

CITY OF FAYETTEVILLE
REQUEST FOR
PROPOSALS



EASTOVER RECREATION CENTER HVAC REPLACEMENT
COF1516952

ISSUED: MAY 16, 2025

DUE: JUNE 26, 2025

The City of Fayetteville is requesting proposals from qualified firms to furnish all labor, material, and equipment for six (6) HVAC units to replace the current units at Eastover Recreation Center located at 3637 Pembroke Ln., Fayetteville, NC 28312.

ISSUED BY:
CITY OF FAYETTEVILLE

PRIMARY CONTACT:
KIMBERLY TOON,
PURCHASING MANAGER
kimberlytoon@fayettevillenc.gov

(910) 433-1942

OFFERORS ARE NOT REQUIRED TO RETURN THIS FORM.



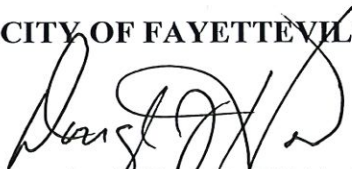
A message from the City of Fayetteville City Manager, Douglas J. Hewett, ICMA-CM

The City of Fayetteville is fully committed to provide Small Local Business Enterprises (SLBE's) an equal opportunity to participate in all aspects of City contracting including, but not limited to participation in the procurement of contracts relating to the construction of and improvements to facilities throughout the City. It is also the policy of the City to prohibit discrimination against any person or business in pursuit of these opportunities on the basis of race, sex, color, religion or national origin and to conduct its contracting and purchasing programs so as to prevent such discrimination. The City is also committed to follow all applicable State and Federal law as they relate to procurement practices.

The City will actively seek and identify qualified SLBE's and offer them the opportunity to participate in the procurement of contracts for all City purchasing and service contracts as well as construction and repair contracts.

The City aspires to spend 40% of its eligible contract dollars with small local suppliers and contractors. Towards this end the City's Charter has been amended by the General Assembly (H.B. 198) to allow the City to establish a race and gender neutral small business enterprise program to promote the development of small local businesses. The City is authorized to establish bid and proposal specifications that include subcontracting goals and good-faith effort requirements to enhance participation by small business enterprises located in Cumberland and Hoke Counties.

For more information or questions about the SLBE policy, please contact the Purchasing Division at 910-433-1942.

CITY OF FAYETTEVILLE

Douglas J. Hewett, ICMA-CM
City Manager

NOTICE TO BIDDERS

Pursuant to N.C.G.S. 143-129 sealed proposals will be received by the City of Fayetteville, until **2:00 p.m., June 26, 2025**, at City Hall, 433 Hay Street, Fayetteville, North Carolina, at which time they will be considered for the purchase of the following:

Eastover Recreation Center HVAC Replacement

Bids may be mailed to the City Purchasing Office, Attn: Kimberly Toon, 433 Hay Street Fayetteville, NC 28301, or may be delivered in person or by express mail to 433 Hay Street, Fayetteville, NC 28301.

The bid opening will be held at **2:00 p.m. on June 26, 2025**, at City Hall, 433 Hay Street, Fayetteville, NC 28301, for the project entitled, **“Eastover Recreation Center HVAC Replacement.”**

Plans, specifications and bid documents may be obtained in the Purchasing Office of the City of Fayetteville, 2nd floor, City Hall, 433 Hay Street, Fayetteville, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday or by email request to kimberlytoon@fayettevillenc.gov

The City reserves the right to reject any or all bids and to waive all informalities concerning bid or award bid to the lowest, responsive, responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract.

City of Fayetteville

Kimberly Toon, CLGPO
Purchasing Manager

TITLE: Eastover Recreation Center HVAC Replacement

USING AGENCY: City of Fayetteville

ISSUE DATE: 05/16/2025

ISSUING AGENCY: City of Fayetteville

Proposals subject to the conditions made a part hereof will be received until **2:00 p.m., Thursday, June 26,**

2025. SEND ALL PROPOSALS DIRECTLY TO THE ISSUING AGENCY ADDRESS AS SHOWN BELOW:

DELIVERED BY US POSTAL SERVICE	DELIVERED BY ANY OTHER MEANS
RFP – Eastover Recreation Center HVAC Replacement City of Fayetteville Attn: Kimberly Toon 433 Hay Street Fayetteville, NC 28301	RFP – Eastover Recreation Center HVAC Replacement City of Fayetteville Attn: Kimberly Toon 433 Hay Street Fayetteville, NC 28301

IMPORTANT NOTE: Indicate firm name and RFP number on the front of each proposal envelope or package, along with the date for receipt of proposals specified above.

Direct all inquiries concerning this RFP to: City of Fayetteville
Attn: Kimberly Toon
kimberlytoon@fayettevillenc.gov

NOTE: Questions concerning the specifications in this Request for Proposals will be addressed by email to kimberlytoon@fayettevillenc.gov. A summary of all questions and answers will be posted on the City of Fayetteville website as an addendum. Questions are due by **June 9, 2025**. It is the offeror's responsibility to ensure that all addenda have been reviewed, signed and returned.

THE PROCUREMENT PROCESS

The following is a general description of the process by which a firm will be selected to provide services:

1. Request for Proposals (RFP) will be posted on the internet via the City of Fayetteville website (<https://www.fayettevillenc.gov>)
2. There will be a pre-bid meeting on **Thursday, May 29 at 9:00 a.m.** We will meet at the Eastover Recreation Center located at 3637 Pembroke Ln. Fayetteville, NC 28312
3. Proposals will be received in an envelope or package. Each shall be signed and dated by an official authorized to bind the firm. Unsigned proposals will not be considered.
4. All proposals must be received by the issuing agency not later than the date and time specified on the cover sheet of this RFP.
5. At that date and time, the package containing the proposals from each responding firm will be opened publicly and the name of the offeror and cost(s) offered will be announced. Interested parties are cautioned that these costs and their components are subject to further evaluation for completeness and correctness and, therefore, may not be an exact indicator of an offeror's pricing position.
6. At their option, the issuing agency's RFP Selection Team may request oral presentations or discussion with any or all offerors for the purpose of clarification or to amplify materials presented in any part of the proposal. However, offerors are cautioned that the proposal evaluators are not required to request clarification; therefore, all proposals should be complete and reflect the most favorable terms available from the offeror.
7. Proposals will be evaluated according to completeness, content, and experience with similar projects, ability of the offeror and its staff, and cost.

A list of references (including contact persons and telephone numbers) for which similar work has been performed shall be included, and the list shall include all similar contracts performed by the offeror in the past five (5) years. The failure of the offeror to list all similar contracts in the specified period may result in the rejection of the offeror's proposal. The RFP Team may check all public sources to determine whether the offeror has listed all contracts for similar work within the designated period. If the evaluators determine that references for other public contracts or similar contracts were not listed, the evaluators may contact the public entities to make inquiry into offeror's performance of those contracts; and the information obtained may be considered in evaluating offeror's proposal. Award of a contract to one offeror does not mean that the other proposals lacked merit, but that, all factors considered, the selected proposal was deemed most advantageous to the issuing agency.

In addition to any other evaluation criteria identified in the issuing agency's solicitation document, the Agency shall, for purposes of evaluating proposed or actual contract performance outside of the United States, consider the following factors to ensure that any award will be in the best interest of the issuing agency:

- Total cost to the Agency
- Level of quality provided by the vendor
- Security and protection of the Agency's information and intellectual property
- Experience with City of Fayetteville
- Ability to provide services/goods

Offerors are cautioned that this is a request for offers, not a request to contract; and the Agency reserves the unqualified right to reject any and all offers when such rejection is deemed to be in the best interest of the Agency. Interested parties are cautioned that these costs and their components are subject to further evaluation for completeness and correctness and, therefore, may not be an exact indicator of an offeror's pricing position.

CONTRACT PERIOD

The period of performance will be 90 days and shall commence upon the issuance of the purchase order.

INTRODUCTION

The City of Fayetteville is requesting proposals to replace the six HVAC systems at Eastover Recreation Center located at 3637 Pembroke Ln. Fayetteville, NC 28312

SCOPE OF WORK

Furnish all labor, material, and equipment to install HVAC units to replace the current units. All work is to be performed Turnkey with associated warranties.

- Removal of existing (2)12.5 ton 208/ 230 volt 3 phase package heat pumps, (1) 10 ton split heat pump, (1) 5.0 ton split system heat pump, (2) 3.0 ton split system heat pump
- Install (2)12.5 ton package heat pumps,(1) 10 ton split system heat pump, (1) 5.0 ton split system heat pump and (2) 3.0 ton split system heat pumps
- New 7-day programmable thermostats
- Reconnect to supply and return duct system with modifications as required
- Reconnect to existing gas piping, Freon lines, condensate drains, flu piping, low voltage control wiring, electrical wiring and disconnects
- System startup and job completion check
- Mechanical and Electrical permits
- 5-year parts warranty from manufacturer
- 1-year labor warranty from vendor
- No warranty on existing Freon lines, electrical wiring, gas piping, duct system and condensate piping

Please include all shipping and taxes due on quote.

FEDERAL, STATE AND LOCAL LAWS

The Parties shall comply with any and all applicable federal, state and local laws, statutes and regulations including but not limited to those regarding local government. This contract will be governed and construed in accordance with the laws of City of Fayetteville, North Carolina.

INSURANCE

During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the Vendor shall provide and maintain the following coverage and limits:

(a) Commercial General Liability: The Contractor shall take out and maintain during the life of this Agreement commercial general liability insurance with limits of \$1,000,000 per occurrence; \$2,000,000 aggregate other than products/completed operations; \$2,000,000 aggregate for products/completed.

(b) Commercial Automobile Liability: The Contractor shall take out and maintain during the life of this Agreement commercial automobile liability insurance with limits of no less than \$250,000 per person, \$500,000 per occurrence for bodily injury and \$1,000,000 for property damage for owned, non-owned, and hired automobiles.

(c) Workers' Compensation and Employers' Liability Insurance: If the Contractor employs three or more employees, the Contractor shall take out and maintain during the life of this Agreement workers' compensation insurance with limits for Coverage A Statutory – State of North Carolina, as required by the laws of the State of North Carolina, and Coverage B Employers' Liability with limits of \$500,000 each accident and policy limit, including occupational disease coverage with limits of \$500,000 for each employee, for all employees employed on the project. In case any employee(s) engaged in work under this Agreement is or are not protected under the Workers' Compensation Statute, the Contractor shall provide adequate coverage for the protection of employees not otherwise protected.

Acceptability of Insurance

All insurance policies shall be written by insurers licensed to do business in North Carolina. It is realized that certain business activities may not be readily insurable by admitted carriers. If insurance is written by non-admitted carriers whose names appear on the current listing of approved and non-admitted carriers prepared by the North Carolina Department of Insurance, such carriers will be favorably considered assuming they meet all other requirements. Non-admitted carriers should be so identified on the Certificate of Insurance form. The City reserves the right to reject any and all certificates or policies issued by insurers with an A.M. Best's Financial Strength Credit Rating less than A.

COST

To be responsive to this RFP the Contractor shall submit pricing at a fixed cost by product (including shipping and all taxes applicable). Contractors are encouraged to price fees as competitively as possible.

PROPOSAL REQUIREMENTS

A response to this RFP shall consist of the following:

1. CORPORATE BACKGROUND AND EXPERIENCE

This section shall include background information on the organization and should give details of experience with similar projects. A list of references (including contact persons and telephone numbers) for which similar work has been performed shall be included, and the list shall include all similar contracts performed by the offeror in the past five (5) years. The evaluators will randomly select at least three (3) of these references, but the evaluators reserve the right to contact all the references listed if information from the three (3) references contacted warrant further inquiry. The failure to list all similar contracts in the specified period may result in the rejection of the offeror's proposal. The evaluators may check all public sources to determine whether the offeror has listed all contracts for similar work within the designated period. If the evaluators determine that references for other public contracts or similar contracts were not listed, the evaluators may contact the public entities to make inquiry into offeror's performance of those contracts; and the information obtained may be considered in evaluating offeror's proposal.

2. COST PROPOSAL

To be responsive to this RFP the Contractor shall submit pricing at a fixed cost by product (including sales tax), services, training, and installation. Contractors are encouraged to price fees as competitively as possible.

3. Proposal Contents & Completed Attachments

To be responsive to this RFP the Contractor shall include:

- 1) Cover Letter
- 2) Page 6 of the RFP along with the body of the RFP and signed receipt pages of any addenda released in conjunction with this RFP
- 3) Price Quote
- 4) Proof of Insurance as outlined in the contract terms and conditions in the RFP
- 5) Indicate in writing any bullet point under the scope of work that is not provided within the proposal and/or cannot be offered.

ALTERNATE PROPOSALS

Vendor may submit alternate proposals for various methods or levels of service(s) or that propose different options. Alternate proposals must specifically identify the RFP requirements and advantage(s) addressed by the alternate proposal. Any alternate proposal, in addition to the marking described above, must be clearly marked with the legend: "Alternate Proposal #____ [for 'name of Vendor']". Each proposal must be for a specific set of Services and must include specific pricing. If a Vendor chooses to respond with various service offerings, each must be offered with a separate price and be contained in a separate proposal document. Each proposal must be complete and independent of other proposals offered.

ASSURANCES/COST PROPOSAL/EXECUTION OF PROPOSAL

IMPORTANT: THIS PAGE MUST BE SIGNED AND INCLUDED IN YOUR PROPOSAL

By submitting this proposal, the potential contractor certifies the following: *[Check all at apply.]*

- This proposal is signed by an authorized representative of the firm.
- It can obtain insurance certificates as required within 10 calendar days after notice of award.
- The cost and availability of all equipment, materials, and supplies associated with performing the services described herein have been determined and included in the proposed cost.
- All labor costs, direct and indirect, have been determined and included in the proposed cost.
- The offeror is aware of prevailing conditions associated with performing these services.
- The potential contractor has read and understands the conditions set forth in this RFP and agrees to them with no exceptions.

Therefore, in compliance with this RFP, and subject to all conditions herein, the undersigned offers and agrees, if this proposal is accepted within 90 days from the date of the opening, to furnish the subject services for a cost **not to exceed** \$_____.

OFFEROR: _____

ADDRESS: _____

CITY, STATE, ZIP: _____

TELEPHONE NUMBER: _____ FAX: _____

EMAIL: _____

Principal Place of Business if different from above:

Will any of the work under this contract be performed outside the United States? **Δ Yes Δ No**

(If YES, describe in technical proposal.)

N.C.G.S. 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with County of Anson, or from any person seeking to do business with County of Anson. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

BY: _____ TITLE: _____ DATE: _____

(Signature)

(Printed Name)

IMPORTANT: Unsigned proposals will not be considered.



ACCEPTANCE OF PROPOSAL

**CITY OF FAYETTEVILLE
GENERAL CONTRACTING AGREEMENT**

This agreement (“Agreement”) is made this ___ day of _____, 2025 between _____ henceforth known as “Contractor,” and the **City of Fayetteville**, henceforth known as “City.”

Pursuant to the work described in the **Proposal (Exhibit A)** provided by _____ the Contractor and City agree to the following:

**Section 1
The Work**

The Contractor and City agree that the following scope of work will be done for:

Total Project Bid:

**Section 2
Timeline**

The Contractor and City agree that the work detailed above will be completed according to the following timeline:

Work Start:

Work Completion:

Any delays that arise during the course of the work must be discussed with City immediately.

**Section 3
Payment**

City agrees to pay the Contractor a total of _____ payable in the following manner:

Within thirty (30) days of receipt of invoice.

**Section 4
Changes**

Any changes made to plans, materials used, time needed, or any other portion of the work must be discussed with City prior to any decisions.

**Section 5
Permits**

Contractor agrees to secure any permits necessary so that this work will be done within the parameters of the laws of **North Carolina**. Contractor agrees that any fees for these permits are already included in the total amount charged to the City.

Section 6 Workers

Contractor agrees that any laborer, subContractor and/or employee that he/she hires for the purposes of this job is legally permitted to work in this function in this country.

Contractor is an independent contractor, and has no authority to act as an agent of City, nor enter into any contract or agreement for or on behalf of City. Contractor is not an employee of City and is not entitled to any benefits provided employees of City, including, but not limited to, workers' compensation, medical care, leave benefits and retirement. Contractor shall be responsible for the payment of all federal, state, and local taxes that may be due as a result of this Agreement.

Section 7 SubContractors

City agrees that the Contractor may hire subContractors at his/her discretion, provided that Contractor agrees that the payment for said subContractor is entirely the Contractor's responsibility. City is not in any way liable for a subContractor's missed payment.

Section 8 Insurance Requirements

The Contractor shall not commence work under this Agreement until he has obtained all insurance required under this paragraph, and such insurance has been approved by the City Attorney, nor shall the Contractor allow any subContractor to commence work on his subcontract until all similar insurance has been so obtained and approved. See Other Provisions Section (2) (c) below titled "SubContractor."

The insurance required for this Agreement is as follows:

(a) **Commercial General Liability:** The Contractor shall take out and maintain during the life of this Agreement commercial general liability insurance with limits of \$1,000,000 per occurrence; \$2,000,000 aggregate other than products/completed operations; \$2,000,000 aggregate for products/completed.

(b) **Commercial Automobile Liability:** The Contractor shall take out and maintain during the life of this Agreement commercial automobile liability insurance with limits of no less than \$250,000 per person, \$500,000 per occurrence for bodily injury and \$1,000,000 for property damage for owned, non-owned, and hired automobiles.

(c) **Workers' Compensation and Employers' Liability Insurance:** If the

Contractor employs three or more employees, the Contractor shall take out and maintain during the life of this Agreement workers' compensation insurance with limits for Coverage A Statutory – State of North Carolina, as required by the laws of the State of North Carolina, and Coverage B Employers' Liability with limits of \$500,000 each accident and policy limit, including occupational disease coverage with limits of \$500,000 for each employee, for all employees employed on the project. In case any employee(s) engaged in work under this Agreement is or are not protected under the Workers' Compensation Statute, the Contractor shall provide adequate coverage for the protection of employees not otherwise protected.

Acceptability of Insurance

All insurance policies shall be written by insurers licensed to do business in North Carolina. It is realized that certain business activities may not be readily insurable by admitted carriers. If insurance is written by non-admitted carriers whose names appear on the current listing of approved and non-admitted carriers prepared by the North Carolina Department of Insurance, such carriers will be favorably considered assuming they meet all other requirements. Non-admitted carriers should be so identified on the Certificate of Insurance form. The City reserves the right to reject any and all certificates or policies issued by insurers with an A.M. Best's Financial Strength Credit Rating less than A.

Indemnity Provision

To the extent permitted by law, the Contractor agrees to defend, indemnify and hold harmless the City, its elected officials, employees, agents, successors, and assigns, from any and all liability and claims for any injury or damage caused by any act, omission or negligence of the Contractor, its agents, servants, employees, contractors, licensees, or invitees. Indemnification of the City by the Contractor does not constitute a waiver of the City's governmental immunity in any respects under North Carolina law. Contractor assumes entire responsibility and liability for losses, expenses, demands and claims in connection with or arising out of any injury, or alleged injury (including death) to any person, or damage, or alleged damage, to property of the City or others sustained or alleged to have been sustained in connection with or to have arisen out of or resulting from the negligence of the Contractor, his subContractor, agents, and employees, in the performance of the work/service set forth in the Standard Specifications and Special Provisions, and any changes, addenda, or modifications including losses, expenses or damages sustained by the City, and agrees to indemnify and hold harmless the City, its officials, employees or volunteers from any and all such losses, expenses, damages, demands and claims and agrees to defend any suit or action brought against them, or any of them, based on any such alleged injury or damage, and to pay all damages, cost and expenses in connection therewith or resulting therefrom. As an integral part of this Agreement, Contractor agrees to purchase and maintain during the life of this Agreement contractual liability insurance in the amount required in the general liability insurance requirements and to furnish proper evidence thereof. Indemnification by the Contractor does not constitute a waiver of the City's governmental immunity in any respect under North Carolina law.

Other Provisions:

- (1) Any deductible or self-insured retention must be declared to and approved by the City.
- (2) The policies are to contain, or be endorsed to contain, the following provisions:
 - (a) Commercial General Liability Coverage

- 1) The City, its officials, employees and volunteers are to be covered as additional insureds with respect to the following: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.

- 2) The Contractor's insurance coverage shall be primary insurance covering the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

- 3) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- (b) All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either Contractor, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to:

City of Fayetteville
Finance Department
433 Hay Street
Fayetteville, NC 28301

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, and volunteers. In the event the City is damaged by the failure of the Contractor to maintain such insurance and to so notify the City, the Contractor shall bear all reasonable costs properly attributable thereto.

- (c) SubContractors

Contractor shall include all subContractors as insurers under its policies

OR shall furnish separate certificates and endorsements for each subContractor. All coverages for subContractors shall be subject to all of the requirements stated herein.

(d) No Waiver of Immunity

Any insurance coverage required by the terms of this Agreement shall not be deemed a contract of insurance purchased by the City nor a waiver of the City's immunity pursuant to NCGS 160A-485.

**Section 9
Cleanup**

Contractor agrees that any debris, equipment, etc. will be removed from the area upon completion of the job. The location will be returned to the state in which it was found prior to the work, excepting, of course, the changes made as a result of the work.

**Section 10
Terms and Conditions**

CITY'S TERMS SUPERSEDE: To the extent a conflict exists between the terms of this Agreement and the terms and conditions in any of the attachments to the Agreement, the terms of this Agreement shall govern.

**Section 11
E-Verify**

Contractor acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. Contractor further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). Contractor pledges, attests and warrants through execution of this contract that Contractor complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by Contractor shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this contract.

**Section 12
Other Provisions**

Binding Effect - This Agreement shall be binding on and inure to the benefit of the parties hereto, their successors and assigns.

Nondiscrimination - The Contractor agrees not to discriminate by reason of age, race, religion,

color, sex, national origin, disability or other applicable law while performing the services required herein. The Contractor further agrees not to discriminate in accordance with federal and state laws while performing the services required herein.

Morality Clause - If, in the sole opinion of the City, at any time Contractor any of its owner(s) or employee(s) or agent(s) (collectively referenced as an "Actor") engages in any one or more of the actions below, the City may immediately upon written notice to Contractor, terminate this Agreement, in addition to any other rights and remedies that the City may have hereunder or at law or in equity:

1. bring disrepute, contempt, scandal, or public ridicule to the Actor;
2. subject the Actor to prosecution;
3. offend the community or public morals/decency;
4. denigrate individuals or groups in the community served by the City;
5. is scandalous or inconsistent with community standards or good citizenship;
6. adversely affect the City's finances, public standing, image, or reputation;
7. is embarrassing or offensive to the City or may reflect unfavorably on the City; and,
8. is derogatory or offensive to one or more employee(s) or customer(s) of the City.

Assignment - It is the intent of this Contract to secure the personal services of Contractor and failure of Contractor for any reason to make the personal services available to the City of Fayetteville for the purposes described in this contract shall be cause for termination of this contract. Contractor shall not assign this contract without prior written consent of the City of Fayetteville.

Governing Law - The validity, interpretation and execution of this Agreement and the performance of and right accruing under this Agreement are all to be governed by the laws of North Carolina.

Venue and Forum Selection - The Parties expressly agree that if litigation is brought in connection with this contract and (1) the litigation proceeds in the Courts of the State of North Carolina, the parties agree that the appropriate venue shall be in Cumberland County (Fourteenth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina.

Compliance with Laws – Contractor agrees to comply with all applicable statutes, ordinances, and regulations of the United States, the State of North Carolina, the City and units of local government.

Entire Agreement - This Agreement constitutes the entire agreement between the parties. Any proposed change to this Agreement shall be submitted to the City for its prior approval. No modification, addition, deletion, etc., to this contract shall be effective unless and until such changes are reduced to writing and executed by the authorized officers of each Contractor.

Severability - The parties agree that if any provision of this Agreement shall be held invalid for any reason, the remaining provisions shall not be affected if they may continue to conform to the

purposes of this Agreement and the requirements of applicable law.

Non-Appropriation Clause - Notwithstanding any other provisions of this contract, the parties agree that payments due hereunder from the City are from appropriations and monies from the City Council and any other governmental entities. In the event sufficient appropriations or monies are not made available to the City to pay the terms of this agreement for any fiscal year, this contract shall terminate immediately without further obligation of City of Fayetteville.

Force Majeure - Neither party shall be deemed to be in default of its obligations hereunder if and *so long as* it is prevented from performing such obligations by an act of war, hostile foreign actions, adverse governmental actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

Termination for Cause - In the event of substantial failure by Consultant to perform in accordance with the terms of this Agreement, the City shall have the right to terminate Consultant upon ten calendar (10) days written notice, in which event Consultant shall have neither the obligation nor the right to perform further services under this Agreement; nor shall the City be obligated to make any further payment for work that has not been performed. Consultant shall provide to the City all reports, surveys or other related documents upon the City's request.

Termination for Convenience - Upon thirty (30) calendar days' written notice to Consultant, the City may, without cause and without prejudice to any other right or remedy legally available to the City, terminate this Agreement. Upon such notice, Consultant shall have neither the obligation nor the right to perform services under this Agreement nor shall the City be obligated to make any further payment for work that has not been performed in accordance with the terms stated herein. In such case of termination, Consultant shall be paid for the completed and accepted work executed in accordance with this Agreement prior to the written notice of termination. Additionally, upon mutual agreement, Consultant may be paid for any completed and accepted work which takes place in order to achieve a specifically identified item in the scope of services or a milestone of the Agreement, between the written notice of termination and the effective date of termination. Unless otherwise stated or agreed upon, the effective date of termination shall automatically occur 30 days after the written notice is sent by the City. Consultant shall provide to the City all reports, surveys or other related documents upon the City's request.

Protest – Protest related to this procurement must be addressed to the Purchasing Manager for City of Fayetteville, 433 Hay St, Fayetteville, NC 28301 and shall be received, in writing, within 2 calendar days of bid award. Responses will be in writing by email and first-class mail not later than (7) calendar days following receipt of said protest by the Purchasing Manager.

Divestment of Companies Boycotting Israel or Investing in Iran Certification- Contractor certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58; (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. 147-86.81 as a company engaged in the boycott of Israel ((i) and (ii) to be collectively referred to as "FD Lists"); and (iii)

it will not take any action causing it to appear on the Treasurer's FD Lists created by the NC State Treasurer during the term of this Contract. By signing this Contract, Contractor further agrees, as an independent obligation, separate and apart from this Contract, to reimburse the City for any and all damages, costs and attorneys' fees incurred by the City in connection with any claim that this Contract or any part thereof is void due to Contractor appearing on the Treasurer's FD Lists at any time before or during the term of this Contract.

Survival of Terms - All warranties, covenants, and representations contained within this contract and all applicable work authorizations, if any, shall continue in full force and effect for three (3) years after the execution and delivery of the final product, act, or service taken in furtherance of this contract. Survivability shall not be impacted, or otherwise shall not be rendered null or void, by the termination or natural expiration of this contract or other applicable work undertaken in furtherance of this contract.

Amendment - The City and Contractor may, from time to time, request changes in services to be performed by Contractor. Any such changes that are mutually agreed upon by the City and Contractor shall be incorporated herein by written amendment to this Agreement. It is mutually agreed and understood that no alteration or validation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties hereto, and that any oral understanding or agreements not incorporated herein, unless made in writing and signed by the Parties hereto, shall not be binding.

City's Terms Supersede - To the extent a conflict exists between the terms of this Agreement and the terms and conditions in any of the attachments to the Agreement, the terms of this Agreement shall govern.

[Signature page to follow]

Attest:

CITY OF FAYETTEVILLE:

JENNIFER L. AYRE
City Clerk

KELLY STRICKLAND
Assistant City Manager

Date

VENDOR NAME

By: _____

Title: _____

Address: _____

Phone: _____

Date: _____

Vendor Signature

This instrument has been pre-audited in the manner
Required by the Local Government Budget and Fiscal
Control Act.

TIFFANY R. MURRAY
Chief Financial Officer

EXHIBIT A