Party may provide the breaching Party with written notice of the immediate termination of this Agreement.
8. **LIMITATION OF DAMAGES.** EACH PARTY AND THEIR AFFILIATED AND RELATED ENTITIES WILL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION, ANY PAYMENT FOR LOST BUSINESS, FUTURE PROFITS, LOSS OF GOODWILL, REIMBURSEMENT FOR EXPENDITURES OR INVESTMENTS MADE OR COMMITMENTS ENTERED INTO, TERMINATION OF EMPLOYEES OR EMPLOYEE SALARIES, OR OVERHEAD OR COSTS INCURRED OR ANTICIPATED UNDER THIS AGREEMENT (WHETHER FORESEEABLE OR NOT), INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES IN CONNECTION WITH THE PERFORMANCE OR FAILURE TO PERFORM THIS AGREEMENT REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM BREACH OF CONTRACT, TORT, OR ANY OTHER THEORY OF LIABILITY. THE AGGREGATE AMOUNT OF DAMAGES RECOVERABLE BY SPONSOR WITH RESPECT TO ANY AND ALL BREACHES, PERFORMANCE, NON-PERFORMANCE, ACTS OR OMISSIONS HEREUNDER WILL NOT EXCEED THE CASH AMOUNTS ACTUALLY PAID TO SPARTAN BY SPONSOR UNDER THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT ANY MONETARY VALUE ASSIGNED TO PROMOTIONAL CONSIDERATIONS PROVIDED HEREIN IS NOT INTENDED TO BE USED AS A MEASURE OF DAMAGES IN CONNECTION WITH THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, NOTHING IN THE AGREEMENT SHALL LIMIT THE LIABILITY OF THE PARTIES FOR: (I) THE INDEMNIFICATION

OBLIGATIONS SET OUT UNDER SECTION 9, (II) BREACHES OF CONFIDENTIALITY, (III) DEATH OR PERSONAL INJURY RESULTING FROM NEGLIGENCE, (IV) GROSS AND WILLFUL MISCONDUCT OF DIRECTORS AND OFFICERS, (V) FRAUD OR FRAUDULENT MISREPRESENTATION, AND (VI) ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED BY LAW.

9. **Indemnification.** Each Party (the “Indemnifying Party”) will at all times indemnify and hold the other Parties and each of their respective affiliates, owners, members, directors, shareholders, officers, employees, servants, agents, sponsors, contractors and media partners (specifically with regard to Spartan, and its respective affiliates, and licensors (together with each of the foregoing’s heirs, successors and assigns, the “Indemnified Parties”) harmless from and against any and all third-party claims, controversies, damages, causes of action, judgments, liens, losses, costs, fines, penalties, and liabilities including, without limitation, attorneys’ fees, consulting fees, and other dispute resolution expenses (collectively “Claims and Losses”) arising out of or related to: (a) any breach or alleged breach by the Indemnifying Party of any warranty, representation, covenant, obligation or agreement made by the Indemnifying Party hereunder, (b) any acts, omissions, or intentional misconduct by the Indemnifying Party (or the Indemnifying Party’s employees, representatives, agents, contractors, or volunteers), (c) any use of the Indemnified Party’s service marks, logos, trademarks, word marks, symbols, emblems, trademark designs, content, or other materials supplied by or on behalf of the Indemnified Parties in a manner inconsistent with this Agreement, or (d) any claim by a third party that the Indemnifying Party’s performance hereunder or the Indemnified Party’s use of the Indemnifying Party’s service marks, logos, trademarks, word marks, symbols, emblems, trademark designs, content or other materials infringes upon, misappropriates or otherwise violates the intellectual property rights or other proprietary rights of such third party. Notwithstanding anything herein to the contrary, Sponsor further specifically agrees to indemnify and hold Spartan and its Indemnified Parties, harmless from and against all Claims and Losses arising out of or related to (x) the exhibition or display of Sponsor Content, Sponsor’s commercial units, or other material provided by or on behalf of Sponsor and (y) Sponsor’s administration of any sweepstakes or contest held in connection with this Agreement and the awarding by Sponsor, or use by any prize winner, of any prize in connection therewith. Each Party’s indemnification obligations shall survive the expiration or early termination of this Agreement.

10. **Insurance.**

a. Sponsor shall carry at all times during the Term and for two (2) years after the expiration of the Term:

i. Commercial General Liability Insurance with a minimum of \$1,000,000 per occurrence covering bodily injury, property damage, and personal, and advertising liability insurance with a combined single limit of \$2,000,000 general aggregate and \$2,000,000 products and completed operations aggregate. Such policy shall be written on an occurrence basis;

ii. Automobile Liability Insurance with a limit not less than \$1,000,000 per occurrence and covering all owned, non-owned, and hired vehicles operated by Sponsor and Spartan on-site;

iii. Statutory Workers’ Compensation including Employer’s Liability Insurance, subject to limits of not less than \$500,000 affording coverage under the workers’ compensation laws of the applicable state of operation with respect to employees operating on-site at a Race; and

b. Sponsor shall deliver to Spartan satisfactory evidence of the aforementioned insurance coverage in form of a certificate of insurance and any policy endorsements as may be requested. Sponsor shall add as additional insured Spartan, and its respective parents, subsidiaries, affiliates, officers, directors, employees, representative and agents and the heirs, successors and assigns of each of the foregoing. Sponsor shall also add as additional insured such other third parties as reasonably identified by Spartan in writing prior to the Races. To the extent permitted by law, each required insurance policy shall provide a waiver of subrogation in favor of each Spartan and its additional insured parties. All required insurance will be placed with reputable carriers licensed to do business in the applicable state. Notice of cancellation will be given in accordance with policy provisions, and Sponsor will promptly notify Spartan of any change to its insurance program which results in noncompliance with this Agreement. Failure by a Spartan to request a certificate shall not be construed as waiver of the obligations outlined above.

c. If, in accordance with Exhibit A, Sponsor is granted the right to exhibit its products and services at the Races or otherwise have a presence on-site, Sponsor shall be required to furnish Spartan certificates of insurance evidencing all required insurance prior to the Race. In the event that any required policy is cancelled, reduced, or non-renewed during the Term of this Agreement, Sponsor shall immediately notify Spartan, and Sponsor shall suspend participation in the Race until insurance has been placed in compliance with all insurance requirements. If Sponsor's on-site exhibition includes the use of vehicles or if other mobile equipment is driven, operated, or displayed in connection with Sponsor's presence on-site, then the required automobile and commercial general liability insurance shall be increased to an amount not less than \$2,000,000 per occurrence and \$5,000,000 aggregate, which may be met by any combination of primary and excess insurance policies. Spartan, in its reasonable discretion and upon written notice to Sponsor, reserves the right to increase or decrease the amount of insurance required by Sponsor or require additional coverages based on the nature of Sponsor's activities in or around the Races, or as may be required by any local venue or authority having jurisdiction over the Races.

d. Spartan shall upon request, name Sponsor and Sponsor's Affiliates, including in each case, all successors and permitted assigns, as additional insureds; and waive any right of subrogation of the insurers against Sponsor or any of its Affiliates.

e. Upon the written request of Sponsor, Spartan shall provide Sponsor with the copies of the certificates of insurance and policy endorsements for all required insurance coverage, and shall not do anything to invalidate such insurance. Failure by Sponsor to request a certificate shall not be construed as waiver of the obligations outlined above.

## 11. **Dispute Resolution.**

a. This Agreement shall be governed by and construed in accordance with the internal laws of the State of ~~Delaware~~, Arkansas without regard to the conflicts of law principles thereof. The Parties shall resolve any dispute, controversy or claim arising out of or relating to the Agreement, or the breach, termination, or invalidity hereof (each, a "Dispute"), under the provisions of this Section 11. The procedures in this Section shall be the exclusive mechanism for resolving any Dispute that may arise from time to time.

b. The Parties shall first attempt in good faith to resolve any Dispute by negotiation and consultation between themselves. In the event that such dispute is not resolved on an informal basis within fourteen (14) days after one Party provides notice to the other Party of such Dispute ("Dispute Notice"), either Party may, by written notice to the other Party ("Escalation to Executive Notice"), refer such dispute to the executives of each Party. If the executives cannot resolve any Dispute during the time period ending fourteen (14) days after the date of the Escalation to

Executive Notice (the last day of such time period, the "Mediation Escalation Date"), either Party may initiate mediation.

c. The Parties may, at any time after the Mediation Escalation Date, submit the Dispute to any mutually agreed to mediation service for mediation by providing the mediation service a joint, written request for mediation, setting forth the subject matter of the dispute and the relief requested. The Parties shall cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings. The Parties covenant that they will use commercially reasonable efforts in participating in the mediation. The Parties agree that the mediator's fees and expenses and the costs incidental to the mediation will be shared equally between the Parties.

d. The Parties further agree that all offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the mediator and any employees of the mediation service are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation, arbitration or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

e. If the Parties cannot resolve for any reason, including but not limited to, the failure of either Party to agree to enter into mediation or agree to any settlement proposed by the mediator, any Dispute within thirty days after the Mediation Escalation Date, either Party may commence arbitration.

f. The Parties hereby agree that any arbitration will be conducted in Boston, MA pursuant to the Commercial Arbitration Rules of the American Arbitration Association by an arbitrator agreed upon by the Parties or, in the absence of such agreement, selected in accordance with such rules. The Parties acknowledge that any monetary value assigned to promotional considerations provided herein is not intended to be used as a measure of damages in connection with this Agreement. Neither the Parties nor the arbitrator shall disclose, describe, or characterize any proceeding hereunder, including, without limitation, any demand, discovery, testimony, evidence, settlement, or award therein, to any other person or entity, except as may be required in any judicial proceeding brought to enforce this paragraph or any award rendered in a proceeding hereunder. The record of any proceeding shall be sealed.

## **12. Entire Agreement; Amendment; Conflict Assignment.**

a. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, understandings and representations relating to the subject matter hereof, whether written or oral. All exhibits attached hereto are incorporated into this Agreement by reference. This Agreement may only be amended, modified, or supplemented by a written agreement duly executed by the Parties. To the extent that any of the terms and conditions of Spartan's agreement(s) with, or related to, a Race, (the "Venue Contracts") conflict or are otherwise incompatible with the terms and conditions of this Agreement, Spartan shall uphold the terms and conditions of the applicable Venue Contracts, and such Venue Contracts' applicable terms and conditions shall supersede the conflicting terms and conditions of this Agreement without owing any liability to Sponsor.

b. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. A Party may not assign this Agreement or any part hereof or any benefit or interest therein without the prior written consent of the other Parties;

provided, that: (i) a Spartan may assign its rights and obligations under this Agreement to any successor to substantially all of the business of such Spartan, and (ii) Spartan may assign its rights and obligations under this Agreement to any of its affiliates.

13. **Relationship of the Parties.** The relationship of the Parties under this Agreement is that of independent contractors and nothing herein or in any related document or representation shall be construed to create or imply any relationship of employment, agency, joint venture, partnership or any other relationship other than that of independent contractors. The Parties acknowledge and agree that each is engaged in a separate and independent business and neither will state, represent, or imply any interest in or control over the business of the other.
14. **Force Majeure.** A Party will not be in breach of this Agreement if any performance required under this Agreement, or the presentation or exhibition of the any Race is prevented or preempted because of an act of God, natural disaster, inclement weather, catastrophe, accident, fire, labor dispute, lockout, strike, riot or civil commotion, act of public enemy, governmental act, regulation or rule, failure of technical facilities, a day of national mourning, emergency or other circumstance or event beyond the control of such Party. If any event of the type described in the preceding sentence constitutes an Unavailable Benefit, then the provisions of Section 4 hereof shall apply.
15. **Confidentiality.** The Parties agree that the terms of this Agreement shall be kept confidential (except as may be required by law, rule or regulation of any governmental authority) and will not be disclosed to any individual or entity, except that a Party may disclose such terms as are reasonably necessary to their respective affiliates, members, lenders, officers, directors, employees, accountants, counsel and agents with a reasonable need to know such information in their representative capacities, and all persons acting by, through, under or in concert with any of them.
16. **Remedies.** All rights and remedies of the Parties under this Agreement are cumulative, and none shall exclude any other right or remedy available at law or in equity and such rights or remedies may be exercised and enforced concurrently. The Parties may seek emergency relief (including injunctive relief) in a court of competent jurisdiction seated in Boston, MA, without first resorting to the appointment of an arbitrator; provided, however, that no monetary relief of any kind may be sought or awarded through such proceedings.
17. **Waiver.** The waiver of any breach of this Agreement shall not constitute a waiver of any other prior or subsequent breach of this Agreement. No waiver is effective unless made in writing and signed by the Parties. The failure of any Party hereto to insist upon strict compliance with this Agreement, or any of the terms and conditions hereof, shall not be deemed a waiver of any rights or remedies that such Party may have.
18. **Severability.** In the event that any provision of this Agreement shall be held invalid or unenforceable, such provision shall be severed and the remainder of the Agreement shall continue in full force and effect.
19. **Notices.** Unless otherwise expressly provided, any notice, request, demand, waiver, or other communication required or permitted to be given under this Agreement shall be by (a) PDF with confirmation of transmission, (b) registered or certified mail, or (c) overnight courier to the receiving Party at the address set forth below:

To Spartan:	Spartan Race, Inc. 234 Congress Street, 5 <sup>th</sup> Floor Boston, MA 02110
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Attn: General Counsel  
Email: legal@spartan.com

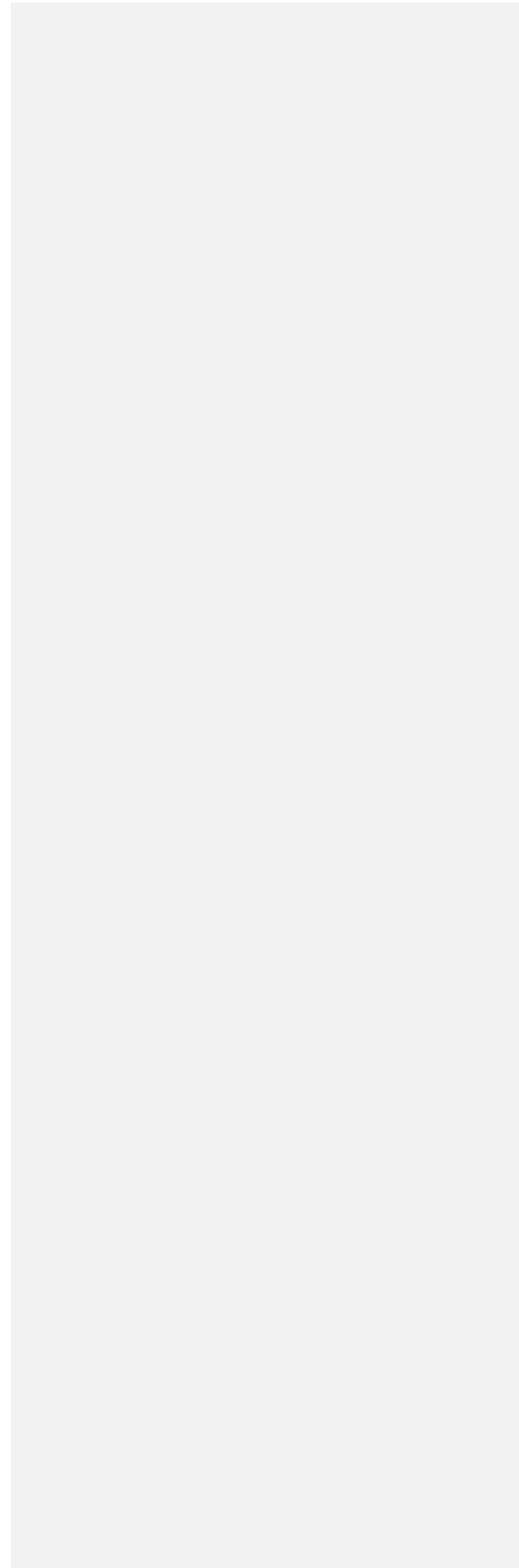
To Sponsor: Fayetteville Advertising and Promotion Commission  
21 South Block Avenue, Suite 100  
Fayetteville, AR 72701  
Attn: Molly Rawn  
Email: mrawn@experiencefayetteville.com

Any Party may change the address to which notices are required to be sent by giving notice of such change in accordance with this Section to the other Parties.

20. **No Construction against Drafting Party.** The Parties and their respective counsel have had the opportunity to review this Agreement, and this Agreement will not be construed against any Party merely because any provisions of the Agreement were prepared by a particular Party.
21. **Agency Representation.** If this Agreement is executed by an agent on behalf of Sponsor (“Agency”), Agency represents and warrants that it is the duly authorized agent of Sponsor for the purposes of this Agreement and the matters contemplated hereby and that its arrangements with Sponsor specifically contemplate the placement of the Sponsorship Benefits herein. Agency and Spartan acknowledge that all Sponsorship Benefits provided hereunder are exercisable by Agency, acting as an agent on behalf of its principal, Sponsor. Sponsor and Agency shall be jointly and severally liable for all liabilities and obligations hereunder.
22. **Survival.** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable.
23. **Representations and Warranties.**
  - a. Each Party represents and warrants to the others that it: (i) is duly incorporated or organized and validly existing under the laws of its jurisdiction of incorporation or organization and it has the legal capacity to enter into this Agreement and to perform each of its obligations hereunder, (ii) has duly authorized, executed and delivered this Agreement and this Agreement constitutes a legally valid and binding obligation of it enforceable against it in accordance with its terms, and (iii) shall comply with all applicable federal, state and local laws, rules and regulations in connection with its performance hereunder.
  - b. Sponsor represents and warrants to Spartan that: (i) the Sponsor Marks, Sponsor Content, Sponsor’s commercial units, or other material provided by or on behalf of Sponsor (collectively, “**Sponsor Materials**”), shall not infringe upon, misappropriate or otherwise violate the intellectual property rights or other proprietary rights of Spartan or any third-party, (ii) Sponsor has obtained all licenses, agreements, permits, waivers, releases, registrations, approvals, authorizations and clearances necessary in connection with the Sponsor Materials, and that such licenses, agreements, permits, waivers, releases, registrations, approvals and/or authorizations will be valid and sufficient for the performance of its obligations hereunder and (iii) there are no additional costs, royalties, residuals, license fees, or other third-party expenses associated with the use of the Sponsor Materials.
24. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be

deemed to constitute one and the same agreement. Signatures of the Parties transmitted by PDF shall be deemed to be their original signatures for all purposes.

[signature page follows]



The Parties are signing this Agreement on the Effective Date stated in the introductory clause.

**FAYETTEVILLE ADVERTISING AND PROMOTION COMMISSION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

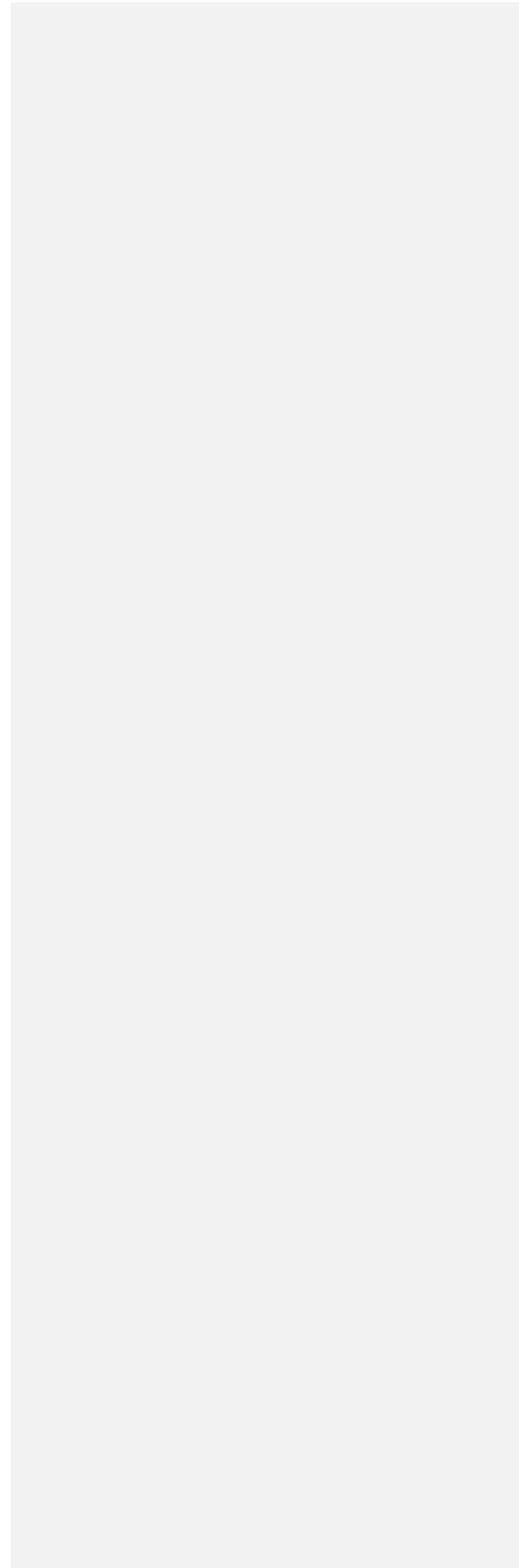
Title: \_\_\_\_\_

**SPARTAN RACE, INC.**

By: \_\_\_\_\_

Name: Jeffrey Connor

Title: Chief Operating Officer



**EXHIBIT A  
SPONSORSHIP BENEFITS**

**COVERED SEASON AND RACE.** The Sponsorship Benefits will be provided in connection with the 2021 U.S. Spartan Trail Seasons, starting on January 1<sup>st</sup>, 2021, and ending on December 31<sup>st</sup>, 2021, however, more specifically, with the Fayetteville Spartan Trail US Championship to be hosted in Fayetteville, Arkansas, starting on October 30<sup>th</sup> and ending on 31<sup>st</sup>, 2021.

1. **LOGO.** Spartan will display destination name, as provided by Sponsor, in or around the official Spartan Trail U.S. Championship weekend logo lock-up.
  - A. Sponsor-approved logo/destination name to appear on Spartan website for the Spartan Trail U.S. Championship webpage, and other collateral where other Spartan Trail U.S. Championship sponsors receive mentions.
2. **ON-SITE ACTIVATION.** During the Event, Sponsor will have the right to the following On-Site Activation benefits at the Event. Sponsor's On-Site Activation rights are further subject to the terms and conditions set forth in the Exhibit C:
  - A. Exhibit Space. Spartan will provide Sponsor with one (1) 20-foot x 20-foot exhibit space in a high traffic area at the festival associated with the Event for Sponsor's use (the "Tent"). Sponsor will keep exhibit open and staffed at all times during Event hours.
  - B. ~~Barrier Jackets. Sponsor shall provide a minimum of four (4) and maximum of fifteen (15) barrier jackets banners or 6 foot x 3 foot banners to be installed in the festival area at the Event and/or on the Race course. Content and design to be reasonably approved by Spartan. Except as otherwise provided in this Agreement, Sponsor shall be responsible for the initial production of on site barrier jackets and comparable signage. Any changes or alterations desired by Sponsor during the Term following initial production, including, without limitation, logo or slogan changes, shall be at the sole cost and expense of Sponsor.~~
  - C. Course Map Inclusion. Sponsor logo to be included in the Event course map; *provided that* Sponsor must provide a black and white logo in a commercially reasonable period prior to the Event date(s).
  - D. MC Announcements. Spartan shall provide Sponsor with at least one (1) MC announcement during the Event; *provided that* Sponsor provide an up to forty (40) word announcement at least two (2) weeks prior to the Event.
  - E. Athletes Guide. With respect to its pre-race athletes guide to be distributed to all racers prior to the Event, Spartan shall provide Sponsor with (i) a display of its destination name and logo on the front page and (ii) one (1) full page advertisement. Content to be mutually approved by the Parties.
  - F. Media Wall. Spartan will incorporate a destination identifier in (i) the "Step and Repeat" media wall and (ii) other locations to be mutually agreed upon by the parties at least one hundred and sixty (160) days prior to the Event; *provided that* Sponsor must provide content for inclusion on the medial wall in a commercially reasonable period prior to the Event date(s).

- G. Co-Branded Collateral. Both Parties will collaborate to develop certain co-branded collateral to be distributed at the Event, ultimately approved by Spartan which approval shall not be unreasonably withheld, including:
- i. Medals and/or medal lanyards;
  - ii. Finisher t-shirts to be distributed to race finishers;
  - iii. Barrier jackets; and
  - iv. Blades.
3. **DIGITAL & MEDIA**. During the Term, Spartan will provide the following benefits:
- A. Host Destination Media Rights. Spartan will designate Sponsor as the host of the “Spartan Trail U.S. Championship” in applicable media and mentions, including, but not limited to.
- i. E-mail marketing of the Event to all e-mail recipients in Spartan’s marketing database;
  - ii. The Spartan Trail U.S. Championship race page on [www.spartan.com](http://www.spartan.com);
  - iii. Facebook posts promoting the Event; and
  - iv. Other co-branded marketing collateral which promotes the Event.
- B. Online and Media Promotion.
- i. Spartan will mention, tag, or incorporate Sponsor in applicable social media posts, email blasts, and blog posts relating to the Event.
  - ii. Spartan will collaborate with Sponsor to promote Fayetteville, as well as activities located near the Event, including, but not limited to:
    1. Social media promotion, including up to ten (10) destination specific posts; *provided that* Sponsor must provide content at least two (2) weeks prior to mutually agreed upon post date;
    2. Distribution of travel guide(s), content to be mutually approved by both Parties; and
    3. Distribution including vacation options/“things to do” in the identified regions during the week leading up to the Event and during Event weekend.
  - iii. Spartan will provide Sponsor with certain broadcast benefits which will highlight Fayetteville as the host of the Event and as a travel destination, including in:
    1. Live Event coverage to be broadcasted via Spartan TV and other Spartan-owned media platforms; and

2. Two (2) fifteen (15) second destination footage integrations into the Event broadcast via Spartan platforms.
  - C. E-mail Promotion. Spartan will include Sponsor in Event-related email blast to the e-mail recipients in Spartan's Event-specific marketing database to promote Fayetteville, with content to be mutually approved by the Parties.
4. **CO-MARKETING AND TRADE SUPPORT**. During the Term, the Parties agree to provide at no additional cost (unless otherwise specified below).
- A. Lodging Promotion. Spartan will provide a direct link from the Spartan website to participating Fayetteville lodging properties via a microsite. Links and discount codes must be provided to Spartan at least six (6) months prior to the Event.
  - B. Race Entries. Spartan will provide Sponsor with up to twenty (20) complimentary Event race entries, at Spartan's sole expense, to use for promotional purposes; *provided that* those redeeming such Race entries are required to register using Spartan's online registration system; sign the Spartan race waiver; pay any processing and/or administrative fees thereto; and pay for any cost or purchase of the individual supplemental Event race insurance offered through the Event registration platform. For the avoidance of doubt, the start time for such race entries shall be determined in Spartan's sole discretion.
  - C. Post-Event Survey. Spartan will include demographic, geographic, spending patterns and lodging questions into the post-race survey in order to gain an accurate ROI analysis of the annual Event. Sponsor will develop survey questions in coordination with Spartan and tailor subsequent annual marketing plans accordingly. Spartan agrees to provide the response data to Sponsor to such questions, however Sponsor understands and agrees that such response data shall be aggregated and anonymized in compliance with all applicable consumer protection and data privacy laws before Spartan provides the data to Sponsor. Sponsor acknowledges and agrees that Spartan shall own such data provided to Sponsor and in no instance shall Sponsor license, sell, or otherwise make such data available to any third party unless approved by Spartan in writing.

**EXHIBIT B  
SPONSORSHIP FEE**

**Payment Terms.**

As good and valuable consideration for the Sponsorship Benefits provided by Spartan, Sponsor agrees to provide Spartan a sponsorship fee payable on the date and in the amount described in the table below. Sponsor acknowledges and agrees that payments will be made by check or wire to Spartan agrees to provide wire details to Sponsor upon execution of this Agreement.

<b>Amount</b>	<b>Due Date</b>
\$45,000.00	Total Sponsorship Fee to be paid within 30 days of invoice date from Spartan, such invoice to be sent upon execution hereof.

**EXHIBIT C**  
**Exhibitor Terms and Conditions**

Sponsor agrees and acknowledges that it will always keep its activation space open and staffed during Race hours. ~~Spartan will communicate the exhibitor hours to Sponsor prior to the event. Sponsor acknowledges that set up hours are on Friday between 8:00 AM — 3:00 PM. Furthermore, set up before Friday is by appointment only and set up on Saturday is prohibited. Event hours will be Saturday from 7:00 AM — 7:00 PM and Sunday from 7:00 AM — 7:00 PM, or until last racer exits the Race. Depending on the number of racers at the Race, the Race may end as early as 4:00 PM.~~ Event tear down begins on the last day of the Race as soon as the last racer exits the Race. Early tear down is not allowed. Sponsor may distribute samples and other Sponsor materials on-site at the activation space; provided that such samples are approved by Spartan at a commercially reasonable time prior to the Race.

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# **Fayetteville Advertising & Promotion Commission**

## **Memo**

**To:** Molly Rawn, CEO, Fayetteville Advertising and Promotion Commission;  
Fayetteville Advertising and Promotion Commissioners

**From:** Tyler Wilson, General Manager, Fayetteville Town Center  
Miletus Callahan-Barile, Facilities Manager, Fayetteville Town Center

**Date:** July 19, 2021

**Re:** Tower Roof Repair at Fayetteville Town Center

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### **Background:**

Upon inspection of water intrusion and mold growth, Fayetteville Town Center must repair damage to the roof and seals of the tower at the entrance to the building.

The weight limits on the re-designed plaza necessitate quotes include the cost of scaffolding to repair the internal components of the tower and placement of an articulated bucket truck to repair the exterior components. The Director of Bond Projects and Facilities at the city was consulted in this process.

Fayetteville Town Center staff sought three quotes that included repair to the tower roof, window, and drywall for the complete restoration of this intrusion area. Nabholz Construction offered the most competitive pricing.

### **Recommendation:**

Staff recommends the commission accept a quote from Nabholz Contractors in the amount of \$54,900 for repair to the Fayetteville Town Center tower and to make the necessary budget adjustments.

# Experience Fayetteville 2021 Budget Adjustment

**7/26/2021**

Commission Meeting Date - Agenda Item Only  
N/A for Non-Agenda Item

Jennifer Walker  
Submitted By

7/16/2021  
Submitted Date

Town Center  
Department

### Action Recommendation:

Staff recommends approval of a budget amendment to provide funding for Town Center tower repairs. This budget adjustment supports the proposed quote with Nabholz Construction. Funding will come from the Capital Reserve Fund.

### Budget Impact:

Account Number	TOTAL		Class	Account Name
	Increase	Decrease		
	<u>55,000.00</u>	-		
	Expense	Revenue		
77800	55,000.00		TC	FFE & Improvements

Approved By

Approval Signature

Approval Date



## Lump Sum Proposal / Agreement

### Proposal For:

#### Miletus Callahan-Barile

Fayetteville Town Center

P.O. Box 4157

Fayetteville, Arkansas, United States

72701

E-mail: [miletus@twncenter.com](mailto:miletus@twncenter.com)

### Project Information:

**Project Title:** Fayetteville Town Center Repairs

**Location:**

**Proposal Number:** 21-4545-20

**Revision:** 1

**Proposal Date:** 10/19/2020

Nabholz Construction Services ("Nabholz") is pleased to submit this Lump Sum Proposal/Agreement (inclusive of the General Terms and Conditions attached hereto) ("Agreement") for the above referenced project. This pricing is valid for 15 day(s). If acceptable, please sign where indicated, date and fax (or return) a copy to Nabholz. Thank you for the opportunity to be of service. The pricing and terms of the Agreement are confidential.

**SCOPE OF WORK** is based on our site visit and as clarified below. Nabholz shall furnish all labor, materials and equipment unless otherwise noted, for the following specific scope of work:

#### Fayetteville Town Center Repairs

##### Roof Repairs

\$24,900.00

1. Provide equipment and/or scaffolding as required for safe repair of roofing system
2. Install a fleece back TPO to the existing modified roof system
3. Install new drip edge metal (choice of color)

##### Window Repairs

\$26,200.00

1. Provide equipment and/or scaffolding as required for safe repair of leaks in the storefront system
2. Remove and replace 1 ea broken glass lite and 2 ea broken seal lites of glass.
3. Also remove or replace any caulking in leaking areas.
4. All resealing of systems to be done in partnership with Harness Roofing.
5. Broken lite of glass will have to be removed and plywood installed in its place
6. The broken piece must be used for glass fabricator to match patterned frit on glass.
7. Nabholz, Building Manager and ACE will have to agree on lift equipment capable of getting our workers to the upper areas of the curtainwall. Reglazing must be done from exterior

##### Drywall Repairs & Paint

\$3,800.00

1. Provide lift and floor protection in the areas where work will be performed
2. Patch drywall at water damage
3. Skim the drywall at repair to closely match surrounding finishes
4. Spot prime as necessary at patched areas
5. Paint the whole bulkhead one standard color

**EXCLUSIONS** from the scope of work in this proposal are as follows:

1. Excludes any item not specifically called out in the scope
2. Any item discovered during the course of the work not specifically addressed will be subject to additional charges
3. Excludes any damages to asphalt, concrete or greenscapes due to normal construction and delivery traffic
4. HVAC work is excluded
5. Plumbing work is excluded

6. Electrical work is excluded.
7. Dumpster fees are excluded
8. Medical containment is excluded.
9. Sprinkler work is excluded
10. A clean clear work area must be provided for Nabholz craftsmen, Subcontractors, and the use of mobile equipment.
11. Masonry.
12. Eifis/ Stucco Repairs.

**SCHEDULE** for the above scope of work ("Work"), is based on Nabholz Normal Working Hours and Work Days, and shall not exceed N/A work days from the project start date. Unless otherwise agreed, Normal Working Hours and Work Days are defined as Monday through Friday, 8 a.m. – 4 p.m. Upon receipt of your written acceptance of this proposal and receipt of applicable permits and governmental approvals, up to 15 work days shall be required as lead time prior to the project start date. If Nabholz is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, or of an employee, or separate contractor or designer employed by the Owner; or by changes ordered in the Work, or by labor disputes, fire, weather, access to work areas, unusual delay in deliveries, unavoidable casualties or other causes beyond the control of Nabholz; or by delay authorized by the Owner; or by other causes which may justify delay in the Owner's reasonable discretion, then the Schedule shall be extended and additional general conditions costs resulting from the delay shall be paid by Owner.

**PAYMENT TERMS** for this proposal shall be based on monthly progress invoices, no retainage withheld, submitted by Nabholz with payments due in full no later than 30 day(s) from the invoice date.

**LUMP SUM PRICE OF THIS PROPOSAL**

**\$54,900.00**

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## LUMP SUM PROPOSAL/AGREEMENT GENERAL TERMS AND CONDITIONS

### Agreement For:

Fayetteville Town Center

### Project Information:

Project Title: Fayetteville Town Center Repairs

**Contract Documents:** Upon execution of this Agreement by the Owner or commencement of Work, whichever occurs first, this Lump Sum Proposal/Agreement ("Agreement"), shall constitute the Contract Documents and shall govern the rights of the parties hereto. In the event of any inconsistencies this Agreement shall control.

**Scope of the Work:** shall be per the Contract Documents and shall constitute the "Work". Nabholz shall exercise the degree of care, skill and diligence in the performance of the Work, to assure its Work is performed in a good and workmanlike manner, consistent with construction industry standards for similar projects and circumstances in the same geographic area (hereinafter the "Standard of Care"). Nabholz shall have responsibility and control over the performance of the Work, including construction methods, techniques, manner, and sequences for coordinating and completing the various portions of the Work. Nabholz' Standard of Care specifically excludes any design or design-related responsibilities, and any action taken by Nabholz under this Agreement does not and shall not be construed to approve, represent or warrant the adequacy and suitability of the plans and specifications for the purpose for which they are provided. Owner expressly warrants that any plans, drawings, specifications, surveys, soil test and reports, and hazardous material studies furnished by the Owner are true, correct and complete; and Nabholz is entitled to rely upon the adequacy, accuracy and completeness of such documents.

**Payment:** Owner agrees to pay Nabholz for the performance of the Work, subject to additive or deductive modifications requested by the Owner. Payments are due in full no later than 30 days from the invoice date. Payments due and unpaid invoices shall bear interest at the rate of six percent (6%) per annum or highest rate allowed by law, whichever is less. Final Payment shall be due when the Work is completed, and final invoice is submitted.

### IMPORTANT NOTICE TO OWNER

**IF BILLS FOR LABOR, SERVICES, OR MATERIALS USED TO CONSTRUCT OR PROVIDE SERVICES FOR AN IMPROVEMENT TO REAL ESTATE ARE NOT PAID IN FULL, A CONSTRUCTION LIEN MAY BE PLACED AGAINST THE PROPERTY. THIS COULD RESULT IN THE LOSS, THROUGH FORECLOSURE PROCEEDINGS, OF ALL OR PART OF YOUR REAL ESTATE BEING IMPROVED. THIS MAY OCCUR EVEN THOUGH YOU HAVE PAID YOUR CONTRACTOR IN FULL. YOU MAY WISH TO PROTECT YOURSELF AGAINST THIS CONSEQUENCE BY PAYING THE ABOVE NAMED PROVIDER OF LABOR, SERVICES, OR MATERIALS DIRECTLY, OR MAKING YOUR CHECK PAYABLE TO THE ABOVE NAMED PROVIDER AND CONTRACTOR JOINTLY.**

**Insurance & Waiver of Subrogation:** Nabholz shall maintain insurance for Workers' Compensation, Builders Risk, Employer's Liability, Comprehensive Automobile Liability, and Comprehensive or Commercial General Liability on an occurrence basis. Owner and Nabholz waive all rights against each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, for damages caused by fire or other causes of loss, to the extent those losses are covered by insurance required by the Agreement or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance. The policies of insurance purchased and maintained by Owner and Nabholz shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to an Owner and Nabholz (1) even though the party would otherwise have a duty of indemnification, contractual or otherwise, (2) even though the party did not pay the insurance premium directly or indirectly, or (3) whether or not the party had an insurable interest in the damaged property.

**Disputes:** If a dispute arises out of or relates to this Agreement, including the breach thereof, the parties shall first attempt to settle the dispute through direct discussions, then by mediation as a condition precedent to binding arbitration. Unless parties mutually agree otherwise, mediation shall be conducted in accordance with the current Construction Mediation Rules of the American Arbitration Association (AAA). Disputes not resolved by discussion or mediation shall be decided by binding arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. The arbitration shall be held in the county and state in which the Project is located unless otherwise agreed in writing.

**Termination:** Owner and Nabholz may terminate this Agreement only in the event of a material breach and only after providing ten (10) calendar days prior written notice to the address stated herein (i) delivered by facsimile or electronic mail, provided sender can provide evidence of successful transmission and that such day is a business day, or (ii) by registered or certified U.S. Mail, return receipt requested. In the event either party fails to cure or fails to diligently commence to cure an alleged material default to the reasonable satisfaction of the non-defaulting party within ten (10) calendar days of receipt of such written notice, the non-defaulting party may terminate this Agreement. Notwithstanding, Nabholz may terminate this Agreement upon ten (10) days prior written notice to Owner if the Work is stopped for a period of 120 consecutive days through no act or fault of Nabholz, including but not limited to when the Work is stopped due to an order of a court or other public authority having jurisdiction, actions by government agencies, or declaration of a national emergency.

**Exclusion of Warranties: NABHOLZ MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED. ALL IMPLIED COVENANTS ARE HEREBY WAIVED. WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED.**

**Miscellaneous:** This Agreement is severable, and any part deemed unenforceable shall not render the remaining part unenforceable. All covenants of the Agreement shall be subject to all federal and state laws, executive orders, rules, or regulations, and this Agreement shall not be terminated, in whole or in part, nor the parties held liable in damages, for failure to comply therewith, if compliance is prevented by, or if such failure is the result of any such law, order, rule, or regulation or acts of God. Notwithstanding, Nabholz will be entitled to an extension of the time to complete its Work and an equitable adjustment of the contract Price, due to labor shortages, material escalation, or otherwise, for the performance of Nabholz' Work due to events and conditions beyond Nabholz' control, including but not limited to direct and indirect impacts from the Coronavirus pandemic, epidemics, and actions by government agencies. Nabholz will employ efforts to mitigate such delays and increased costs, in consultation with Owner, and will provide updates to Owner as to any time or cost impacts resulting from this provision. Disputes as to the entitlement of extensions of time to complete the Work or increases in the contract Price shall be resolved pursuant to the Disputes provisions of this Agreement. In the event of an Owner-related or third-party union-related dispute or activities on or near the Project, not directly involving Nabholz or its Subcontractors, affecting the schedule or cost of the Project, Owner shall agree to an equitable adjustment of the schedule and cost by Change Order and take all appropriate actions to assure the Work is not disrupted. This Agreement is intended to be the final expression of the parties, and there are no other written or oral agreements relating to the subject thereof. This Agreement may only be amended by a further written agreement signed by both parties. This Proposal/Agreement, when signed by both parties, constitutes the entire agreement and contract between the parties for the performance of the Work described in this Proposal. Faxes of signed Proposal/Agreement are acceptable. As proof of such Agreement, Owner is hereby notified of Nabholz's objection to any terms inconsistent herewith and to any additional terms proposed by Owner in accepting or acknowledging this Proposal/Agreement or otherwise and such terms shall not become a part of this Agreement unless accepted in writing by Nabholz. Neither Nabholz's subsequent lack of objection to any such terms, nor the beginning of Work shall constitute or be deemed an agreement by Nabholz to any such terms. Nabholz will not be responsible for consequential damages of any type under any circumstances. Unless otherwise noted in the Proposal, Nabholz excludes performance and payment bonds; rock excavation; asbestos or any other hazardous material removal, disposal, or encapsulation; services of licensed professionals such as attorneys, architects, or engineers; costs for the after-hour work, shift work, weekend or holiday work.

**Market Fluctuations:** The price is based on material prices at the time of the Proposal. Any significant price increase (meaning a price increase exceeding 5%) in materials necessary to perform the Work, that occur after the date of this Proposal, shall cause the contract Price to be adjusted by an amount reasonably necessary to cover any increase in costs or to pay for an acceptable substitute and associated costs. Price increases shall be documented through quotes, invoices, or receipts. Nabholz will not be liable for additional costs or damages associated with delays in material deliveries not occasioned by the fault of Nabholz.

**EEO:** Nabholz complies with both Federal and State laws pertaining to Equal Employment Opportunity (EEO) and does not discriminate in employment opportunities or practices on the basis of race, color, religion, sex, national origin, age (except as otherwise required by child labor statutes), disability, genetic information, sexual orientation, gender identity, veteran status, or any other characteristic protected by law.

**Additional Work:** Unless otherwise provided in writing between the parties, any additional work requested directed by Owner or its representative(s) shall be governed by the General Terms and Conditions of this Agreement.

**Confidential & Competitive Information:** Owner acknowledges that certain information provided to it by Nabholz contains information deemed trade secret, proprietary or otherwise confidential. Such information includes but is not limited to Nabholz' research, development, methods, processes, techniques, operations, computer programs; pricing/price modeling, and financial data of Nabholz, its related companies, for payment, change orders, or commercial information, including value engineering and constructability studies; current and prospective clients, subcontractors, and/or competitors; and proposals. Recipient acknowledges the value of such information to Nabholz and agrees to use reasonable diligence in protecting this information from unauthorized disclosures to third parties (excluding any governmental regulatory bodies entitled to access such information by law, or Recipient's parent, subsidiary or affiliated companies, or Recipient's auditors or lenders to the extent such disclosure is necessary). The Recipient agrees it shall not use the information provided in this proposal, in whole or part, for any purpose other than to evaluate the proposal, except that if a contract is awarded to Nabholz as a result of or in connection with the submission of the proposal, Recipient may use the information to the extent provided and consistent with the terms and conditions stated in the contract.

**Governing Law:** This Proposal/Agreement shall be construed, and its performance governed, by the laws of the state in which the Work is performed.

Respectfully Submitted:

Accepted by Owner:

Signature/Title: \_\_\_\_\_

Acceptance Date: \_\_\_\_\_

Desired Project Start Date: \_\_\_\_\_



James Scantlin  
Project Manager  
Nabholz Construction Services

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# **Fayetteville Advertising & Promotion Commission Memo**

**To:** Fayetteville Advertising and Promotion Commissioners

**From:** Molly Rawn, CEO, Fayetteville Advertising and Promotion Commission

**Date:** July 19, 2021

**Re:** Grant amendment

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## **Background:**

Experience Fayetteville received a grant from the Walton Family Foundation's Personal Philanthropy Group (WPPG) to produce, promote and host a series of Cyclo-cross race events with funding of \$2.3 Million.

With two of the three events remaining and the hiring of a new race production company, we have refined the total budget for the three race events at \$3.7 Million. WPPG has approved a grant amendment to increase the funding by \$1.4 Million.

## **Recommendation:**

Staff recommends the CEO execute Cyclo-cross grant amendment with Walton Family Foundation and accept the additional \$1.4 million in funds.

WALTON FAMILY  
FOUNDATION



July 19, 2021

Molly Rawn  
Fayetteville Advertising and Promotion Commission  
21 South Block Avenue  
Fayetteville, AR 72701

RE: Amendment to Grant 00001521 (formerly 2019-505)

Dear Molly,

The Walton Family Foundation, Inc. ("Foundation") issued a \$2,300,000.00 grant to the Fayetteville Advertising and Promotion Commission ("Grantee") on July 16, 2019 (the "Original Grant Agreement"). This letter (the "Grant Amendment") represents an amendment to the original grant agreement to support a change in purpose, an increase in the amount of the grant, and a reschedule of the Final Report. Sections 1 ("Purpose"), 2 ("Amount") and 5 ("Reporting and Evaluation") are hereby restated and amended as follows:

**1. Purpose:** The purpose of the grant is to support a series of three Cyclocross events in Fayetteville between 2019-2022. This grant is more fully described in Grantee's proposal dated July 10, 2019, and supplemented on June 6, 2021. Grantee agrees to use all grant funds exclusively for the grant's purpose. Any changes in the purpose must be authorized in advance by the Foundation in writing.

**2. Amount: \$3,700,000.00**

Grant payments have been and will be made as follows:

Installment	Installment Amounts	Installment Dates and Notes
#1	\$500,000.00	Paid to Grantee on or about August 1, 2019
#2	\$750,000.00	Paid to Grantee on or about June 23, 2020
#3	\$2,050,000.00	Upon signature and return to the Foundation of this Amendment
#4	\$400,000.00	To be requested via email submission of informal Progress Report at any point before the grant period ends, but preferably prior to 11/2/2021

**3. Reporting and Evaluation:** Grantee has provided and will continue to provide the Foundation with financial and narrative reports by the due dates listed in the report schedule below. Each report shall include an account of expenditures of grant funds and a brief narrative of what was accomplished (including a description of progress made in fulfilling the purpose of the grant and a confirmation of Grantee's compliance with the terms of the grant).

	<b>Report Type</b>	<b>Approved and/or Scheduled Date</b>
1	Progress Report	Approved on 6/11/2021
2	Progress Report	Approved on 7/7/2021
3	Final Report	Due on or before 2/28/2022

All reports will be submitted electronically using the Foundation's online grants management system. Any questions regarding this process should be addressed to your contact below or by emailing [smartsimplehelp@wffmail.com](mailto:smartsimplehelp@wffmail.com). Please reference Grant 00001521 on all reports submitted.

Grantee payments are always contingent upon the Foundation's approval of Grantee's operations based on the above reports and the Foundation's satisfaction with such information as it chooses to obtain from other sources.

Except as otherwise expressly modified by the terms of this Grant Amendment, the Original Grant Agreement shall remain unchanged and continue in full force and effect. All terms, covenants and conditions of the Original Grant Agreement not expressly modified herein are hereby confirmed and ratified and remain in full force and effect, and, as further amended hereby, constitute valid and binding obligations of the Grantee enforceable according to the terms thereof.

By electronically signing this letter, the Grantee acknowledges and agrees to the terms and conditions herein. A copy of the completed document will be emailed to the Grantee through DocuSign. If the electronic signing of this letter is not completed by August 15, 2021, the Foundation will consider the Grantee to have declined the grant amendment.

On behalf of the Foundation, I extend every good wish for the success of your organization's endeavors.

Sincerely,

DocuSigned by:  
  
 4E5797CFBB26445...  
 Caryl M. Stern  
 Executive Director

ACKNOWLEDGED AND AGREED

By: \_\_\_\_\_

Molly Rawn, Fayetteville Advertising and Promotion Commission

cc: Sally Fisher

# Fayetteville Advertising & Promotion Commission

## Memo

**To:** Molly Rawn, CEO, Fayetteville Advertising and Promotion Commission;  
Fayetteville Advertising and Promotion Commissioners

**From:** Jennifer Walker, VP Finance, Experience Fayetteville

**Date:** July 19, 2021

**Re:** Limited Amendment to Financial Policies –  
Presentation of Cyclo-cross Grant Funded Vendor Payments

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### Background:

Experience Fayetteville has contracted with Union Cycliste Internationale (UCI) to host the 2021 Cyclo-cross World Cup and 2022 Cyclo-cross World Championships. Expenditures for these events are funded through a WPPG grant.

The budget for these events and grant is approximately \$3.7 Million. As we approach the October 2021 event and January 2022 event, there will be some vendor payments greater than \$20,000. Our financial policies require contracts and/or payments greater than \$20,000 to be presented to the A&P Commission for approval prior to execution.

In order to expedite contracts and payments, Experience Fayetteville staff is requesting Commission approval to make a limited amendment to our Financial Policies in order to include a “batch” notification to the A&P Commission of vendor contracts and payments for the purposes of the grant spending.

This would entail the Experience Fayetteville CEO executing contracts after legal review on a weekly basis and then providing a summary of contract approvals and payments to the A&P Commission twice – once in December 2021 after the World Cup event; and, again in March 2022 after the World Championship event.

### Recommendation:

A vote authorizing a limited amendment to the Financial Policies permitting the Experience Fayetteville CEO to execute Cyclo-cross grant contracts and payments on an individual basis prior to Commission approval with a summary reporting to the Commission in December 2021 and March 2022.