

Mayor
Elise Partin

Mayor Pro-Tem
James E. Jenkins

Council Members
Ann Bailey-Robinson
Phil Carter
Tim James

City Manager
Tracy Hegler

Assistant City Manager
James E. Crosland



**City of Cayce
Regular Council Meeting
Wednesday, August 18, 2021
5:00 p.m. – Cayce City Hall – 1800 12th Street
caycesc.gov**

I. Call to Order

A. Invocation and Pledge of Allegiance

II. Public Comment Regarding Items on the Agenda

III. Presentations

A. Presentation of Mayor Partin's 2021/2022 Youth Involvement Task Force

B. Presentation by Parker Poe and DGA Cayce, LP re Abbott Arms

IV. Resolutions

A. Consideration and Approval of Resolution Authorizing the Execution and Delivery of a Fee Agreement; and Other Matters Relating Thereto

V. Discussion Items

A. Discussion and Approval Authorizing the City Manager to Enter into a Fee Agreement with DGA Cayce, LP

VI. City Manager's Report

VII. Council Comments

VIII. Executive Session

A. Receipt of legal advice relating to claims and potential claims by and against the City and other matters covered by the attorney-client privilege

IX. Reconvene

X. Possible Actions by Council in follow up to Executive Session

XI. Adjourn

SPECIAL NOTE: Upon request, the City of Cayce will provide this document in whatever form necessary for the physically challenged or impaired.

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE AGREEMENT; AND OTHER MATTERS RELATING THERETO.

BE IT RESOLVED by the City Council of the City of Cayce (the “*Council*”), the governing body of the City of Cayce, South Carolina (the “*City*”), in a meeting duly assembled:

Section 1. Findings of Fact

The Council has made the following findings of fact:

A. The City is empowered by the South Carolina Constitution (1895, as amended) and general laws of the State to provide essential public services to establishments and residences within the City, including fire, police and sanitation service (“*Essential Public Services*”), and funds such Essential Public Services through the imposition of *ad valorem* property taxes (“*Property Taxes*”) levied upon all taxable property within the City.

B. DGA Cayce, LP (the “*Sponsor*”) is pursuing the acquisition, rehabilitation, and equipping of a 100-unit apartment development located within the City located at 2011 Wilkinson Street, Cayce, South Carolina that is currently known as Abbott Arms (the “*Project*”).

C. While the real property currently constituting the Project is subject to Property Taxes and currently generates approximately \$6,400 in annual Property Tax receipts for the City, the City is advised that, once complete, the Project will be eligible, after application is made to the South Carolina Department of Revenue, to receive a property tax exemption pursuant to Section 12-37-220(B)(11)(e) of the Code of Laws of South Carolina 1976 (“*State Tax Exemption*”).

D. On the basis of the foregoing, the City and the Sponsor have determined to enter into a Fee Agreement (the “*Agreement*”) wherein the Sponsor agrees to pay annual fees to the City in the event the Project qualifies for the State Tax Exemption.

Section 2. Approval of the Contract and Other Necessary Documents

A. The Council has reviewed the Amendment, the form of which is attached hereto as Exhibit A.

B. The Agreement, in substantially the form attached hereto and subject to such non-material deviations as may be necessary to fully finalize the Agreement, shall be executed and delivered on behalf of the City by the City Manager. Upon such execution, the Council shall be timely informed of the execution of the Agreement. The consummation of the transactions and undertakings described in the Agreement, and such additional transactions and undertakings as may be determined by the City Manager in consultation with the Council to be necessary or advisable in connection therewith are hereby approved.

C. In connection with the execution and delivery of the Agreement, the City Manager is additionally authorized to prepare, review, negotiate, execute, deliver, and agree to such

additional agreements, certifications, documents, closing proofs, and undertakings as he/she shall deem necessary or advisable.

D. Any actions previously undertaken by the City Manager, Council or City staff in connection with the execution and delivery of the Agreements prior to the enactment of this Resolution are ratified and confirmed.

Section 3. Effect

This Resolution shall be adopted upon due approval by the Council.

Section 4. Severability

If any one or more of the provisions this Resolution should be contrary to law, then such provision shall be deemed severable from the remaining provisions, and shall in no way affect the validity of the other provisions of this Resolution.

Section 5. Repealer

Nothing in this Resolution shall be construed to affect any suit or proceeding pending in any court, or any rights acquired or liability incurred, or any cause of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Resolution.

Section 6. Inconsistency

All ordinances, resolutions or parts of any ordinances or resolutions inconsistent or in conflict with the provisions of this Resolution are hereby repealed to the extent of the conflict or inconsistency.

DONE AND ADOPTED IN COUNCIL ASSEMBLED, this 18th day of August 2021.

CITY OF CAYCE,
SOUTH CAROLINA

(SEAL)

Mayor

Attest:

City Clerk

FEE AGREEMENT

THIS FEE AGREEMENT (this “*Agreement*”) is entered into this ___ day of August 2021 (the “*Effective Date*”), by and between the **CITY OF CAYCE, SOUTH CAROLINA** (the “*City*”), a municipality and body politic and corporate of the State of South Carolina (the “*State*”), and **DGA CAYCE, LP** (the “*Sponsor*”), a limited partnership organized under the laws of the State of Tennessee, each a “*Party*” and together the “*Parties.*”

RECITALS

1. The City is empowered by the South Carolina Constitution (1895, as amended) and general laws of the State to provide essential public services to establishments and residences within the City, including fire, police and sanitation service (“*Essential Public Services*”), and funds such Essential Public Services through the imposition of *ad valorem* property taxes (“*Property Taxes*”) levied upon all taxable property within the City.

2. The Sponsor is pursuing the acquisition, rehabilitation, and equipping of a 100-unit apartment development located within the City located at 2011 Wilkinson Street, Cayce, South Carolina that is currently known as Abbott Arms (the “*Project*”).

3. The Sponsor has applied to the Housing Authority of the City of Cayce (the “*Authority*”) to assist the Sponsor by issuing Housing Authority of the City of Cayce Multifamily Housing Revenue Bonds (Abbott Arms Project), Series 2021 (the “*Bonds*”), in the aggregate principal amount of not-exceeding \$25,000,000, for the purpose of making a loan to the Sponsor for the acquisition, rehabilitation, and equipping of the Project.

4. The Sponsor has requested that the City conduct a public hearing (the “*TEFRA Hearing*”) pursuant Section 147(f) of the Internal Revenue Code of 1986, as amended, and Treasury Regulations Section 5f.103-2(f), as amended (collectively, the “*Federal Tax Regulations*”) and adopt a resolution in support of the Bonds (the “*Supporting Resolution*”).

5. While the real property currently constituting the Project is subject to Property Taxes and currently generates approximately \$6,400 in annual Property Tax receipts for the City, the City is advised that, once complete, the Project will be eligible, after application is made to the South Carolina Department of Revenue (“*DOR*”), to receive a property tax exemption pursuant to Section 12-37-220(B)(11)(e) of the Code of Laws of South Carolina 1976 (“*State Tax Exemption*”).

NOW THEREFORE, in consideration for the mutual premises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Section 1 TEFRA Hearing and Support Resolution. The City will timely schedule the TEFRA Hearing in the manner required pursuant to and in accordance with the Federal Tax Regulations in order to receive comments, if any, from interested parties on matters regarding the issuance of the Bonds and the location and nature of the Project. The City will also timely place the Supporting Resolution, as required by the Federal Tax Regulations, on its regular agenda for consideration by the City Council of the City of the Cayce, as the governing body of the City (the

“*City Council*”). Subject to applicable timing requirements under State law and the Federal Tax Regulations, the City shall schedule the TEFRA Hearing and the consideration of the Supporting Resolution for the next available meeting of the City Council for which items may be placed on the agenda thereof after the Effective Date, or on such other date as the Sponsor may reasonably request after the Effective Date. If the City fails to conduct the TEFRA Hearing, or the City Council fails to adopt the Supporting Resolution, this Agreement shall automatically terminate and the Parties shall have no further obligations under this Agreement.

Section 2 Fees for Essential Public Services.

(a) If at any time after the Effective Date, the Sponsor secures the State Tax Exemption, then, beginning in the first tax year in which the Project is exempt from the payment of Property Taxes, the Sponsor shall pay to the City a fee in lieu of the applicable Property Taxes (the “*Annual Fee*”). The Annual Fee shall be due and payable annually in arrears for the Term of this Agreement (as defined herein). The City shall send the Sponsor an invoice for the amount of the Annual Fee (the “*Fee Invoice*”) due with respect to each tax year by no later than December 1 of such tax year and the Sponsor shall be pay such amount in full, pursuant to the payment instructions provided in the Fee Invoice, by no later than the next occurring January 15. In the event that the Annual Fee is not timely paid by the applicable January 15 deadline, the Annual Fee shall accrue an interest penalty at a rate of 5% (calculated on a 30/360 basis); such penalty shall accrue from the applicable January 15 payment date through and until the date of payment of the Annual Fee. Upon such delinquency, the City, in its discretion and acting under the provisions hereof, shall be responsible for calculating the amount of the interest penalties accruing hereunder and making arrangements with the Sponsor for the payment thereof.

(b) The first Annual Fee payment due hereunder shall be in the amount of \$6,400. Each successive Annual Fee payment shall increase year over year by a percentage equal to the applicable millage adjustment utilized by the City for such tax year, pursuant the provisions of Section 6-1-320 of the Code of Laws of South Carolina 1976, as amended (the “*Adjustment Factor*”). In the event the City does not raise taxes in any given tax year, the City shall not increase the Adjustment Factor for said tax year. Notwithstanding the foregoing, at no point shall the Annual Fee be in excess of \$10,000 (“*Maximum Annual Fee*”).

(c) The Sponsor shall notify the City within 30 days of the receipt of the State Tax Exemption (“*Notice Date*”). If the Sponsor does not provide notice to the City within 30 days of the Notice Date, the Annual Fee shall accrue an interest penalty at a rate of 5% (calculated on a 30/360 basis) from the Notice Date; all such interest charges shall be due and payable together with the first payment of the Annual Fee. The interest penalties under this Section 2(c) shall be in addition to any penalties accruing under Section 2(a) above, as applicable, and shall be calculated by the City, in its sole discretion, under the provisions of Section 2(a) above.

(d) The Project shall not be subject to any reassessment or other reevaluation, and the Annual Fee shall not exceed the Maximum Annual Fee during the Term of this Agreement.

Section 3 Subsequent Owners; Assignment. The Parties acknowledge that the State Tax Exemption is only available to the Project for so long as the requirements of the State Tax Exemption are met, and the State Tax Exemption does not run with the land. Upon sale or transfer

If to the Sponsor: DGA Cayce, LP
Attn: Craig Cobb
3834 Sutherland Avenue
Knoxville, TN 37919

Section 8 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of South Carolina.

Section 9 Headings. The headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement.

Section 10 Amendments. The provisions of this Agreement may only be modified or amended in writing by an agreement or agreements entered into between the Parties.

Section 11 Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party.

Section 12 Severability. If any provision of this Agreement is declared illegal, invalid or unenforceable for any reason, it is the intent of the Parties that the remaining provisions hereof shall be unimpaired and such illegal, invalid or unenforceable provision shall be reformed, so as to most closely effectuate the legal, valid and enforceable intent thereof.

Section 13 Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts, and all of the counterparts together constitute one and the same instrument. Each Party hereto also agrees that electronic signatures, whether digital or encrypted, of the Parties to this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means any electronic sound, symbol, or process attached to or logistically associated with a record and executed and adopted by a Party with the intent to sign such record, including facsimile or email signatures.

[Remainder of Page Left Blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed under seal as of the Effective Date.

DGA CAYCE, LP

By: _____
Its: _____

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

[Signature Page of Sponsor]

CITY OF CAYCE, SOUTH CAROLINA

By: _____
Its: _____

[SEAL]

Attest:

City Clerk

[Signature Page of City]