CITY OF FAYETTEVILLE REQUEST FOR PROPOSALS

ENHANCED SERVICES FOR "ARTS & ENTERTAINMENT-FOCUSED" DOWNTOWN MUNICIPAL SERVICE DISTRICT

COF1516783

ISSUED: MARCH 15, 2023

DUE: APRIL 14, 2023

The City of Fayetteville is soliciting proposals for qualified private agencies to contract enhanced services to further develop the City's Downtown Municipal Services District.

ISSUED BY:
CITY OF FAYETTEVILLE

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

(910) 433-1942

OFFERORS ARE NOT REQUIRED TO RETURN THIS FORM.

FAYETTEVILLE NC
AMERICA'S CAN DO CITY

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., April 14, 2023** at City Hall, 433 Hay Street, Fayetteville, North Carolina, at which time they will be considered for the purchase of the following:

Enhanced Services for "Arts & Entertainment-Focused" Downtown Municipal Service District

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 April 14, 2023** at City Hall, 433 Hay Street, Fayetteville, NC 28301, for the project entitled, **"Enhanced Services for "Arts & Entertainment-Focused" Downtown Municipal Service District"**

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 right is reserved to reject any or all bids and to waive all informalities concerning bid or award bid to the lowest, 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

REQUEST FOR PROPOSALS
Enhanced Services for "Arts & Entertainment-Focused" Downtown Municipal Service District

INTRODUCTION

The City of Fayetteville (NC) seeks proposals from qualified private agencies to contract enhanced services in our established, "Arts & Entertainment-focused" Downtown Municipal Services District (MSD). As further detailed in the PROPOSAL REQUIREMENTS section, the "Scope of Services" are each contained within the following categories of enhanced service elements:

- Economic Vitality and Development
- Art and Design Enhancements
- Promotion and Marketing
- Special Events and Programming
- Partnership, Organizational Support, and Conflict resolution

BACKGROUND

The City of Fayetteville, North Carolina, located in Cumberland County and home to one of the world's largest military installations (Fort Bragg), is the sixth largest City in North Carolina with a population exceeding 208,000. Located along the Cape Fear River and Interstate I-95, Fayetteville is a three-time recipient of the prestigious "All America City" designation awarded by the National League of Cities. With a traditional, urban core Downtown, anchored by the Hay Street corridor and containing an impressive inventory of historic buildings housing a growing array of restaurants, specialty retailers, loft housing, and arts and entertainment venues, a number of efforts are underway further to revitalize the Downtown as an Arts & Entertainment destination. Such measures include a $33M Minor League Baseball stadium designed as the home of the Class-A-Advanced affiliate of the Houston Astros as well as significant, mixed-use private sector developments surrounding the stadium that will include a hotel, restaurants, retail and urban residential units.

A Municipal Service District (MSD) is a defined area where the municipality's governing board levies an additional property tax to provide or support enhanced services to the residents of properties within the District. The additional tax funds collected can be used for functions defined explicitly in the North Carolina State Statutes, including Downtown and urban revitalization. The City first established an MSD encompassing its Downtown core area in 1978 and has maintained it for the provision of enhanced services ever since. In September 2015, the NC General Assembly adopted legislation impacting the process by which Cities contract with private agencies to provide services within an MSD.

The legislation also outlines specific contractual requirements which must be present, including specifying the purposes for which City funding is to be used in the MSD and appropriately accounting for the funding at the end of each fiscal year.

Given enhanced revitalization efforts, a more pronounced emphasis on Downtown as an Arts & entertainment destination, and consistent with NC statutory requirements, the City will utilize this Request for Proposal process to solicit, evaluate, and select a private agency partner organization to enter into a multi-year contract with for the provision of the Scope of Work as herein described.

SCOPE OF WORK

I. Economic Vitality and Development:

- Actively enhance and grow Downtown Fayetteville's arts, entertainment, culinary, and retail sectors through efforts to attract new businesses. Activities should aim to provide diverse retail, dining, and entertainment options;
- Develop, pursue, and/or advocate for tools, policies, or incentives which aid in business retention/expansion and targeted business recruitment efforts;
- Support development and redevelopment activities/efforts already underway, including but not limited to hotel development, residential and adaptive reuse, and stadium district mixed-use developments;
- Report on the analytics of new business growth, loss, and investment;
- Manage/expand, as needed, a commercial sanitation program for the District; and
- Support the construction of the Crown Event Space.

II. Art and Design Enhancements:

- Work to introduce more public art Downtown;
- Coordinate the installation of holiday decorations and displays;
- Develop partnerships to enhance the economic impact of the arts and entertainment by increasing frequency and variety; and
- Work to support and strengthen local arts and cultural organizations and their participation in Downtown as an arts, entertainment, and culinary destination.

III. Promotion and Marketing:

- Advertise, promote, and showcase collective Downtown retail, dining, and entertainment opportunities;
- Advertise and promote special events, campaigns, themed retail sales, or other collective or cooperative events designed to drive business Downtown;
- Maintain a professional, attractive, constantly-updated, and maintained website promoting Downtown events, activities, attractions map, and resources;
- Lead the efforts for a consistent, unique, identifiable branding for Downtown;
- Market Downtown Fayetteville as an arts, entertainment, culinary, and cultural tourism destination;
- Maintain an aggressive, targeted social media presence on behalf of Downtown; and
- Target marketing efforts to attract more active military, veterans, and family members Downtown.

IV. Special Events and Programming:

- Support and enhance efforts to grow established yearly special events and festivals;
- Develop and expand opportunities for street activities, buskers, displays of public art, festivals, sporting events, exhibitions, performances, and other programs or events designed to drive interest, foot traffic, and consumer spending to Downtown;
- Identify and promote opportunities for more recreational activities in Downtown and their connection to the complementary business;
- Develop a plan/program for maximizing spin-off opportunities in relation to the stadium and other festival park activities and events; and

- Create a place-based identity through the use of recognizable branding opportunities.

V. Partnership, Organizational Support, and Conflict resolution:

- Work closely with other Fayetteville area partner organizations engaged in economic development and redevelopment, tourism, promotions, arts, culture, entertainment, and business advocacy to enhance the local and regional economy as a whole;
- Serve as a consistent voice of advocacy for Downtown business owners and issues that impact Downtown;
- Work closely with Downtown property owners and tenants to solve problems, such as the prevalence of homelessness/panhandling in the Downtown;
- Serve as liaison with City staff and departments on behalf of Downtown property owners, business owners, and residents;
- Provide a mechanism for ongoing public feedback regarding services provided in District;
- Welcome new businesses and residents to Downtown and offer resource information;
- Serve as a convener and facilitator of complex and challenging issues in the Municipal Service District;
- Monitor, evaluate, and provide advocacy for ordinance and/or policy amendments pertaining to Downtown issues regarding signage, parking, vacant buildings, and/or storefronts;
- Provide vigilance in monitoring and reporting safety and security concerns; identify incidents of graffiti, incidents of vandalism, damages to public infrastructure, or similar issues to the maintenance of a quality built and social environment; and
- Communicate promptly with City or contracted staff on reporting any cleaning, maintenance, parking, safety, or lighting issues.

PROPOSAL CONTENT AND SUBMISSION REQUIREMENTS

Interested Agencies or Organizations shall submit a proposal which is clear and succinct and in the format, and consisting of the required information as described.

The City may reject as non-responsive at its sole discretion any proposal or any part thereof that is incomplete, inadequate in its response, or depart in any substantive way from the required format. Proposal responses shall be organized into the following component parts:

A. Cover letter/Letter of Intent

The cover letter shall be addressed to Kimberly Toon, Purchasing Manager. It may be up to two (2) pages in length and, at a minimum, must contain the following:

- Identification of organization, including name, address, telephone number, and e-mail.
- Name, title, address, telephone number and e-mail of contact person during period of proposal evaluation.

- A statement to the effect that the proposal shall remain valid for a period of not less than ninety (90) calendar days from the deadline date established for submissions.
- Signature of a person authorized to bind the agency or organization to the terms of the proposal.

B. Executive Summary

In a brief narrative, describe the overall approach and plans to meet the requirements of the RFP. The intent of this narrative is to convey to the City that the offeror understands the nature of the work and the level of effort necessary to successfully provide the defined enhanced services.

C. Project Understanding, Approach, and Schedule

This section shall include, in narrative, outline, and/or graph form the offerors approach to accomplishing the tasks outlined in the Scope of Work section of this RFP. A description of each task and deliverable and the schedule for accomplishing each shall be included.

D. Team Organization, Experience and Qualifications

The information requested in this section should describe the qualifications of the agency and any and all key staff members to demonstrate the offeror's ability to perform the requested enhanced services. In addition, include the following information:

- Experience of all executive, managerial, legal, and professional personnel providing the defined services.
- Resumes for proposed lead staff and previous work completed that is applicable.
- Team organization chart showing all support individuals, firms, organizations, or agencies; contractual relationships (if any) between the offeror and said individuals, firms, organizations, or agencies; and, the names of specific staff proposed for this contracted effort, including their titles.
  (Identify certified Minority Business Enterprises (MBE), Woman Business Enterprises (WBE), or Veteran Business Enterprises (VBE), if any.
- A summary of your agency's demonstrated capability, including length of time that your agency has provided services similar to or related to those being requested in this RFP.

E. Consultants, Agents, and/or Subcontractors

The City desires to enter a contract with a single offeror that will be responsible for all defined services. If the offeror plans on using consultants, agents, and/or subcontractors as part of its implementation plan, then provide the name, address, and telephone for each; define the responsibilities and give a description of services to be provided by each; and, describe the offeror's past or present business and reporting relationship (if any) with each.

Include references and resumes for all third-party consultants, agents, and/or subcontractors in the proposal. The City reserves the right to accept or reject any changes

made to the proposed team members of the offeror, including the use of consultants, agents, and/or subcontractors.

F. References

The Offeror must provide a minimum of three (3) references whom the City may contact regarding qualifications, capacity, and past performance (within 7 years). The city may randomly select references to contact as part of the offeror's evaluation process. The following is to be included for each reference:

- Name of contact and organization
- Title of contact
- Address (delivery and e-mail)
- Telephone numbers

G. Cost/Fee Proposal

Offerors shall submit and include a fee/cost proposal stated as a lump-sum total yearly contract fee to complete the required scope of enhanced services for each contract year offered. The fee/cost proposal shall further break down and show (within the total yearly contract fee) the amount(s) expected to be paid to consultants, agents, and/or subcontractors as associated with the services to be performed. Offeror may, additionally submit fee/cost proposals to provide greater or supplemental services (beyond the scope of Services required herein) to be available at option to City, at City's sole discretion. (Note: The Downtown MSD funding budgeted for the fiscal year 2023 was: $220,000; it is expected that approximately $220,000 will be budgeted and available in the fiscal year 2024.)

H. Financial Information

The offeror shall provide sufficient and detailed financial background information on offeror (agency or organization) to allow for the City to thoughtfully and responsibly assess the offeror's capacity to fulfill the terms and requirements of the contract for services contemplated. This should include most recent internal financial statements (balance sheet, income statement, and cash flow statement or budget with entries reflecting revenues and expenditures to date) along with other evidence of financial stability such as the most recently-filed income tax return, or evidence of a line of credit/other types of financing, or grants received and administered etc.

I. Additional Proposal Considerations

Items included on the following list of "Additional Proposal Considerations" may be a reiteration of information included in previous sections. The offeror should reference if the response to any of the following has been included in a previous section.

- Discuss the mechanism(s) the organization will use for ongoing feedback on services.
- Discuss how the organization will leverage funding from other sources.
- Discuss how the organization will assist and support the City in the implementation of the Arts & Entertainment District Plan.

- Propose a contract term (NC State statute legislation allows for a term from 1-5 years).
- Discuss and examine offeror's Board composition for inclusiveness of MSD residents and both small and large property-owner(s)/businesses.
- Discuss community surveys that the organization has undertaken (if any) that has been used to gauge community and public sentiment on the services and roles that the organization provides. Examples -
    - How familiar is the public to the program and services that you offered?
    - How satisfied is the public to the downtown infrastructure – i.e. parking, transportation, safety, beautification, biking and pedestrian mobility, as well as landscaping lighting and street maintenance?
    - Awareness to the City's Small Business Programs available for businesses located downtown?
    - How satisfied is the community with downtown events, communications and public awareness to the downtown arts and entertainments efforts?
- Address your thoughts on the long-term strategic direction of the MSD/Arts & Entertainment district.
    - The desired mix of goods and services offered.
    - A retail economic strategy that considers diversity of retail choices.
    - An annual work plan and metrics to success which aligns with the Arts & Entertainment plan goals and with the City's Budget process.

EVALUATION CRITERIA AND CONTRACT AWARD

Proposals will be evaluated by a committee composed of City officials, and/or key management staff familiar with these types of services. Proposals will be evaluated and ranked based on the requirements stated herein. The City may choose to conduct in-person interviews with one or more top ranking agencies/organizations based upon this evaluation. Offerors are hereby notified that key personnel identified for the service provision will be expected to participate in the interview should one be requested. The City intends to award a contract to the agency/organization that demonstrates the experience, skill, and capacity to meet the City's requirements as outlined herein. The City reserves the right to accept or reject any proposal. Evaluation Criteria will be as follows:

Criteria	Weighted %
Qualification and experience of proposed team	40%
Overall understanding as detailed in submittal	20%
Demonstration of prior successes/abilities	20%
Ability to measure and understand past to adapt to future	10%
Proposed Cost	10%

Selection and Award of Contract Timeline: (These dates are subject to change)

Release of RFP:	March 15, 2023
Submittal deadline for RFP:	April 14, 2023
Interviews [Selected Organization(s)]:	April 28, 2023
Public Hearing Ads in Newspaper:	May 21 & 28, 2023
City Council Public Hearing/Contract Award:	June 12, 2023
Extra Council Meeting for Award (If necessary):	June 26, 2023

Contract for MSD Services Commences: July 1, 2023

SUBMITTAL DUE DATE

A total of four (4) hard copies of the completed proposal shall be submitted to the City of Fayetteville Purchasing Office no later than **2:00 p.m., April 14, 2023.** Packages should be plainly and visibly marked on the outside with the Proposer's Organization/Agency name and, **"Proposal-Arts & Entertainment-Focused Municipal Service District".**
Proposals should be mailed or delivered to:

- Fayetteville Purchasing Office
  Attention: Ms. Kimberly Toon, Purchasing Manager
  City Hall
  433 Hay Street
  Fayetteville, NC 28301-5537

KEY CONTRACT TERMS AND CONDITIONS

Proposals shall be firm for acceptance by the City for a period of ninety (90) calendar days after the date and time set for receipt.
Proposals must be submitted in a sealed envelope; no faxed or e-mailed proposals will be accepted.
The City reserves the right to award this contract in whole or in part in the best interest of the City. The City further reserves the right to accept or reject any or all proposals.
The City reserves the right to request additional information it feels necessary to make a qualified judgement as to the offering organization/agency's ability to perform the work.
The final contract for provision of enhanced services for the Arts & Entertainment-Focused Municipal Service District (MSD) shall at minimum contain the following:

(1) Shall specify the purposes for which the City-levied and collected MSD monies are to be used for the Service District.

(2) Shall require an appropriate accounting for said monies following the conclusion of each fiscal year. Such accounting shall further include the name, location, purpose, and amount paid to any person or persons with whom the agency contracted to perform or complete any purpose for which the monies were used for the service district.

(3) Shall specify the scope of services to be provided by the contracted agency. Any changes to that scope of services shall be approved by the City Council.

(4) The successful bidder shall not commence work under this Contract until he has obtained all insurance required under this paragraph, and such insurance has been approved by the City, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance has been obtained and approved. See Other Provisions Section (2) (c) below titled "Subcontractors."
The insurance required for this contract is as follows:

(a) Commercial General Liability ISO #CG 00 01 10 93: The Contractor shall take out and maintain during the life of this contract 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) Automobile Liability ISO #CA 00 01 12 93: The Contractor shall take out and maintain during the life of this contract automobile liability insurance in an amount not less than $1,000,000 combined single limit per accident for bodily injury and property damage from owned, non-owned, and hired automobiles.

(c) Worker's Compensation and Employers' Liability Insurance: The Contractor shall take out and maintain during the life of this contract workers' compensation insurance as required by the laws of the State of North Carolina and Employers' Liability with limits of $100,000 each accident, $500,000 policy limit and $100,000 each employee for all employees employed on the project. In case any employee(s) engaged in work under this contract is or are not protected under the Worker's Compensation Statue, the Contractor shall provide adequate coverage for the protection of employees not otherwise protected.

(d) Owner's and Contractor's Protective Liability I.S.O. #CG 00 09 10 93: The Contractor shall secure and maintain during the life of the contract, an Owner's and Contractor's Protective Liability insurance policy for the City, with minimum limits of $1,000,000 per occurrence/$2,000,000 aggregate.

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 shall 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 a Best's rating less than A;VII.

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.

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 of Fayetteville, its officials, employees and volunteers are to be covered as additional insured as respects: 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 as respects 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 party, 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 Purchasing Office
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 contract 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.

E - Verify

Contractor hereby 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 workauthorization of the employee through E-Verify in accordance with NCGS §64-26(a). Contractorhereby pledges, attests and warrants through execution of this Agreement that Contractor complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and furtherpledges, 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 Agreement.

Professional Service Agreement

Scope of Work and Terms Document

City of Fayetteville, NC

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is made as of the ____ day of _____ 2023 by and between the City of Fayetteville, a North Carolina City and Municipal Corporation ("City"), and _____.

In consideration of mutual promises and covenants in this Agreement, the parties agree as follows:

ARTICLE 1. Services

1.1 Background. The City desires to engage ------xxxxxx------ to provide certain professional services as fully described and outlined in the Proposal (Exhibit 1) which is attached hereto and fully incorporated into this Agreement by reference. ------xxxxxx------ is willing to provide such services as outlined in the Proposal on the terms and conditions stated in this Agreement.

1.2 Scope of Work. ------xxxxxx------ will furnish the services as set forth in the Proposal which is incorporated by reference herein.

1.3 Time of Performance. ------xxxxxx------ will perform the services promptly and according to the Proposal provided. The City will cooperate with ------xxxxxx------ as reasonably required to complete the services outlined in the Proposal. Both parties acknowledge that changes from or delays in the timeline may extend the date(s) for delivery of the service(s).

1.4 Term. The term of this Agreement shall begin on the date expressed in the introductory paragraph of this Agreement and shall continue until terminated based upon the completion of services by ------xxxxxx------ as outlined in the Proposal.

ARTICLE 2. Payment

2.1 Basis of Compensation: The City shall pay ------xxxxxx------ for services rendered under this Agreement in amounts tied to the various project milestones as set forth in the Proposal. Each payment shall be invoiced upon completion of each successive milestone and the City shall pay within thirty (30) days. In no event shall the payment for all work performed pursuant to this Agreement exceed the amount of $_____ without prior written authorization of the City. Such payment shall be full compensation for all work performed and for all labor, materials, supplies, equipment and incidentals necessary to complete the work.

2.2. Records. ------xxxxxx------ shall keep records and accounts pertaining to this Agreement available for inspection by the City for a period of three (3) years after final payment. Copies of records and accounts pertaining to this Agreement shall be made available to the City upon request.

ARTICLE 3. Termination

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

3.2 Termination for Convenience: Upon thirty (30) calendar days' written notice to ------xxxxxx------, the City of Fayetteville may, without cause and without prejudice to any other right or remedy legally available to the City of Fayetteville, terminate this Contract. Upon such notice, ------xxxxxx------ shall have neither the obligation nor the right to perform services under this contract nor shall the City of Fayetteville 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, ------xxxxxx------ shall be paid for the completed and accepted work executed in accordance with this Contract prior to the written notice of termination. Additionally, upon mutual agreement, ------xxxxxx------ 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 Contract, 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 of Fayetteville. ------xxxxxx------ shall provide to the City of Fayetteville all reports, surveys or other related documents upon the City's request.

ARTICLE 4. Liability, Indemnification and Insurance

4.1 General. The City and ------xxxxxx------ have considered the risks and potential liability that may exist during the performance of services by ------xxxxxx------ and have agreed to allocate such liabilities in accordance with this Article. During the performance of services under this Agreement, ------xxxxxx------ shall purchase and maintain insurance coverage as hereinafter set

forth, without lapse or changes contrary to the requirements of this section. Words and phrases used in this Article shall be interpreted in accordance with customary insurance industry usage and practice.

4.2 Indemnity and Professional Liability. To the extent permitted by law, ------xxxxxx------ agrees to defend, indemnify and hold harmless the City of Fayetteville and 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 ------xxxxxx------ its agents, servants, employees, contractors, licensees, or invitees. Indemnification of the City by ------xxxxxx------ does not constitute a waiver of the City's governmental immunity in any respects under North Carolina law. ------xxxxxx------ agrees to purchase and maintain professional liability insurance (errors and omissions insurance) in the amount of $1,000,000 coverage for each claim, with a general aggregate of $2,000,000. Said insurance coverage shall be underwritten by an insurance company authorized to do business in the State of North Carolina by the North Carolina Department of Insurance, with an A.M. Best rating of not less than A•VII.

4.3 Liability Insurance. ------xxxxxx------ agrees to defend, indemnify and hold the City, its servants, agents and employees, harmless from and against all liabilities, claims, demands, suits, losses, damages, costs and expenses (including attorney's fees) for third party bodily injury to or death of any person, or damage to or destruction of any third party property, to the extent caused by the negligence of ------xxxxxx------,

------xxxxxx------'s employees, and ------xxxxxx------'s subcontractors, for whom ------xxxxxx------ is legally responsible during the performance of services under this Agreement. ------xxxxxx------ shall purchase and maintain at all times during performance of services under this Agreement Commercial General Liability Insurance with combined single limits of $1,000,000.00 coverage for each occurrence with a general aggregate of $2,000,000.00, designating the City as an additional insured and which said insurance provides ------xxxxxx------ with insurance for contractual liability which ------xxxxxx------ has assumed pursuant to the terms of this Agreement.

4.4 Other Insurance. In addition to professional liability insurance and commercial general liability insurance set forth above, ------xxxxxx------ further agrees to purchase and maintain at all times during the performance of services under this Agreement insurance coverage as follows:

(a) Worker's Compensation Insurance as provided by North Carolina law which said policy shall also afford coverage to ------xxxxxx------ for employer's liability.

(b) Automobile liability insurance with $1,000,000.00 combined single limit for each accident covering bodily injury and property damage.

(c) The CGL policy required above shall include independent contractor liability coverage.

(d) The CGL policy required above shall provide ------xxxxxx------ with products and completed operations insurance, said coverage to be written on an occurrence basis, with coverage extended for such a period of time that suits can be filed before the running of the statute of limitations on any claim for injury to person or property due to negligence of ------xxxxxx------ in the design of any building designed by ------xxxxxx------ under the terms of this Agreement.

ARTICLE 5. Independent Contractor. ------xxxxxx------ is an independent Contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. ------xxxxxx------ shall be wholly responsible for the methods, means and techniques of performance. City shall have no right to supervise methods and techniques of performance employed by ------xxxxxx------ but City shall have the right to observe such performance.

ARTICLE 6. <u>Other</u>

6.1 <u>Assignment</u>. It is the intent of this Agreement to secure the personal services of ------xxxxxx------ and failure of ------xxxxxx------ for any reason to make the personal services available to the City for the purposes described in this Agreement and Proposal shall be cause for termination of this Agreement. ------xxxxxx------ shall not assign this Agreement without prior written consent of the City.

6.2 <u>Non-Appropriation</u>. Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the City are from appropriations and monies from the City Council and 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 Agreement shall terminate immediately without further obligation of the City.

6.3. <u>Governing Law</u>. The validity, interpretation, and execution of this Agreement and the performance of and rights accruing under this Agreement are all to be governed by the laws of the State of North Carolina.

6.4 <u>Venue</u>. The Parties expressly agree that if litigation is brought in connection with this Agreement 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 (Twelfth 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

6.5 Non Discrimination. ------xxxxxx------ 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.

6.6 Compliance with Laws. ------xxxxxx------ 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.

6.7 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 with the purposes of this Agreement and the requirements of applicable law.

6.8 Amendment. The City and ------xxxxxx------ may, from time to time, request changes in services to be performed by ------xxxxxx------. Any such changes that are mutually agreed upon by the City and ------xxxxxx------ 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.

6.9 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 Agreement shall be effective unless and until such changes are reduced to writing and executed by the authorized officers of each party.

6.10 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.

6.11 Morality Clause. If, in the sole opinion of the City, at any time ------xxxxxx------ or any of its owner(s) or employee(s) or agent(s) (collectively referenced as an "Actor") engages in any one or more actions that bring disrepute, contempt, scandal, or public ridicule to the Actor or subject the Actor to prosecution or offend the community or public morals or decency or denigrate individuals or groups in the community served by the City or are scandalous or inconsistent with

community standards or good citizenship or may adversely affect the City's finances, public standing, image, or reputation or are embarrassing or offensive to the City or may reflect unfavorably on the City or are derogatory or offensive to one or more employee(s) or customer(s) of the City, the City may immediately upon written notice to ------xxxxxx------ terminate this Agreement, in addition to any other rights and remedies that the City may have hereunder or at law or in equity.

CITY'S TERMS SUPERSEDE: To the extent that there are terms in any of the attachments that conflict with the terms of this Agreement, the terms of this Agreement are superseding.

6.12 E-Verify. ------xxxxxx------ hereby 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. ------xxxxxx------ further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statues, 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). ------xxxxxx------ hereby pledges, attests and warrants through execution of this Agreement that ------xxxxxx------ complies with the requirements of Article 2 of Chapter 64 of North Carolina General Statues and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by ------xxxxxx------ shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Agreement.

6.13 Iran Divestment Act. As mandated by N.C.G.S. 147-86.59(a), ------xxxxxx------ hereby certifies that it is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. ------xxxxxx------ further certifies that in accordance with N.C.G.S. 147-86.59(b) that it shall not utilize any subcontractor found on the State Treasurer's Final Divestment List. ------xxxxxx------ certifies that the signatory to this Agreement is authorized by ------xxxxxx------ to make the foregoing statement.

6.14 Protest. Protests 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.

6.15 Survival of Terms. All warranties, covenants, and representations contained within this contact 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.

[Signature page to follow]

ATTEST:

_____

VENDOR

By: _____

Title: _____

Address: _____

Phone: _____

Date: _____

_____
Signature

ATTEST:

_____
PAMELA MEGILL, City Clerk

CITY OF FAYETTEVILLE

By: _____
KELLY OLIVERA
Assistant City Manager

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

_____
JODY PICARELLA
Chief Financial Officer