

FORSYTH COUNTY

BOARD OF COMMISSIONERS

ADDED ITEM

Option **2**

MEETING DATE: MARCH 19, 2020 AGENDA ITEM NUMBER: 18

- SUBJECT:**
- A. RESOLUTION AUTHORIZING EXECUTION OF A CONTRACT WITH THE GREATER WINSTON-SALEM CHAMBER OF COMMERCE TO PROVIDE ECONOMIC DEVELOPMENT MARKETING SERVICES FOR THE RECRUITMENT OF START-UP COMPANIES FOR A PERIOD OF FOUR YEARS**

 - B. RESOLUTION AUTHORIZING AN AMENDMENT TO AN ECONOMIC DEVELOPMENT AGREEMENT TO ENCOURAGE INMAR, INC., TO RETAIN, RELOCATE, AND EXPAND ITS CORPORATE HEADQUARTERS AND BUSINESS IN FORSYTH COUNTY**

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:

SUMMARY OF INFORMATION:

ATTACHMENTS: yes no

SIGNATURE: _____ DATE: March 19, 2020
COUNTY MANAGER

RESOLUTION AUTHORIZING EXECUTION OF A CONTRACT WITH THE GREATER WINSTON-SALEM CHAMBER OF COMMERCE TO PROVIDE ECONOMIC DEVELOPMENT MARKETING SERVICES FOR THE RECRUITMENT OF START-UP COMPANIES FOR A PERIOD OF FOUR YEARS

WHEREAS Forsyth County is an innovative community for technology-based start-up companies and is vitally interested in marketing to start-up companies around the world to relocate in Forsyth County;

WHEREAS the Greater Winston-Salem Chamber of Commerce has requested that Forsyth County, along with the City of Winston-Salem, provide funding to assist with its efforts to market for the recruitment of technology-based start-up companies to the County;

WHEREAS the Greater Winston-Salem Chamber of Commerce is proposing to create a Start-up Program to perform marketing and branding activities to establish Forsyth County, nationally and internationally, as an innovative community for technology-based start-up companies to locate and leverage private funds to recruit approximately twenty start-up companies to Forsyth County annually;

WHEREAS the County executed an Incentives Agreement with Inmar, Inc. (Inmar), on March 22, 2013, to provide Inmar with up to \$1,053,610 in incentives over a 7-year period, beginning in Fiscal Year 2017, to relocate and expand its operation and jobs in the Innovation Quarter and the County has paid Inmar \$380,180.40 to date; and

WHEREAS Inmar has offered to amend its Incentives Agreement to reduce its maximum incentive it may receive by \$526,805, provided that the County direct such amount and a matching County contribution of \$526,805 over a four-year period to the Start-Up program;

NOW, THEREFORE, BE IT RESOLVED, by the Forsyth County Board of Commissioners that the Chairman or the County Manager and the Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, a contract in the amount of \$1,053,610 with the Greater Winston-Salem Chamber of Commerce, substantially in the same form as attached hereto as Exhibit A, to provide economic development marketing services for the recruitment of technology-based start-up companies to Forsyth County over a four-year period, conditioned on the prior execution of an agreement with Inmar, Inc., no later than December 31, 2020, to reduce its Incentives Agreement with Forsyth County by \$526,805 and funding by the City of Winston-Salem in an annual amount at least equal to County funding, subject to a pre-audit certificate thereon by the County Chief Financial Officer, where applicable, and approval as to form and legality by the County Attorney.

Adopted this the 19th day of March 2020.

STATE OF NORTH CAROLINA

AGREEMENT FOR THE GRANT OF FUNDS

FORSYTH COUNTY

THIS AGREEMENT, made and effective this ____ day of _____, _____, by and between Forsyth County, North Carolina (the "County"), and Greater Winston-Salem Chamber of Commerce (the "Grantee");

For the purpose and subject to the terms and conditions hereinafter set forth, the County and the Grantee hereby agree as follows:

- 1. Services.** The Grantee shall perform marketing and branding activities to establish Forsyth County, nationally and internationally, as an innovative community for technology-based start-up companies to locate and leverage private funds to recruit approximately 20 start-up companies to Forsyth County annually ("Start-up Services"). Grants made by the Grantee to start-up companies, which will be funded by private donations, shall not be contingent upon the start-up companies giving any equity interest or other consideration to any party at any time.
- 2. Term.** The services of the Grantee shall begin on _____, _____, and, unless sooner terminated by mutual consent or as hereinafter provided, shall be provided for 4 years until _____, _____ subject to an annual appropriation of funds. The County will perform a full programmatic review of the accomplishments of the Grantee after the first year and may terminate the contract at that time if, in its sole discretion, it deems the Grantee's efforts and accomplishments insufficient.
- 3. Grant.** As full compensation for the Grantee's services, the County agrees to pay the Grantee a grant in the sum of the lesser of \$263,402.50 per year for 4 years for a total of \$1,053,610, or the amount provided to the Grantee for Start-up Services by other governmental entities located in Forsyth County. County funds may be used only for the Grantee's advertising, branding, and recruitment services designed to attract start-up companies to Forsyth County. County funds may not be provided directly to any of the recruited start-up companies or as an incentive to any person or business. County funds may not be spent on excessive or luxurious goods, travel, or services. Funding will be payable in installments and will commence after verification that the Grantor has received for its start-up efforts at least \$875,000 in private donations and at least an additional \$875,000 in pledges from private donors. Upon commencement, the Grantee shall send the County quarterly invoices for services rendered during the preceding 90 days. Provided that the Grantee has provided all such Reports as required in Section 5 and that the Grantee complies with all elements of the Agreement, the County shall pay one-half of the eligible expenses in each quarterly invoice, and the Grantee shall be responsible for collecting the remainder from another governmental entity in Forsyth County.

4. Independent Contractor. The Grantee shall operate as an independent contractor, and the County shall not be responsible for any of the Grantee's acts or omissions. The Grantee, its employees, and subcontractors shall not be treated as an employee with respect to the services performed hereunder for federal or state tax, unemployment or workers' compensation purposes. Neither federal, state, nor payroll tax of any kind shall be withheld or paid by the County on behalf of the Grantee or the employees of the Grantee. The Grantee is fully responsible for the payment of any and all taxes arising from the payment of monies under this Agreement. The Grantee shall comply with the North Carolina Workers' Compensation Act and shall ensure that its subcontractors also comply. The Grantee shall not be treated as an employee with respect to the services performed hereunder for purposes of eligibility for, or participation in, any employee pension, health, or other fringe benefit plan of the County. The Grantee has no authority to enter into contracts or agreements on behalf of the County. The County shall not be liable to the Grantee for any expenses paid or incurred by the Grantee unless otherwise agreed in writing. The Grantee shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide contracted services unless otherwise agreed in writing.

5. Reports. In each invoice presented to the County for payment, the Grantee shall specifically list all such Services completed in the period for which payment is sought; a financial statement showing revenue and the source, and line item expenditures compared with the approved budget; report of activities and programs indicating the amount of progress toward meeting the objectives for the fiscal year; report showing the number of participants or clients of Grantee programs. At the end of each fiscal year the Grantee performs services under this contract, the Grantee shall provide a complete Report containing a summary of its Services completed and their impact on the community, in accordance with the Reporting Requirements listed in Exhibit A which is attached hereto and incorporated herein by reference. Failure to provide any required Report shall constitute a breach of this Agreement.

6. Records, Audit. The Grantee agrees that it will supply such records, information or verification relating to expenditures of the funds or the operations of the Grantee as may reasonably be requested by the County. The Grantee agrees that the County shall have access to the records and premises of the Grantee at all reasonable times, and the Grantee agrees to submit such reports as the County shall request pertaining to the funds granted herein or the operation of the Grantee. The Grantee shall maintain a written accounting and documentation of all of its receipts and disbursements relating to the grant funds which are the subject of this Agreement. The County reserves the right to require a certified audit pertaining to the use of the grant funds, or may perform the audit through the use of its staff. The Grantee shall furnish to the County a copy of its audit report performed by a certified public accountant as soon as such becomes available to the Grantee.

7. Termination. The County may terminate this Agreement for any violation thereof by Grantee. In the event of termination, the Grantee shall promptly remit any payments received which the County deems to have been paid in violation of this Agreement. The County may terminate the Agreement based upon, but not limited to, the following reasons, which shall be determined in the sole discretion of the County:

- a. Improper use of grant funds, including providing any cash grant or loan to a private company;
- b. Failure to comply with the terms of this Agreement;

- c. Submission to the County of reports which are incorrect or incomplete in any material respect;
- d. Any circumstance rendering the completion of the Services improper, illegal, or infeasible;
- e. Failure to make satisfactory progress in completion of the Services;
- f. Personal financial gain by any employee, board member, or sub-contractor from private or public funds used in relation to these contractual efforts; or
- g. Use of public funds in a way deemed to be excessive or extravagant (e.g. private flights)

8. Indemnification. The Grantee agrees to indemnify, defend, and hold the County harmless from and against any and all claims, expenses (including attorney fees), costs or liability for acts or omissions of the Grantee relating to this Agreement or services provided pursuant to it.

9. Notice. All notices permitted or required to be given by one party to the other party shall be addressed and delivered in writing as follows:

For the County:

Kyle Haney, Economic Development Program Administrator
Forsyth County Community & Economic Development
201 N Chestnut Street,
Winston-Salem, NC 27101
haneyjk@forsyth.cc

For the Provider:

Mark Owens, President & CEO
Greater Winston-Salem Chamber of Commerce
411 West Fourth Street, Suite 211
Winston-Salem, NC 27101
markowens@winstonsalem.com

10. Assignment. The Grantee may not assign its obligations under this Agreement unless it has received prior written approval from the County, which may be withheld at the sole discretion of the County.

11. Waiver. No action or failure to act by the County shall constitute a waiver of any of its rights or remedies or as approval or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

12. Governing Law. This Agreement shall be governed by North Carolina law, except that provisions regarding conflicts of laws shall not apply. The venue for any legal proceeding shall be in Forsyth County, North Carolina.

13. Survival of Provisions. All obligations arising prior to termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the parties shall survive the completion of services and termination of this Agreement.

14. Modification. This Agreement may only be modified in writing and signed by both the Grantee and by the County Manager or other authorized County official.

15. Conflict with Attachments. In the event of any conflict between the provisions in this Agreement and any provisions in an attachment thereto, the provisions in this Agreement shall take precedence over any provision in an Attachment.

16. Miscellaneous. The Grantee shall comply with all applicable laws and regulations including but not limited to federal, state and local laws regarding business permits, certificates, and licenses that may be required to carry out the services to be performed under this Agreement and all federal immigration laws in its hiring and contracting practices. Grantee and its subcontractors shall comply with Article 2 of Chapter 64 of the North Carolina General Statutes relating to the required use of the federal E-Verify program to verify the work authorization of newly hired employees. Failure of the Grantee to comply with this provision or failure of its subcontractors to comply could render this contract void under North Carolina law. Grantee hereby certifies that it is not on the North Carolina State Treasurer's lists of persons engaging in business activities in Sudan (Darfur), Iran, or boycotting Israel, prepared pursuant to NCGS §§ 147-86.43, 147-86.58, and 147-86.81, nor will Grantee utilize for this Agreement any subcontractor on such lists. This agreement is intended for the benefit of the County and the Grantee and not for any other party. If any provision of this Agreement shall be unenforceable, the remainder of the Agreement shall be enforceable to the extent allowed by law.

17. Future Grants. The County has limited resources and must prioritize its obligations required by law. This Grant does not guarantee that the County will fund the Grantee in future years. If the Grantee experiences any material changes in its financial support or if there is any change which threatens its ability to carry out its mission or its Services set forth in Section 1, it must notify the County immediately.

18. Superseder. This Agreement supersedes all prior agreements between the parties regarding the Services.

IN WITNESS WHEREOF, the authorized officials of the County and the Grantee have set their hands and seals as of the day and year first above written.

[SIGNATURE PAGE TO FOLLOW]

FORSYTH COUNTY, NORTH CAROLINA

By: _____

J. Dudley Watts, Jr, County Manager

(SEAL)

Date: _____

ATTEST:

Ashleigh M. Sloop, Clerk to the Board

Date: _____

GREATER WINSTON-SALEM
CHAMBER OF COMMERCE

By: _____

(SEAL)

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A

GREATER WINSTON-SALEM CHAMBER OF COMMERCE REPORTING REQUIREMENTS

Subject to this contract, the GRANTEE must provide annual reports that contain, at least, the following information:

- **Financial Records**
 - **Annual Audit of Program**
 - **Private funds raised and spent for efforts**
- **Explanation of Subcontracted Services**
 - **Name and description of subcontractors**
 - **Efforts of subcontractor**
 - **Funding amount to subcontractor**
- **Description of Recruitment Efforts**
 - **Recruitment Trips**
 - **Location and purpose of Recruitment Trips**
 - **Financial accounting of Recruitment Trips**
 - **# of leads generated/companies met with on trip**
 - **# of companies relocated to Forsyth County**
 - **Companies Targeted/Recruited**
 - **By Sector**
 - **By Size**
- **Results of Recruitment Efforts**
 - **Companies Relocated to Forsyth County**
 - **Name & Description of Companies**
 - **Brief Description of 5-year Business Plan**
 - **# of existing employees relocated**
 - **# of local hires by company**
 - **Average wage of new jobs (relocated & hired)**
 - **Payroll of Company (W2 & 1099 separate)**
 - **Revenue Generation**
 - **Economic Impact**
 - **New County Tax Dollars Generated**
 - **Average Revenue Growth of Relocated Companies**
 - **Employee Growth of Relocated Companies**
 - **Retention Rate of Relocated Companies**

**RESOLUTION AUTHORIZING AN AMENDMENT TO AN
ECONOMIC DEVELOPMENT AGREEMENT TO ENCOURAGE INMAR, INC., TO
RETAIN, RELOCATE, AND EXPAND ITS CORPORATE HEADQUARTERS
AND BUSINESS IN FORSYTH COUNTY**

WHEREAS on February 13, 2012, the Forsyth County Board of Commissioners approved a resolution authorizing Forsyth County to execute an economic development incentive agreement with Inmar, Inc., in an amount not to exceed \$1,053,610 over a seven-year period;

WHEREAS on March 22, 2013, Forsyth County executed an Incentives Agreement with Inmar, Inc., to provide up to \$1,053,610 in economic development incentive payments over a seven-year period based on Inmar, Inc., retaining, relocating, and expanding its corporate headquarters in Forsyth County and making a capital investment of at least \$24.5 Million in new equipment and \$37.5 Million in real property and creating 212 new permanent, full-time or full-time equivalent positions with an average wage of \$72,783 per year, plus benefits and retaining 761 existing full-time or full-time equivalent jobs in Forsyth County;

WHEREAS Forsyth County has made two annual payments to Inmar, Inc., beginning in Fiscal Year 2017, in the total amount of \$380,180.40, leaving \$673,429.60 remaining for additional incentive payments; and

WHEREAS the Greater Winston-Salem Chamber of Commerce is proposing to create a Start-up Program to perform marketing and branding activities to establish Forsyth County, nationally and internationally, as an innovative community for technology-based start-up companies to locate and leverage private funds to recruit approximately twenty start-up companies to Forsyth County annually;

WHEREAS Inmar has offered to amend its Incentives Agreement to reduce its maximum incentive it may receive by \$526,805, provided that the County direct such amount and a matching County contribution of \$526,805 over a four-year period to the Start-Up program;

NOW, THEREFORE, BE IT RESOLVED, by the Forsyth County Board of Commissioners that the Chairman or the County Manager and the Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, an amendment to the economic development incentive agreement between Forsyth County and Inmar, Inc., to reduce the maximum amount of incentives offered to Inmar from \$1,053,610 to \$526,805, conditioned on Forsyth County providing \$1,053,610 towards marketing efforts to recruit technology-based start-up companies to Forsyth County over a four-year period, subject to a pre-audit certificate by the County Chief Financial Officer, where applicable, and approval as to form and legality by the County Attorney.

Adopted this the 19th day of March 2020.