

## **REQUEST FOR QUOTES**

### **Appraisal Services for Hazard Mitigation Grant Program**

**Submittal Due Date:  
October 5, 2018; 5:00 p.m.**

**City of Fayetteville**  
Purchasing  
433 Hay Street  
Fayetteville, NC 28301

**We strongly encourage Minority participation**

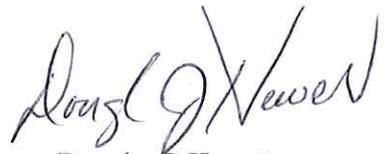
**A message from the City of Fayetteville City Manager, Douglas J. Hewett, ICMA-CM**

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 bid 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.



Douglas J. Hewett  
City Manager, ICMA-CM

## REQUEST FOR QUOTES

The City of Fayetteville intends to access funds available through the FEMA Hazard Mitigation Grant Program (HMGP) program to purchase real property that was severely impacted by Hurricane Matthew, October 2016 Severe Weather Event. These are programs where property owners voluntarily agree to sell their flood-damaged properties at fair market value for the purpose of removing all improvements and maintaining the property in public ownership as open space or Public Park. Under the terms of these programs, the purchase price is determined by one independent, pre-event market valuations, performed by Certified Appraisers.

This RFQ is to solicit unit price bids from multiple Certified Appraisal firms to contract with the City of Fayetteville to perform appraisals of approximately 28 properties at a *per appraisal report rate* under the terms of HMGP program. The properties identified at this time are single-family residential and all properties are located in the Cumberland County. The deadline for appraisal report submission for known properties is within 45 days of execution of the contract to provide the scope of services identified, and 21 days for task orders assigned subsequent to the execution of the contract.

**Specifications and a sample contract with a FEMA specific addendum are attached. The successful proposer shall execute the attached addendum as part of any contract with the city and comply with all FEMA requirements set forth in that addendum.**

### **Written Inquiries**

All inquiries regarding this RFQ shall be submitted via e-mail to the City of Fayetteville Purchasing Division at [ktoon@ci.fay.nc.us](mailto:ktoon@ci.fay.nc.us) on or before 5:00 p.m., Wednesday, September 26, 2018.

### **Submittal Instructions**

Submittals are due at the City of Fayetteville, Purchasing Division, 433 Hay Street, 2<sup>nd</sup> Floor, Fayetteville, NC 28301 or the email box listed below, for time and date recording **on or before 5:00 p.m. Eastern Time on October 5, 2018.**

**Your response can be submitted in the following ways: Please note that e-mail responses to this solicitation are preferred but are limited to a maximum of 25MB capacity. Electronic Submittals must be received in the e-mail box listed below. Submittals sent to any other box will NOT be forwarded or accepted. This e-mail box is only accessed on the due date of your questions or proposals. Please use the Delivery Receipt option to verify receipt of your email.**

**E-Mail:** [ktoon@ci.fay.nc.us](mailto:ktoon@ci.fay.nc.us); identified as City of Fayetteville Appraisal Services in the subject line.

-OR-

**US Mail:** One (1) unbound copy of your submittal, printed double-sided, 11 point, on at least 50% post-consumer, recycled paper must be submitted in a sealed envelope, clearly marked as Appraisal Services to City of Fayetteville, Purchasing Division, 433 Hay Street, 2nd Floor, Fayetteville, NC 28301. Please allow at least 2 days for delivery of USPS Priority and Express Mail.

All RFQs must be received by the above due date and time. Sole responsibility rests with the Offeror to see that their RFQ response is received on time at the stated location(s). Any responses received after due date and time will be returned to the Offeror.

The City reserves the right to reject any-and-all responses, to waive any informalities or irregularities therein, and to accept the proposal that, in the opinion of the Board, is in the best interest of the Board and of the City of Fayetteville, State of North Carolina.

**Americans with Disabilities Act (ADA):** If you need special services provided for under the Americans with Disabilities Act, contact (910) 671-3016 at least 48 hours before the scheduled event.

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## TERMS AND CONDITIONS

1. Proposers are expected to examine the drawing, specifications, schedule of delivery, and all instructions. Failure to do so will be at the proposer's risk.
2. Each proposer shall furnish the information required in the proposal.
3. The Contract/Purchase Order will be awarded to that responsible proposer whose submittal, conforming to the Request for Quotes, will be most advantageous to the City of Fayetteville, lowest price, (fixed price) as long as qualified.
4. The City of Fayetteville reserves the right to reject any or all proposals and to waive informalities and minor irregularities in proposals received, and to accept any portion of or all items proposed if deemed in the best interest of the City of Fayetteville to do so.
5. No submittal shall be withdrawn for a period of thirty (30) days subsequent to the opening of RFQs without the consent of the City Purchasing Manager or delegated representative.
6. A signed purchase order or contract furnished to the successful proposer results in a binding contract without further action by either party.
7. Late or unsigned responses to this RFQ will not be accepted or considered. It is the responsibility of proposers to ensure their response to this RFQ arrives in the office of the City's Purchasing Manager prior to the time indicated in the "Request for Quotes."
8. The proposed price shall be exclusive of any Federal or State taxes from which the City of Fayetteville is exempt by law.
9. Any interpretation, correction or change of the RFQ documents will be made by Addendum. Interpretations, corrections and changes of the RFQ documents made in any other manner will not be binding, and proposer shall not rely upon such interpretations, corrections and changes. The City's Representative will not be responsible for oral clarification.
10. Confidential/Proprietary Information: RFQs submitted in response to this "Request for Quotes" and any resulting contract are subject to the provisions of the General Statutes § 132-1.2 or General Statutes § 143-52. Any restrictions on the use or inspection of material contained within the proposal and any resulting contract shall be clearly stated in the RFQ itself. Confidential/proprietary information must be readily identified, marked and separated/packaged from the rest of the proposal. **Co-mingling of confidential/proprietary and other information is NOT acceptable. Neither a proposal, in its entirety, nor proposed price information will be considered confidential/proprietary. Any information that will be included in any resulting contract cannot be considered confidential.**

**SPECIFICATIONS  
APPRAISAL SERVICES FOR HAZARD MITIGATION GRANT**

**BACKGROUND**

The City of Fayetteville is seeking Appraisal services to establish the value of properties to be acquired via the FEMA Hazard Mitigation Grant program consistent with the Federal Uniform Acquisition and Relocation standards.

In compliance with Procurement Standards included in 24 CFR Part 85 Administrative Requirements for Grants and Cooperation Agreement to State and Local Governments, the City of Fayetteville desires to retain multiple appraisal firms which will provide appraisals that meet the FHA requirements on an as-needed basis. Appraisal firms must be FIRREA Certified and the Appraiser(s) assigned to this scope of work shall have at least three (3) years of concurrent residential real estate appraisal experience.

Official jargon aside, these are standard real estate appraisals.

Funds have been applied to acquire approximately 28 properties which were damaged by the October 2016 Severe Weather Event, Hurricane Matthew. One independent, pre-flood appraisal (as of October 1, 2016) will be used to determine the value for purposes of acquiring the homes. At this time, the appraisal work will be for properties with single family homes. All appraisal reports but be submitted within 21 days of order and the deadline to complete the known properties at the time of contract execution is 45 days.

Multiple appraisal firms will be selected and task orders will be issued. Appraisal firms will be selected based on price and qualifications.

## **SCOPE OF WORK**

City of Fayetteville will award multiple contracts from which appraisals can be ordered. Each appraisal will be full and independent.

### **The appraiser must, at a minimum:**

1. Provide an appraisal report meeting the definition of an appraisal found at 49 CFR 24.2(a)(3). The appraiser must be FIRREA Certified. The appraisal must meet the URA definition of an appraisal (see 49 CFR 24.2(a)(3) and the five following requirements (see 49 CFR 24.103(a)(2)) which are intended to be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP):
  - i. An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.
  - ii. All relevant and reliable approaches to value. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value.
  - iii. A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
  - iv. A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.
  - v. The effective date of valuation, date of appraisal, signature, and certification of the appraiser. The effective date of the appraisal, unless otherwise specified, shall be October 5, 2018.
  - vi. A statement of the value of the real land to be acquired.
2. Afford City of Fayetteville staff or City of Fayetteville's designated representative the opportunity to accompany the appraiser on the inspection of the property.
3. Perform an inspection of the subject property. The inspection should be appropriate for the appraisal problem, and the scope of work should address:
  - The extent of the inspection and description of the neighborhood and proposed project area,
  - The extent of the subject property inspection, including interior and exterior areas,

- The level of detail of the description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, the remaining property),
4. In the appraisal report, include an adequate description of the physical characteristics of the property being appraised (i.e., sketch of the property and provide the location and dimensions of any improvements) and a description of comparable sales. The appraisal report should also include adequate photographs of the subject property and comparable sales and provide location maps of the property and comparable sales.
  5. In the appraisal report, include items required by the acquiring agency, including but not limited to the following:
    - Property right(s) to be acquired, e.g., fee simple, easement, etc.,
    - Value being appraised (usually fair market value), and its definition,
    - Appraised as if free and clear of contamination (or as specified),
    - Date of the appraisal report and the date of valuation,
    - A realty/personalty report as required by 49 CFR 24.103(a)(2)(i),
    - Known and observed encumbrances, if any,
    - Title information,
    - Location,
    - Zoning,
    - Present use, and
    - At least a 5-year sales history of the property.
  6. In the appraisal report, identify the highest and best use. If highest and best use is in question or different from the existing use, provide an appropriate analysis identifying the market-based highest and best use.
  7. Present and analyze relevant market information. (*Specific requirements for market information should be included in the agency's appraisal procedural manual and should include research, analysis, and verification of comparable sales. Inspection of the comparable sales should also be specified.*)
  8. In developing and reporting the appraisal, disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project. (*If necessary, the appraiser may cite the Jurisdictional Exception or Supplemental Standards Rules under USPAP to ensure compliance with USPAP while following this and other Uniform Act requirements.*)
  9. Report his or her analysis, opinions, and conclusions in the appraisal report.

## **DEFINITION OF FAIR MARKET VALUE**

This is determined by State law. Fair market value, however, is generally defined as the price that a seller is willing to accept, and a buyer is willing to pay on the open market in an arm's length transaction, and usually includes the following:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, each acting in what he or she considers his or her own best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

## **CERTIFICATION**

The appraisal shall include a certification of the appraiser (see attached sample or insert agency's certification).

Because Federal dollars are being used, the contractor must abide by all Federal, State and Local standards, executive orders, and laws including but not limited to the Federal Equal Opportunity requirements and Americans with Disabilities Act.

## **Minimum Standards/Requirements**

- Have been active as a Certified Appraiser for at least three years.
- Demonstrate a familiarity with the market, especially appraising sandhill/piedmont properties in flood corridors and those in sandhills/coastal plains areas particularly affected by the floods.
- Demonstration of industry appropriate minimum insurance coverage.
- Receive excellent references from past work.
- Demonstrate specific knowledge and experience with applying depreciation based on market value.
- Demonstrated knowledge regarding estimating structure value (separated from overall property value).
- If requested, appraiser will be willing to attend a training with City of Fayetteville and/or FEMA staff on flood damage estimate issues (flood insurance, floodplain regulations, etc.)

## **Submittal Selection**

Please respond to the following questions in the order listed below:

1. How many years have you been a Certified Appraiser?
2. Please provide a narrative description of general type of appraisal work you focus on (residential, commercial, land, industrial, etc.)
3. Please provide a list of credentials, licenses, certifications, and professional memberships.
4. Explain your staff resources and abilities to complete approximately 28 appraisals and your ability complete an appraisal within 21 days from the date of order.
5. Please list at least three references for work you performed over last three years (name,

address, phone number).

6. Do you have knowledge and experience with applying depreciation based on market value?
7. Please describe your insurance coverage. (Please attach Certificates of Insurance to this application.)
  - Do you carry commercial general liability coverage? Yes \_\_\_\_ No \_\_\_\_  
If yes, what are your policy limits? \_\_\_\_\_  
(Minimum requirements of \$1,000,000 combined single limit for each occurrence.)
  - Do you carry Errors and Omissions (professional liability) coverage? Yes \_\_\_\_ No \_\_\_\_  
If yes, what are your policy limits? \_\_\_\_\_  
(Minimum requirements of \$1,000,000 per occurrence and \$1,000,000 aggregate.)
  - Do you carry automotive liability coverage? Yes \_\_\_\_ No \_\_\_\_  
If yes, what are your policy limits? \_\_\_\_\_  
(Minimum requirements of \$1,000,000 for each occurrence.)
  - Do you carry Workers' Compensation Insurance? Yes \_\_\_\_ No \_\_\_\_  
If yes, what are your policy limits? \_\_\_\_\_  
If no, do you have any employees? \_\_\_\_\_  
(Minimum requirements of \$100,000.00 Each Accident/\$500,000.00 Disease-Policy Limit/\$100,000.00 Disease-Each Employee.)
8. Please disclose any family relationship with any City of Fayetteville employee or Elected Official.

**SUBMITTAL SECTION  
APPRAISAL SERVICES FOR HAZARD MITIGATION GRANT if  
approved.**

Please submit the following information in the order listed below:

1. Name of your company / organization
2. Type of organization: (Corporation, Partnership, etc.)
3. Address
4. Names and Address of the Partners and Subcontractors if applicable
5. Contact Person(s)
6. Telephone, Fax, e-mail
7. A detailed project schedule.
8. Information on the relevant experience of key personnel
9. Please submit a copy of any contract you would require to be executed in this process.
10. Submit three references for similar projects your company has completed within the last three years and contact information.
11. Complete fee schedule attached.

**SIGNATURE PAGE  
APPRAISAL SERVICES FOR HAZARD MITIGATION GRANT**

**Failure to complete, sign and return this signature page with your proposal may be cause for rejection.**

<b>Contact Information</b>	<b>Response</b>
Company Name	
Name and Title of Primary Contact Person	
Company Address	
Phone Number	
Email Address	
Company Website	

**By signing below, I certify that:**

I am authorized to bid on my company's behalf.

I am not currently an employee of the City of Fayetteville.

None of my employees or agents is currently an employee of the City of Fayetteville. I am not related to any City of Fayetteville employee or Elected Official.

**Signature of Person Authorized to Bid on  
Company's Behalf** \_\_\_\_\_

**Date** \_\_\_\_\_

Note: If you cannot certify the above statements, please explain in the space provided below.

## Fee Schedule:

**Firm Name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date** \_\_\_\_\_

<b>Single Family Appraisal Report</b>	
<b>Multi Family Appraisal Report (per family unit @ 1,000 sq. ft.)</b>	

# CITY OF FAYETTEVILLE (name of service contracting for) CONTRACT

THIS CONTRACT ("Contract") is entered into between the City of Fayetteville, State of North Carolina, acting by and through its Board of City Officials ("City") and (name of company) ("Contractor").

In consideration of the rights and obligations specified below, the City and the Contractor agree as follows:

1. Incorporation into Contract: *The Invitation for Bid and Bid Specifications of City of Fayetteville Bid No. \_\_\_\_\_*, together with any alterations and/or modifications to these Specifications (the "Bid Documents"), are expressly incorporated into this Contract by this reference.

2. Work to be Performed: The Contractor will, in a good and workmanlike manner and at its own cost and expense, furnish all labor and equipment and do all work necessary and incidental to performing (specify type of work) as specified in the Bid Documents and this Contract (the "Work"). The Contractor shall perform the Work in strict accordance with the Bid Documents and this Contract.

3. Term of Contract: This Contract shall begin and become effective on the date of execution by the parties, which date is the date specified on the signature page of this Contract. Under this Contract, the Contractor shall begin Work on (date) and shall continue through (date).

4. Payment for Work Performed: In consideration of the Work to be performed by the Contractor, and subject to paragraph 14, the City shall pay to the Contractor, in accordance with the Bid Documents, \$ (contract price).

5. Extension and/or Renewal of Contract Term:

a. The City, in its sole discretion, may elect to extend the term of this Contract. In the event the City elects to exercise this right, it shall send written notice to Contractor, pursuant to paragraph 15, of its intent to extend the term of the Contract. The notice shall set forth the length of the extension.

b. Upon mutual-agreement by the parties, this Contract may be renewed for four additional one-year periods through date during which time this Contract shall be in full force and effect, subject to the termination provisions of paragraph 14. If this option to renew is exercised, the parties shall execute a written agreement no later than thirty (30) days before the expiration of this Contract or any subsequent renewals.

c. All of the provisions of this Contract shall remain in full force and effect during any extension or renewed term except that the scope of services and compensation to be paid to Contractor during any extension or renewed term shall be mutually agreed upon prior to the commencement of any extension or renewed term. The agreed upon scope of services and compensation shall be reduced to writing, signed by both

parties, and attached to this Contract.

d. **TEN CALENDAR DAYS BEFORE THE COMMENCEMENT OF ANY EXTENDED TERM THE CONTRACTOR SHALL SUBMIT TO THE CITY PROOF OF INSURANCE AS REQUIRED IN PARAGRAPH 9.**

e. Should the parties fail to agree upon the scope of services or compensation to be paid to Contractor for any extension or renewed term, or should Contractor fail to submit the required documents within the time period specified in paragraph 5(d), then this Contract shall terminate at the end of the then current term and no extension or renewal of the term of the Contract shall occur.

6. Quality of Performance: The Contractor shall perform the Contract in a manner satisfactory and acceptable to the City. The City shall be the sole judge of the quality of performance.

7. Schedule of Work: The Contractor shall perform the Work during the hours designated by the City so-as-to avoid inconvenience to the City and its personnel and interference with the City's operations.

8. Indemnity: The Contractor shall be liable and responsible for any-and-all damages to persons or property caused by or arising out of the actions, obligations, or omissions of the Contractor, its employees, agents, representatives or other persons acting under the Contractor's direction or control in performing or failing to perform the Work under this Contract. The Contractor will indemnify and hold harmless the City, its elected and appointed officials, and its employees, agents and representatives (the "indemnified parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including but not limited to attorneys' fees, which may be made or brought or which may result against any of the indemnified parties as a result or on account of the actions or omissions of the Contractor, its employees, agents or representatives, or other persons acting under the Contractor's direction or control.

9. Insurance Requirements: The Contractor shall procure and maintain at its own expense, and without cost to the City, the following kinds and minimum amounts of insurance for purposes of insuring the liability risks which the Contractor has assumed until this Contract has expired or is terminated:

a. Commercial General Liability.

This coverage should be provided on an Occurrence Form, ISO CG001 or equivalent, with Minimum limits of \$1,000,000 Each Occurrence, \$2,000,000 General Aggregate and \$2,000,000 Products Completed Operations Aggregate.

b. Automobile Liability.

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of the Contract. Minimum limits \$1,000,000 Each Accident.

*This coverage may not be required if Contractor is not using a vehicle as part of its performance under the contract. Contact Risk Management for a waiver.*

c. Workers' Compensation and Employer's Liability.

Workers' Compensation must be maintained with the statutory limits. Employer's Liability is required for minimum limits of \$100,000 Each Accident/\$500,000 Disease-Policy Limit/\$100,000 Disease-Each Employee.

*This coverage may not be required if contractor has no employees. Contact Risk Management for a waiver.*

The Contractor shall provide a Certificate of Insurance to City of Fayetteville demonstrating that the insurance requirements have been met prior to the commencement of Work under this Contract. The City of Fayetteville shall be named as an additional insured for General Liability and Pollution Liability, as designated in the contract. Additional insured shall be endorsed to the policy.

**THE ADDITIONAL INSURED WORDING SHOULD BE AS FOLLOWS:** *City of Fayetteville, State of North Carolina, a body corporate and politic, is named as Additional Insured.*

**Notice of Cancellation:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to Kimberly Toon, Purchasing Manager.

If any insurance company refuses to provide the require notice, the Contractor or its insurance broker shall notify the City of any cancellation, suspension, and/or non-renewal of any insurance within seven (7) days of receipt of insurers' notification to that effect. Such notice shall be sent directly to:

**City of Fayetteville  
Purchasing Division  
Attn: Kimberly Toon, Purchasing Manger  
433 Hay Street, 2nd Floor  
Fayetteville, NC 28301**

Please forward certificates to the above certificate holder.

10. Nondiscrimination: The Contractor agrees to comply with the letter and spirit of the North Carolina **NC General Statutes § 75B-1 to 75B-7**, and all applicable local, state and federal laws respecting discrimination and unfair employment practices.

11. Nondiscrimination Provisions Binding on Subcontractors: In all solicitations by the Contractor for any Work related to this Contract to be performed under a subcontract, either by

competitive bidding or negotiation, the Contractor shall notify each potential subcontractor of the Contractor's obligations under this Contract, and of all pertinent regulations relative to nondiscrimination and unfair employment practices.

12. Information and Reports: The Contractor will provide to authorized governmental representatives, including those of the City, State and Federal Government, all information and reports which they may require for any purpose authorized by law. The Contractor will permit such authorized governmental representatives access to the Contractor's facilities, books, records, accounts, and any other relevant sources of information. Where any information required by any such authorized government representative is in the exclusive possession of a person other than the Contractor, then such Contractor shall so certify to the City, and shall explain what efforts it has made to obtain the information.

13. Independent Contractor: The Parties recognize and agree that the Contractor is an independent contractor for all purposes, both legal and practical, in performing services under this Contract, and that the Contractor and its agents and employees are not agents or employees of City of Fayetteville for any purpose. As an independent contractor, the Contractor shall be responsible for employing and directing such personnel and agents as it requires to perform the services purchased under this Contract, shall exercise complete authority over its personnel and agents, and shall be fully responsible for their actions.

**Contractor acknowledges that it is not entitled to unemployment insurance benefits or workers' compensation benefits from City of Fayetteville, its elected officials, agents, or any program administered or funded by City of Fayetteville. Contractor shall be entitled to unemployment insurance or workers' compensation insurance only if unemployment compensation coverage or workers' compensation coverage is provided by Contractor, or some other entity that is not a party to this Contract. Contractor is obligated to pay federal and state income tax on any monies earned pursuant to this Contract.**

14. Termination and Related Remedies:

a. The other provisions of this Contract notwithstanding, financial obligations of City of Fayetteville payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. The City of Fayetteville is prohibited by law from making financial commitments beyond the term of its current fiscal year. The City has contracted for goods and/or services under this Contract and has reason to believe that sufficient funds will be available for the full term of the Contract. Where, however, for reasons beyond the control of the Board of City Officials as the funding entity, funds are not allocated for any fiscal period beyond the one in which this Contract is entered into, the City shall have the right to terminate this Contract by providing seven (7) days written notice to the Contractor pursuant to paragraph 15 and will be released from any-and-all obligations hereunder. If the City terminates the Contract for this reason, the City and the Contractor shall be released from all obligations to perform Work and make payments hereunder, except that the City shall be required to make payment for Work which has been performed by the Contractor prior to the effective date of termination under this provision; and, conversely, the Contractor shall be required to

complete any Work for which the City has made payment prior to providing written notice to the Contractor of the termination.

- b. The preceding provisions notwithstanding, the City may terminate this Contract, either in whole or in part, for any reason, whenever the City determines that such termination is in the City's best interests. Such termination shall be effective after the City provides seven (7) days written notice to the Contractor pursuant to paragraph 15.
- c. In the event the City exercises either of the termination rights specified in paragraphs 14(a) or 14(b), this Contract shall cease to be of any further force and effect, with the exception of all Contract remedies which are specified herein and may otherwise be available to the parties under the law, and with the exception of any rights or liabilities of the parties which may survive by virtue of this Contract.

15. Notices: For purposes of the notices required to be provided under paragraphs 5, 9, and 14, all such notices shall be in writing, and shall be either sent by Certified U.S. Mail - Return Receipt Requested, or hand-delivered to the following representatives of the parties at the following addresses:

For the City: Kimberly Toon, Purchasing Manager  
City of Fayetteville  
433 Hay Street  
Fayetteville, NC 28301

For the Contractor: (enter Contractor's name and Mailing Address)

In the event a notice is mailed pursuant to the provisions of this paragraph, the time periods specified in paragraph 14 shall commence to run on the day after the postmarked date of mailing.

16. Statutory Requirements: This Contract is subject to all statutory requirements that are or may become applicable to counties or political subdivisions of the State of North Carolina generally. Without limiting the scope of this provision, the Contract is specifically subject to the following statutory requirement:

Contract payments may be withheld pursuant to NC General Statutes § 22C-4 if the City receives a verified statement that the Contractor has not paid amounts due to any person who has supplied labor or materials for the project.

17. Prohibitions on Public Contract for Services: Pursuant to North Carolina as amended, the Contractor shall meet the following requirements prior to signing this Agreement (public contract for service) and for the duration thereof:

- A. The Contractor shall certify participation in the E-Verify Program (the electronic employment verification program that is authorized in 8 U.S.C. § 1324a and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program) on the attached certification.

B. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.

C. The Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.

D. At the time of signing this public contract for services, the Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services through participation in either the E-Verify Program or the Department Program.

E. The Contractor shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this public contract for services is being performed.

F. If Contractor obtains actual knowledge that a subcontractor performing work under this public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall: notify the subcontractor and the City within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and, terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to the previous paragraph, the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

G. If Contractor violates any provisions of this Section of this Agreement, the City may terminate this Agreement for breach of contract. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City.

18. Amendments: This Contract may be altered, amended or repealed only on the mutual agreement of the City and the Contractor by a duly executed written instrument.

19. Assignment: This Contract shall not be assigned or subcontracted by the Contractor without the prior written consent of the City.

20. Benefit to Successors and Assigns: This Contract shall be binding upon the successors and assigns of the parties.

21. Governing Law: The laws of the State of North Carolina shall govern the interpretation and enforcement of this Contract. Any litigation that may arise between the parties involving the interpretation or enforcement of the terms of this Contract shall be initiated and pursued by the parties in the Courts of the State of North Carolina and the applicable North Carolina Appellate Courts.

22. Breach: Any waiver of a breach of this Contract shall not be held to be a waiver of any other or subsequent breach of this Contract. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

23. Termination of Prior Agreements: This Contract cancels and terminates, as of its effective date, all prior agreements between the parties relating to the services covered by this Contract, whether written or oral or partly written and partly oral.

24. Severability: If any provision of this Contract is found to be invalid, illegal or unenforceable, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

25. Third Party Beneficiary: The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the City and the Contractor, and nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other or third person. It is the express intent of the parties to this Contract that any person receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.

26. Governmental Immunity: Nothing in this agreement shall be construed in any way to be a waiver of the City's immunity protection under the North Carolina [https://www.sog.unc.edu/sites/www.sog.unc.edu/files/course\\_materials/Crowell\\_Local%20gov't%20immunity%20Nov%202011.pdf](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/course_materials/Crowell_Local%20gov't%20immunity%20Nov%202011.pdf) <-This website could help with governmental immunity in NC.

27. Execution by Counterparts; Electronic Signatures: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Parties approve the use of electronic signatures for execution of this Agreement. Only the following two forms of electronic signatures shall be permitted to bind the Parties to this Agreement: (1) Electronic or facsimile delivery of a fully executed copy of a signature page; (2) The image of the signature of an authorized signer inserted onto PDF format documents. All use of electronic signatures shall be governed by the NC General Statutes § 66-311 to 66-339.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on \_\_\_\_\_(date)\_  
\_\_\_\_\_.

**CITY OF  
FAYETTEVILLE,  
STATE OF NORTH  
CAROLINA**

**ATTEST:** \_\_\_\_\_  
Administrative Assistant  
Clerk to the Board of  
City Officials  
(seal)

By: \_\_\_\_\_  
Chair, Board of City Officials

**CONTRACTOR:**

**ATTEST:** \_\_\_\_\_  
**By:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

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

(If this Contract is executed on behalf of a corporation, it must be signed by an agent duly authorized by the corporation to execute such Contract, and if specified by the corporate by-laws, the corporate seal must be affixed to the Agreement by the Secretary of the corporation or other authorized keeper of the corporate seal.)

**CONTRACTOR’S CERTIFICATION OF COMPLIANCE**

Pursuant to North Carolina Session Law 2013-418 House Bill 786, as a prerequisite to entering into a contract for services with City of Fayetteville, North Carolina, the undersigned Contractor hereby certifies that at the time of this certification, Contractor does not knowingly employ or contract with an illegal alien who will perform work under the attached contract for services and that the Contractor will participate in the E-Verify Program or Department program, as those terms are defined in NC General Statutes, Chapter 64 Article 2. in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the attached contract for services.

CONTRACTOR:

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Print or Type)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Note: Registration for the E-Verify Program can be completed at:

<https://e-verify.uscis.gov/enroll/>.

**ADDENDUM TO CONTRACT**  
**FEDERAL EMERGENCY MANAGEMENT AGENCY'S**  
**GRANT PROGRAM REQUIREMENTS FOR PROCUREMENT**  
**CONTRACTS**

This is an addendum to the Agreement between ("Contractor"), and City of Fayetteville, (the "City").

The parties acknowledge that the above-referenced contract is subject to the provisions of 44 CFR § 13.36 and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.). This addendum is hereby expressly incorporated into the agreement between City of Fayetteville and the Contractor. To the extent that the terms of the Agreement and this Addendum conflict, the terms of this Addendum shall control. Nothing in this Addendum shall be construed as making this Agreement contingent upon a Presidential disaster declaration or FEMA's approval or obligation of funds.

**The following provisions are hereby added and incorporated into the above-referenced Agreement:**

1. **EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE** (*applicable to all construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees; 44 CFR§13.36(i)(3)*) Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60).
2. **ANTI-KICKBACK ACT COMPLIANCE** (*applicable to all contracts and subgrants for construction or repair; 44 CFR§13.36(i)(4)*) Contractor agrees to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).
3. **ACCESS TO RECORDS**
  - A. The Contractor agrees to provide the City, FEMA, the Comptroller General of the United States or any their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. 44 CFR§13.36(i)(10).
  - B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
  - C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date City makes final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case, Contractor agrees to maintain same until the City, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related

thereto 44 CFR§13.36(i)(11).

4. **CONTRACT WORK HOURS AND SAFETY STANDARDS** (*applicable to construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers; 44 CFR §13.36(i)(6)*)

Contractor agrees that it shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.

5. **NOTICE OF REPORTING REQUIREMENTS**

A. Contractor acknowledges that it has read and understands the reporting requirements of FEMA stated in 44CFR§ 13.40 et seq., 13.50-13.52 and Part III of Chapter 11 of the United States Department of Justice’s Office of Justice Programs Financial Guide and agrees to comply with any such applicable requirements.

B. The Contractor agrees to include the above clause in each third-party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

6. **PATENT RIGHTS** (*applicable to contracts for experimental, research, or development projects financed by FEMA; 44 CFR §13.36(i)(8)*)

A. **General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to FEMA.

B. Unless the Government later makes a contrary determination in writing, irrespective of Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FEMA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” 37 CFR, Part 401.

C. The Contractor agrees to include paragraphs A and B above in each third-party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

7. **NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS**

A. Contractor agrees that FEMA shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:

(1) The copyright in any work developed with the assistance of funds provided under this Agreement;

(2) Any rights of copyright to which Contractor purchases ownership with the

assistance of funds provided under this Agreement. 44 CFR §13.34, 13.36(i)(8)- (9).

**B.** The Contractor agrees to include paragraph A above in each third-party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**8. ENERGY CONSERVATION REQUIREMENTS**

**A.** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. 44 CFR § 13.36(i)(13).

**B.** The Contractor agrees to include paragraph A above in each third-party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**9. CLEAN AIR AND WATER REQUIREMENTS** (applicable to all contracts and subcontracts in excess

*\$100,000, including indefinite quantities where the amount is expected to exceed*

*\$100,000 in any year; 44 CFR §13.36(i)(12))*

**A.** Contractor agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

**B.** Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA regional office.

**C.** The Contractor agrees to include paragraph A and B above in each third-party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

**10. TERMINATION FOR CONVENIENCE OF CITY** (*applicable to all contracts in excess of \$10,000; 44 CFR §13.36(i)(2)*)

**A.** City shall have the option in its sole discretion, to terminate this Agreement, at any time during the term hereof for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

**B.** Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to affect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of the City. Such actions shall include, without limitation:

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

(4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all

claims arising out of the termination of such orders and subcontracts.

(5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

(7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

**C.** Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(1) The reasonable cost to Contractor, without profit, for all services and other

work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice. Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

(2) A reasonable allowance for profit on the cost of the services and other work

described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(3) The reasonable cost to Contractor of handling material or equipment returned to vendor, delivered to the City or otherwise disposed of as directed by the City.

**D.** In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs related to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

**E.** In arriving at the amount due to Contractor under this Section, City may deduct:

(1) All payments previously made by City for work or other services covered by Contractor's final invoice;

(2) Any claim which City may have against Contractor in connection with this Agreement;

(3) Any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and

(4) In instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to

costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

F. City's payment obligation under this Section shall survive termination of this Agreement.

## **11. TERMINATION FOR DEFAULT**

Contractor's failure to perform or observe any term, covenant or condition of this document (Federal Emergency Management Agency's Emergency Management Performance Grant Program Requirements for Procurement Contracts) shall constitute an event of default under this Agreement.

A. Each of the following shall also constitute an event of default ("Event of Default") under this Agreement:

(1) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor.

(2) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

(3) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

B. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

C. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws,

rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

Except as modified herein, all terms and conditions of the existing contract between the parties remain in full force and effect.

Accepted by Contractor on \_\_\_\_\_, 2018

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

\_\_\_\_\_  
Title

Accepted by City of Fayetteville on \_\_\_\_\_, 2018

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

\_\_\_\_\_  
Title