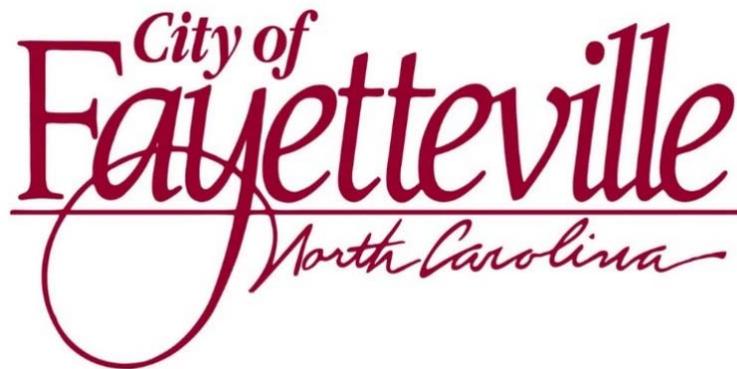


REQUEST FOR PROPOSALS

**Point of Sale System and Installation
Minor League Baseball Stadium/Entertainment Venue**

RFP # 603-COF1516289



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, ICM-CM
City Manager

REQUEST FOR PROPOSALS
RFP # 603-COF1516289
Point of Sale System and Installation

7/16/18

To Potential Service Providers:

The City of Fayetteville, North Carolina, is now accepting Proposals for Point of Sale System and Installation. The requirements for submitting a Proposal are stated in the attached Request for Proposals (the "RFP"). Please review them carefully.

A **Non-Mandatory** Pre-Proposal Conference for the purpose of reviewing the RFP and answering questions regarding the Services will be held on **JULY 31, 2018 at 2:00 PM**, at Fayetteville-City Hall, 433 Hay Street, Fayetteville, North Carolina 28301, in the 1st Floor Cape Fear Conference Room. Please bring a copy of the RFP with you at that time. All interested Companies should return a completed Request for Proposals Acknowledgement Form (see Section 6, Form 1) by the date stated in the schedule in Section 2.1 of this RFP.

An electronic copy of the RFP in Microsoft Word format may be obtained by contacting Kimberly Toon at KToon@ci.fay.nc.us.

All Proposals are due to Fayetteville-City Hall, 433 Hay Street, Fayetteville, North Carolina 28301, no later than **AUGUST 7, 2018 at 5:00 p.m.**

One (1) electronic copy of the Proposal on a flash drive in a searchable format such as MS Word or Adobe Acrobat and one (1) original Proposal signed in ink by a company official authorized to make a legal and binding offer. Proposals ***must be submitted in a sealed box or opaque envelope*** plainly marked with the Proposal number and service description as follows:

Request for Proposals
Attention: Kimberly Toon
[Name of Company Submitting Proposal]
Point of Sale System and Installation
RFP # 603-COF1516289

RFP questions must be directed to Kimberly Toon, at KToon@ci.fay.nc.us by August 1, 2018. The City is an equal opportunity purchaser. To access the documents listed in the Appendix, email Francesca for electronic drop box access.

Important Dates

Pre-Proposal Conference:	July 31, 2018 at 2:00 pm
Questions Deadline:	August 1, 2018 at 5:00 pm
Proposal Submission Deadline:	August 7, 2018 at 5:00 pm

Sincerely,

Kimberly Toon, CLGPO
City of Fayetteville, NC

Checklist for submitting a Proposal:

Step 1-Read the document fully.

Step 2-If you plan on submitting a Proposal then email Form 1 in Section 6 to the number listed on the sheet.

Steps 3-If you have any questions send them before the deadline listed in Section 2.3.

If you plan to submit a Proposal you must follow this checklist, and must include everything detailed below.

Proposal Copies - Please provide the specified number for each format

- 1 Copy on flash drive
- 1 Copy marked "Original"

Proposal Format - Proposals should be formatted as follows:

- Cover Letter per **Section 4**
- Proposed Solution per **Section 4**
- Section 6, Form 2, Addenda Receipt Confirmation**
- Section 6, Form 3, Proposal Submission**
- Section 6, Form 4, Pricing Worksheet**
- Itemized Quote Detailing units and costs for the Total Project Pricing in Form 4.**
- Section 6, Form 5, LSDBE Utilization**
- Section 6, Form 6, Company Background and Experience**
- Section 6, Form 7, References**

Exceptions to any part of the RFP (If you take any exceptions to anything in this document list it in a category in your Proposal called "Exceptions" and offer an alternative solution).

The above items constitute all that must be included in the Proposal. If awarded a contract, you will be required to provide an insurance certificate that meets or exceeds the requirements set forth in Exhibit A, Section 28.

It is the Company's responsibility to check:

<https://fayettevillenc.gov/government/city-departments/finance/purchasing/bid-opportunities>

and www.ips.state.nc.us for any addenda or changes to this Project. Search for bid # 603-COF1516289 to find if any documents or changes have been posted.

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Appendices Access

PLEASE NOTE: Due to the large size of the files that make up the appendices an electronic drop box has been set up. Interested Service Providers need to email Kimberly Toon at KToon@ci.fay.nc.us to gain access to the electronic drop box. Access to the drop box may not be shared among colleagues, therefore please provide the **Name, Company, Email** address for each individual your firm will want to review the documents listed in the chart below.

Point of Sale System and Installation Appendix Guide	
Appendix A	Barton Malow Insurance Requirements
Appendix B	Barton Malow Safety Manual
Appendix C	Barton Malow Procedure Manual
Appendix D	Barton Malow Construction Schedule
Appendix E	Populous Bid Package Vol 1 - Specifications
Appendix F	Populous Bid Package Vol 2 - Specifications
Appendix G	Populous Bid Package Plans Vol 1
Appendix H	Populous Bid Package Plans Vol 2
Appendix I	Populous Bid Package Plans Vol 3

Section 1

Introduction and General Information

1. INTRODUCTION.

1.1. Objective.

The objective of this RFP is to solicit Proposals that will enable the City to determine which Company and Proposed Solution will best meet the City's needs for provision and installation of the stadium point of sale equipment, hardware, software and any necessary infrastructure for the new minor league baseball stadium and entertainment venue currently being constructed on the City's behalf by Construction Manager at Risk, Barton Malow. The project must be completed and available for its intended use for the start of the 2019 Class-A South Atlantic League baseball season. Currently this project is schedule for installation to take place from December 26, 2018 – January 30, 2019.

1.2. Definitions.

As used in this RFP, the following terms shall have the meanings set forth below:

<i>Acceptance:</i>	Refers to receipt and approval by the City of a Deliverable or Service in accordance with the acceptance process and criteria in the Contract.
<i>Affiliates:</i>	Refers to all departments or units of the City and all other governmental units, boards, committees or municipalities for which the City processes data or performs services.
<i>Biodegradable:</i>	Refers to the ability of an item to be decomposed by bacteria or other living organisms.
<i>Fayetteville Combined Statistical Area (CSA):</i>	Refers to the Fayetteville-Cumberland-Hoke Combined Statistical Area consisting of the North Carolina counties of Cumberland and Hoke, a criteria used by the City of Fayetteville to determine eligibility to participate in the program.
<i>City:</i>	Refers to the City of Fayetteville, North Carolina.
<i>City Project Manager:</i>	Refers to a specified City employee representing the City's best interests in this Project.
<i>Company:</i>	During the solicitation process, refers to a company that has interest in providing the Services. After the solicitation process, refers to a company that has been selected by the City to provide the Services.
<i>Company Project Manager:</i>	Refers to a specified Company employee representing the best interests of the Company for this Project.
<i>Contract:</i>	Refers to a written agreement executed by the City and Company for all or part of the Services.
<i>Deliverables:</i>	Refers to all tasks, reports, information, designs, plans, and other items that the Company is required to deliver to the City in connection with the Contract.
<i>Documentation:</i>	Refers to all written, electronic, or recorded works that describe the use, functions, features, or purpose of the Deliverables or Services or any component thereof, and which are provided to the City by the Company or its subcontractors, including without limitation all end user manuals, training manuals, guides, program listings, data models, flow charts, and logic diagrams.
<i>Evaluation Committee:</i>	Refers to a City appointed committee that will evaluate Proposals and identify the Company(-ies) best meeting the needs of the City.
<i>Milestones:</i>	Refers to an identified deadline for the completion of specific Services and/or the Acceptance of identified Deliverables, as specified in this RFP.
<i>Minority Business Enterprise/MBE:</i>	Refers to a business enterprise that: (a) is certified by the State of North Carolina as a Historically Underutilized Business (HUB) within the meaning of N.C. Gen. Stat. § 143-128.4; (b) is at least fifty-one percent (51%) owned

Section 1

Introduction and General Information

by one or more persons who are members of one of the following groups: African American or Black, Hispanic, Asian, Native American or American Indian; and (c) is headquartered in the Fayetteville Combined Statistical Area.

- LSDBE:* Refers to Local Small Business Enterprises (LSBEs), Minority Business Enterprises (MBEs) and Women Owned Business Enterprises (WBEs), collectively.
- LSDBE Goal:* If an RFP or Contract has separate Subcontracting Goals for MBEs, WBEs, and/or LSBEs, the term LSDBE is a shorthand way to refer collectively to all MBE, WBE, and LSBE Goals set for the RFP. In some instances, the City may set one combined goal for MBEs, WBEs, and/or SBEs, in which event the term LSDBE Goal refers to that one, combined goal. In the latter instance, calculated as a percentage, the LSDBE Goal represents the total dollars spent with MBEs, WBEs, and SBEs as a portion of the total Proposal amount, including any contingency.
- Project:* Refers to the City’s need for a service provider to provide Point of Sale System and Installation for the City.
- Project Plan:* Refers to the detailed plan for delivery of the Services as described in Section 3, in the form accepted in writing by the City in accordance with the terms of this RFP and resultant Contract.
- Proposal:* Refers to the proposal submitted by a Company for the Services as outlined in this RFP.
- Services:* Refers to the Point of Sale System and Installation as requested in this RFP.
- Specifications and Requirements:* Refers to all definitions, descriptions, requirements, criteria, warranties, and performance standards relating to the Deliverables and Services that are set forth or referenced in: (i) this RFP, including any addenda; (ii) the Documentation; and (iii) any functional and/or technical specifications that are published or provided by the Company or its licensors or suppliers from time to time with respect to all or any part of the Deliverables or Services.
- Subcontracting Goals:* Refers to the SBE, MBE, WBE, and LSDBE Goals established by the City for an RFP and resulting Contract.
- Trade Secrets:* Information of the City or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. See N.C. Gen. Stat. § 66-152 et seq. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.
- Women Business* Refers to a business enterprise that: (a) is certified by the

Section 1

Introduction and General Information

Enterprise (WBE): State of North Carolina as a Historically Underutilized Business (HUB) within the meaning of N.C. Gen. Stat. § 143-128.4; (b) is at least fifty-one percent (51%) owned by one or more persons who are female; and (c) is headquartered in the Fayetteville Combined Statistical Area.

Work Product: Refers to the Deliverables and all other programs, algorithms, reports, information, designs, plans and other items developed by the Company in connection with this RFP, and all partial, intermediate or preliminary versions of any of the foregoing.

1.3. Accuracy of RFP and Related Documents.

Each Company must independently evaluate all information provided by the City. The City makes no representations or warranties regarding any information presented in this RFP, or otherwise made available during this procurement process, and assumes no responsibility for conclusions or interpretations derived from such information. In addition, the City will not be bound by or be responsible for any explanation or conclusions regarding this RFP or any related documents other than those provided by an addendum issued by the City. Companies may not rely on any oral statement by the City or its agents, advisors, or consultants.

If a Company identifies potential errors or omissions in this RFP or any other related documents, the Company should immediately notify the City of such potential discrepancy in writing to Kimberly Toon at KToon@ci.fay.nc.us. The City may issue a written addendum if the City determines clarification necessary. Each Company requesting an interpretation will be responsible for delivering such requests to the City's designated representative as directed in RFP Section 2.

1.4. City's Rights and Options.

The City reserves the right, at the City's sole discretion, to take any action affecting this RFP, this RFP process, or the Services or facilities subject to this RFP that would be in the best interests of the City, including:

- 1.4.1. To supplement, amend, substitute, or otherwise modify this RFP, including the schedule, or to cancel this RFP, at any time;
- 1.4.2. To require any Companies to supplement or clarify its Proposal or provide additional information relating to its Proposals;
- 1.4.3. To investigate the qualifications, experience, capabilities, and financial standing of each Company submitting a Proposal;
- 1.4.4. To waive any defect or irregularity in any Proposal received;
- 1.4.5. To reject any or all Proposals;
- 1.4.6. To share the Proposals with City employees and contractors in addition to the Evaluation Committee as deemed necessary by the City;
- 1.4.7. To award all, none, or any part of the Services and enter into Contracts with one or more of the responding Companies deemed by the City to be in the best interest of the City, which may be done with or without re-solicitation;
- 1.4.8. To discuss and negotiate with any Company(-ies) their Proposal terms and conditions, including but not limited to financial terms; and
- 1.4.9. To terminate discussions and negotiations with any Company at any time and for any reason.

1.5. Expense of Submittal Preparation.

The City accepts no liability, and Companies will have no actionable claims, for reimbursement of any costs or expenses incurred in participating in this solicitation process. This includes expenses and costs related to Proposal submission, submission of written questions, attendance at pre-proposal meetings or evaluation interviews, contract negotiations, or activities required for contract execution.

Section 1

Introduction and General Information

1.6. Proposal Conditions.

The following terms are applicable to this RFP and the Company's Proposal.

1.6.1. RFP Not An Offer.

This RFP does not constitute an offer by the City. No binding contract, obligation to negotiate, or any other obligation shall be created on the part of the City unless the City and the Company execute a Contract. No recommendations or conclusions from this RFP process concerning the Company shall constitute a right (property or otherwise) under the Constitution of the United States or under the Constitution, case law, or statutory law of North Carolina.

1.6.2. Trade Secrets and Personal Identification Information

Definition.

Upon receipt at the City Purchasing Office, all materials submitted by a Company (including the Proposal) are considered public records except for (1) material that qualifies as "trade secret" information under N.C. Gen. Stat. § 66-152 et seq. ("Trade Secrets") or (2) "personally identifiable information" protected by state or federal law, to include, but not be limited to, Social Security numbers, bank account numbers, and driver's license numbers ("Personally Identifiable Information" or "PII").

Instructions for Marking and Identifying Trade Secrets.

If any Proposal contains Trade Secrets or PII, such Trade Secrets and PII must specifically and clearly be identified in accordance with this Section 1.6.2 by clearly separating them from the rest of the Proposal. For hard copy documents, it must be submitted in a separate, sealed envelope, marked either "Personally Identifiable Information – Confidential" or "Trade Secret—Confidential and Proprietary Information." For electronic submissions it must also be submitted on a separate flash drive. In both hard copy and electronic format, the confidentiality caption stated above must appear on each page of the Trade Secret or PII materials.

Availability of Proposals to City Staff and Contractors.

By submitting a Proposal, each Company agrees that the City may reveal any Trade Secret materials and PII contained therein to all City staff and City officials involved in the selection process, and to any outside consultant or other third parties who serve on the Evaluation Committee or who are hired or appointed by the City to assist in the evaluation process.

Availability of Proposals via Public Records Requests.

Any person or entity (including competitors) may request Proposals submitted in response to an RFP. Only those portions of RFPs properly designated as Trade Secret or PII are not subject to disclosure. The public disclosure of the contents of a Proposal or other materials submitted by a Company is governed by N.C. Gen. Stat. §§ 132 and 66-152, et seq.

When determining whether to mark materials as Trade Secret, please note the following:

- Entire Proposals may not be marked as Trade Secret
- Pricing may not be marked as Trade Secret

The City may disqualify and Company that designates its entire Proposal as a trade secret, or any portion thereof that clearly does not qualify under applicable law as a Trade Secret or PII. Each Company agrees to indemnify, defend, and hold harmless the City and each of its officers, employees, and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material that the Company has designated as a Trade Secret or PII. This includes an obligation on the part of the Company to defend any litigation brought by a party that has requested Proposals or other information that the Company has marked Trade Secret or PII.

1.6.3. Amendments to RFP.

If the City amends this RFP, addenda will be posted to the City of Fayetteville's website and the IPS website at www.ips.state.nc.us, bid# 603-COF1516289. Companies are

Section 1

Introduction and General Information

required to acknowledge receipt of each addendum by including the Addenda Receipt Confirmation Form (Section 6, Form 2) with their Proposals.

- 1.6.4. Proposal Terms Firm and Irreversible.
The signed Proposal shall be considered a firm offer on the part of the Company. The City reserves the right to negotiate price and other terms. All Proposal elements (including all statements, claims, declarations, prices, and specifications) shall be considered firm and irrevocable for purposes of future Contract negotiations unless specifically waived in writing by the City. The Company chosen for award should be prepared to have its Proposal and any relevant correspondence incorporated into the Contract, either in part or in its entirety, at the City's election.
- 1.6.5. Proposal Binding for 180 Days.
Section 6, Form 3 contains a statement to the effect that the Proposal is a firm offer for one-hundred-eighty (180) calendar day period from the date of the opening. This statement must be signed by an individual authorized to bind the Company. All prices quoted shall be firm and fixed for the full Contract period. The City shall have the option to accept subject to exception by Contract.
- 1.6.6. Fayetteville LSDBE Program.
Pursuant to Fayetteville City Council's adoption of the Fayetteville Local, Small, Disadvantaged Business Enterprise (LSDBE) Policy, the City promotes diversity, inclusion, and local business opportunities in the City's contracting and procurement process for LSDBEs headquartered in the Cumberland-Hoke Counties Combined Statistical Area (CSA).
The City is committed to promoting opportunities for maximum participation of LSDBEs on City funded contracts at both the Prime and Subcontract level.
- 1.6.7. Subcontracting.
The Company given contract award shall be the prime contractor and shall be solely responsible for contractual performance. In the event of a subcontracting relationship, the Company shall remain the prime contractor and will assume all responsibility for the performance of the Services that are supplied by all subcontractors. The City retains the right to approve all subcontractors.
- 1.6.8. Equal Opportunity.
The City has an equal opportunity purchasing policy. The City seeks to ensure that all segments of the business community have access to supplying the goods and services needed by City programs. The City provides equal opportunity for all businesses and does not discriminate against any Companies regardless of race, color, religion, age, sex, and national origin or disability.
- 1.6.9. Use of City's Name.
No advertising, sales promotion, or other materials of the Company or its agents or representatives may identify or reference the City in any manner absent the prior written consent of the City.
- 1.6.10. Withdrawal for Modification of Proposals.
Companies may change or withdraw a previously-submitted Proposal at any time prior to the Proposal due date. Only formal written requests addressed in the same manner as the Proposal and received by the City prior to the Proposal due date will be accepted. The request must be in a sealed envelope that is plainly marked "**Modifications to Proposal.**" No oral modifications will be allowed. If the Company complies with this Section, after the Proposal due date, the Proposal, will be withdrawn or corrected in accordance with the written request(s).

Section 1

Introduction and General Information

- 1.6.11. No Bribery.
In submitting a response to this RFP, each Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the foregoing has bribed, or attempted to bribe, an officer or employee of the City in connection with the Contract.
- 1.6.12. Exceptions to the RFP.
Other than exceptions that are stated in compliance with this Section and Section 3.7, each Proposal shall be deemed to agree to comply with all terms, conditions, specifications, and requirements of this RFP including the Sample Contract language included in Exhibit A. An “exception” is defined as the Company’s inability or unwillingness to meet a term, condition, specification, or requirement in the manner specified in the RFP including the Sample Contract language included as in Exhibit A. All exceptions taken must be identified and explained in writing in your Proposal and must specifically reference the relevant section(s) of this RFP. If the Company provides an alternate solution when taking an exception to a requirement, the benefits of this alternative solution and impact, if any, on any part of the remainder of the Company’s solution, must be described in detail.
- 1.6.13. Fair Trade Certifications.
By submitting a Proposal, the Company certifies that:
- The prices in its Proposal have been arrived at independently, without consultation, communication, or agreement with anyone, as to any matter relating to such prices for the purpose of restricting competition;
 - Unless otherwise required by law, the prices quoted in its Proposal have not been knowingly disclosed by the Company and will not knowingly be so disclosed prior to the Proposal due date; and
 - No attempt has been made or will be made by the Company to induce any other person or firm to submit or not to submit a Proposal for the purpose of restricting competition.
- 1.6.14. Companies’ Obligation to Fully Inform Themselves.
Companies or their authorized representatives must fully inform themselves as to all conditions, requirements, and specifications of this RFP before submitting Proposals. Failure to do so will be at the Company’s own risk.

~ *End of Section* ~

Section 2

Procurement Process

2. PROCUREMENT PROCESS.

This Section 2 contains information about the procurement process for this Project.

2.1. Schedule and Process.

The following chart shows the schedule of events for the conduct of this RFP. The key events and deadlines for this process are as follows, some of which are set forth in more detail in the Sections that follow:

DATE	EVENT
July 16, 2018	<i>Issuance of RFP.</i> The City issues this RFP.
JULY 30, 2018	<i>Request for Proposals Acknowledgement.</i> Companies that intend to submit a Proposal shall submit the RFP Acknowledgement Form to KToon@ci.fay.nc.us
JULY 31, 2018	<i>Non-Mandatory Pre-Proposal Conference</i> to be held at the location indicated in Section 2.4 at 2:00 PM
AUGUST 1, 2018	<i>Submission of Written Questions After the Pre-Proposal Conference.</i> Questions are due by 5 p.m.
AUGUST 7, 2018	<i>Proposal Submission.</i> Proposals are due by 5:00 p.m. at Fayetteville City Hall located at 433 Hay Street, Fayetteville, NC
AUGUST, 2018	<i>Evaluation.</i> The Evaluation Committee will assess each Proposal and conduct evaluation activities with Companies.
AUGUST 27, 2018	<i>Contract Award by Council.</i>

2.2. Intent to Propose.

Please acknowledge receipt of this RFP via email by **JULY 30, 2018** using the Request for Proposals Acknowledgement Form located in Section 6, Form 1. Complete the form in its entirety advising the City of your firm's intention to submit or not submit a Proposal. Email or fax a copy of the completed and signed form to the email address or number below. The City strongly encourages Companies to submit this form prior to the Pre-Proposal conference but Companies shall not be precluded from submitting a Proposal if they fail to submit this form.

2.3. Interpretations and Addenda.

There are two (2) ways to ask questions about this RFP: (1) submit a question in writing to the Procurement Officer at the e-mail address listed below; or (2) ask a question at the Pre-Proposal Conference. Other than these permitted methods, Companies should refrain from contacting City staff prior to the Proposal deadline. **The City is not bound by any statements, representations or clarifications regarding this RFP other than those provided in writing by the Procurement Officer.**

Kimberly Toon
 City of Fayetteville
 Finance Dept – Purchasing Division
 433 Hay Street
 Fayetteville, NC 28301
 RFP # 603-COF1516289
 E-mail: KToon@ci.fay.nc.us

After the Pre-Proposal Conference, questions must be submitted in writing by the deadline stated in Section 2.1 to KToon@ci.fay.nc.us . In the case of questions not submitted by the deadline, the Procurement Officer will, based on the availability of time to research and communicate an answer, decide whether an answer can be given before the Proposal deadline. When responding to Company questions or issuing addenda to the RFP, the City will post the answer or information to the Internet at <https://fayettevillenc.gov/government/city-departments/finance/purchasing/bid-opportunities> and www.ips.state.nc.us, referencing solicitation # 603-COF1516289. Companies are required to

Section 2

Procurement Process

acknowledge their receipt of each addenda by including in the Proposal a completed Addenda Receipt Confirmation Form (Section 6, Form 2).

2.4. Pre-Proposal Conference.

A Non-Mandatory Pre-Proposal Conference will be conducted on JULY 31, 2018 at 2:00 PM. The meeting will be held at Fayetteville-City Hall, 433 Hay Street, Fayetteville, North Carolina 28301, in the 1st Floor Cape Fear Conference Room

While attendance at the Pre-Proposal Conference is not mandatory, all interested Companies are encouraged to attend. If special accommodations are required for attendance, please notify Kimberly Toon in advance of the conference date and time identifying the special accommodations required.

2.5. Submission of Proposals.

Proposals must be in the format specified in Section 4 of this RFP. One (1) electronic copy on a flash drive in a searchable format such as MS Word or Adobe Acrobat and one (1) original Proposal signed in ink by a company official authorized to make a legal and binding offer shall be submitted to the address listed in Section 2.3 above by **AUGUST 7, 2018 on or before but no later than 5:00 p.m.** The original Proposal shall be complete and unabridged, and shall not refer to any other copy of the signed and sealed original for any references, clarifications, or additional information.

When received, all Proposals and supporting materials, as well as correspondence relating to this RFP, shall become the property of the City. **Proposals sent by fax or email will not be accepted.**

Due to security measures at Fayetteville City Hall, your proposal packets will be collected by the security guard on the first floor.

Do not arrive at the City Purchasing Office on the Proposal due date for the purposes of reviewing your competitors' Proposals. The Proposals will not be read aloud or made available to inspect or copy until any trade secret issues have been resolved. All Proposals will be time-stamped upon receipt and held in a secure place until opening.

2.6. Correction of Errors.

The person signing the Proposal must initial erasures or other corrections in the Proposal. The Company further agrees that in the event of any obvious errors, the City reserves the right to waive such errors in its sole discretion. The City, however, has no obligation under any circumstances to waive such errors.

2.7. Evaluation.

As part of the evaluation process, the Evaluation Committee may engage in discussions with one or more Companies. Discussions might be held with individual Companies to determine in greater detail the Company's qualifications, to explore with the Company the scope and nature of the required contractual Services, to learn the Company's proposed method of performance and the relative utility of alternative methods, and to facilitate arriving at a Contract that will be satisfactory to the City.

The City may in its discretion require one or more Companies to make presentations to the Evaluation Committee or appear before the City and/or its representatives for an interview. During such interview, the Company may be required to orally and otherwise present its Proposal and to respond in detail to any questions posed. Additional meetings may be held to clarify issues or to address comments, as the City deems appropriate. Companies will be notified in advance of the time and format of such meetings.

Since the City may choose to award a Contract without engaging in discussions or negotiations, the Proposals submitted shall state the Company's best offer for performing the Services described in this RFP.

2.8. Contract Award by Council.

As soon as practical after opening the Proposals, the name of the apparent successful Company will be submitted to the Council for final approval of award and the Procurement Officer will provide Contract documents to the Company. In the event the Council approval is not received within one hundred eighty (180) calendar days after opening of the Proposals, the Company may request that it be released from the Proposal.

Section 2

Procurement Process

2.9. Vendor Inclusion.

The City's vendor management philosophy supports a fair, open, and inclusive process that offers the same access and information to all Companies. Although Companies are not required to be registered in the City's vendor registration system prior to submitting a Proposal, in order to execute a contract with the City and receive payment from the City, all Companies must register with the City's vendor registration system.

Your registration provides the City with baseline information for your company including location, contact and demographic information. Contact Kimberly Toon at KToon@ci.fay.nc.us to learn more about becoming a registered city vendor.

~ End of Section ~

Section 3

Scope of Services

SCOPE OF SERVICES

Point of Sale System and Installation

The scope of work for this category includes but is not limited to providing all labor, equipment, materials, and incidentals to complete all **Point of Sale System and Installation work** in accordance with the Contract Documents and applicable codes. All Work is to be performed as shown on the plans and specified in the following technical Specification sections:

The scope of work for this project is provide and install the following hardware and implement the necessary vending module software to manage all point of sale activities.

- Wired Concessions terminals: 28
- Portable/wireless terminals: 12
- Premium terminals: 3
- Vending module software with dedicated workstation
- Server hardware

Proposals for this scope should include all required travel, shipping, and support staff on hand for the first three events held in the stadium.

All equipment will utilize the ballpark Ethernet network and wireless access points at designated locations (see construction plans for those locations.) No cabling, switching hardware or wireless access points are contained in these estimates.

~ End of Section ~

Section 4

Proposal Content and Format

4. PROPOSAL CONTENT AND FORMAT.

The City desires all Proposals to be identical in format in order to facilitate comparison. While the City's format may represent departure from the Company's preference, the City requires strict adherence to the format. The Proposal will be in the format described below:

- a. Cover letter;
- b. Proposed Solution;
- c. The "Addenda Receipt Confirmation" set forth in Section 6, Form 2;
- d. The "Proposal Submission" set forth in Section 6, Form 3;
- e. The "Pricing Worksheet" set forth in Section 6, Form 4;
- f. The "LSDBE Utilization" form set forth in Section 6, Form 5;
- g. The "Background and Experience" form set forth in Section 6, Form 6;
- h. The "References" set forth in Section 6, Form 7;
- i. The "Additional Company Questions" set forth in Section 6, Form 8;
- j. Exceptions to the Remainder of the RFP, including the Sample Contract in Exhibit A.

Companies are required to organize the information requested in this RFP in accordance with the format and instructions outlined above and detailed below. Failure to do so may result in the City, at its sole discretion, deeming the Proposal non-responsive. The Company, however, may reduce the repetition of identical information within several sections of the Proposal by making the appropriate cross-references to other sections of the Proposal. Appendices for certain technical or financial information may be used to facilitate Proposal preparation.

4.1. Proposal Content.

- Cover Letter.
The Proposal must include a letter of transmittal attesting to its accuracy, signed by an individual authorized to execute binding legal documents. The cover letter shall provide the name, address, telephone and facsimile numbers of the Company along with the name, title, address, email address, telephone and facsimile numbers of the executive that has the authority to contract with the City. The cover letter shall present the Company's understanding of the Project and a summary of the approach to perform the Services.
- Proposed Solution.
Given the purpose of this project and the City's goals as stated in this RFP, provide a creative solution to meet such goals. If you wish to add supplemental information, it shall be labeled "Supplemental Information."
- Required Forms.
To be deemed responsive to this RFP, Companies must complete, in detail, all Proposal Forms listed in this Section 4, items numbered c through j.
- Exceptions to the RFP.
Exceptions must be submitted in accordance with Section 1.6.13 of this RFP. If exceptions are not identified in your Proposal they may not be considered during Contract negotiation and could result in Proposal being rejected from further consideration. If legal counsel needs to review the Sample City Contract prior to signature, reviews must be completed before your Proposal is submitted.
The City intends to enter into a City-drafted Contract with the successful Company that contains the terms and conditions set forth in Exhibit A ("Sample Terms"). The number and extent of any exceptions and proposed additions to the Sample Terms will be one of the City's evaluation criteria.
Accordingly, each Company must state specifically in its Proposal any exceptions to the Sample Terms, or any such exceptions will be waived. Any Company-proposed additional terms or conditions must also be included in the Proposal, and the City reserves the right to refuse consideration of any terms not so included. Any proposed changes to the Sample

Section 4

Proposal Content and Format

Terms after tentative contract award may constitute a material change to the Company's Proposal and be grounds for revoking the award.

Notwithstanding the foregoing, the City reserves the right to modify the Sample Terms prior to or during contract negotiations if it is in the City's best interest to do so.

~ End of Section ~

Section 5

Evaluation Criteria

5. PROPOSAL EVALUATION CRITERIA.

Proposals will be evaluated based on the Company's ability to meet the performance requirements of this RFP. This section provides a description of the evaluation criteria that will be used to evaluate the Proposals. To be deemed responsive, it is important for the Company to provide appropriate detail to demonstrate satisfaction of each criterion and compliance with the performance provisions outlined in this RFP. The Company's Proposal will be the primary source of information used in the evaluation process. Proposals must contain information specifically related to the proposed Services and requested herein. Failure of any Company to submit information requested may result in the elimination of the Proposal from further evaluation.

Proposals will be assessed to determine the most comprehensive, competitive and best value solution for the City based on, but not limited to, the criteria below. The City reserves the right to modify the evaluation criteria or waive portions thereof. Proposals will be evaluated on the following major categories:

- a. Qualifications and Experience;
- b. Project Approach and Proposed Solution;
- c. Cost Effectiveness and Value;
- d. LSDBE inclusion efforts; and
- e. Acceptance of the Terms of the Contract

5.1. Qualifications and Experience

Companies will be evaluated on the background and experience information provided in Section 6, Form 6.

5.2. Project Approach / Proposed Solution.

Companies will be evaluated based upon their understanding, experience and qualifications in performing the same or substantially similar Services, as reflected by its experience in performing such Services. The evaluation will include references regarding work for organizations with needs similar to the City's, and the feasibility of the Company's approach for the provision of the Services.

5.3. Cost Effectiveness and Value.

Under this criterion, Proposals will be compared in terms of the most reasonable and effective pricing options. The Evaluation Committee will also take into consideration any indirect costs associated with the Services and administration of the Contract.

5.4. LSDBE Subcontractor Utilization.

The City maintains a strong commitment to the inclusion of LSDBEs in the City's contracting and procurement process. For the purposes of this RFP, the City will consider a Company's LSDBE certification and/or LSDBE subcontracting inclusion efforts. To count towards a Department LSDBE Goal, LSDBE certified Companies and/or their LSDBE subcontractors must meet the following certification criteria prior to Proposal submission:

- Be designated as a City certified SBE; and/or
- Be designated as a City registered MBE or WBE
- LSDBE utilization is only one (1) criterion considered in the totality of all criteria listed in this Section 5.

5.5. Acceptance of the Terms of the Contract.

The City will evaluate the Proposals for compliance with the terms, conditions, requirements, and specifications stated in this RFP including the sample contract language provided in Exhibit A. Regardless of exceptions taken, Companies shall provide pricing based on the requirements and terms set forth in this RFP. Exceptions shall be identified in accordance with Sections 1.6.13 and 4.1.5 of this RFP.

Section 6
Required Forms

REQUIRED FORM 1 - REQUEST FOR PROPOSALS ACKNOWLEDGEMENT
RFP # 603-COF1516289

Point of Sale System and Installation

The Company hereby certifies receipt of the Request for Proposals for the City of Fayetteville, North Carolina RFP #603-COF1516289, Point of Sale System and Installation . This form should be completed upon receipt of the City's Request for Proposals and emailed by or before **JULY 30, 2018**. Failure to submit this form by the designated date shall not preclude the Company from submitting a proposal. Please email the completed Request for Proposals Acknowledgement Form to the attention of:

Kimberly Toon
City Purchasing Office
Email: KToon@ci.fay.nc.us

Date: _____

Authorized Signature: _____

Title: _____

Company Name: _____

Contact Name: _____

Contact E-mail address: _____

Contact Telephone: _____

Please check the appropriate space below and provide the requested information:

_____ **We plan to attend the Pre-Proposal Conference and plan on submitting a Proposal**

Indicate number of attendees: _____

_____ **We do not plan to attend the Pre-Proposal Conference but plan on submitting a Proposal**

Reason: _____

_____ **We do not plan to attend the Pre-Proposal Conference and do not plan on submitting a Proposal**

Reason: _____

Section 6
Required Forms

REQUIRED FORM 2 - ADDENDA RECEIPT CONFIRMATION

RFP # 603-COF1516289

Point of Sale System and Installation

Please acknowledge receipt of all addenda by including this form with your Proposal. All addenda will be posted to the City of Fayetteville website and NC IPS website.

ADDENDUM #:

DATE:

I certify that this proposal complies with the Specifications and conditions issued by the City except as clearly marked in the attached copy.

(Please Print Name)

Date

Authorized Signature

Title

Company Name

Section 6
Required Forms

REQUIRED FORM 3 - PROPOSAL SUBMISSION FORM

RFP # 603-COF1516289

Point of Sale System and Installation

This Proposal is submitted by:

Company Name: _____

Representative (printed): _____

Address: _____

City/State/Zip: _____

Email address: _____

Telephone: _____

(Area Code) Telephone Number

The representative signing above hereby certifies and agrees that the following information is correct:

1. In preparing its Proposal, the Service Provider has considered all proposals submitted from qualified, potential subcontractors and suppliers; and has not engaged in or condoned prohibited discrimination.
2. For purposes of this Section, discrimination means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor or supplier on the basis of race, ethnicity, gender, age or disability or any otherwise unlawful form of discrimination. Without limiting the foregoing, discrimination also includes retaliating against any person or other entity for reporting any incident of discrimination.
3. Without limiting any other provision of the solicitation for proposals on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the Proposal submitted by the Service Provider on this Project and to terminate any contract awarded based on such Proposal.
4. As a condition of contracting with the City, the Service Provider agrees to maintain documentation sufficient to demonstrate that it has not discriminated in its solicitation or selection of subcontractors. The Service Provider further agrees to promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation and selection of subcontractors. Failure to maintain or failure to provide such information constitutes grounds for the City to reject the bid submitted by the Service Provider or terminate any contract awarded on such bid.
5. As part of its Proposal, the Service Provider shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against Service Provider in a legal or administrative proceeding alleging that Service Provider discriminated against its subcontractors, vendors or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.
6. The information contained in this Proposal or any part thereof, including its Exhibits, Schedules, and other documents and instruments delivered or to be delivered to the City, is true, accurate, and complete. This Proposal includes all information necessary to ensure that the statements therein do not in whole or in part mislead the City as to any material facts.
7. It is understood by the Company that the City reserves the right to reject any and all Proposals, to make awards on all items or on any items according to the best interest of the City, to waive formalities, technicalities, to recover and re-bid this RFP.
8. This Proposal is valid for one hundred and eighty (180) calendar days from the Proposal due date.

I, the undersigned, hereby acknowledge that my company was given the opportunity to provide exceptions to the Sample Terms as included herein as Exhibit A. As such, I have elected to do the following:

Include exceptions to the sample contract in the following section of my Proposal: _____

Not include any exceptions to the Sample Terms.

I, the undersigned, hereby acknowledge that my company was given the opportunity to indicate any Trade Secret

Section 6

Required Forms

materials or Personally Identifiable Information (“PII”) as detailed in Section 1.6.X. I understand that the City is legally obligated to provide my Proposal documents, excluding any appropriately marked Trade Secret information and PII, upon request by any member of the public. As such, my company has elected as follows:

The following section(s) of the Proposal are marked as Trade Secret or PII: _____

No portion of the Proposal is marked as Trade Secret or PII.

Representative (signed): _____

Section 6
Required Forms

REQUIRED FORM 4 - PRICING WORKSHEET

RFP # 603-COF1516289

Point of Sale System and Installation

Regardless of exceptions taken, Companies shall provide pricing based on the requirements and terms set forth in this RFP and all attachments. **Service Provider agrees to perform all of the work identified in Section 3 – Scope of work. The total proposed project price shall be all-inclusive and cover every aspect of the Project. Cost must be in United States dollars.**

Ballpark Point of Sale System Pricing Sheet			
Description	Quantity	Unit Price	Extended Price
Wired Concessions Terminals	28	\$	\$
Portable (Wireless) Terminals	12	\$	\$
Premium Terminals	3	\$	\$
Vending Software	1	\$	\$
Computer Workstation	1	\$	\$
Server Hardware	1	\$	\$
All Use and Sales Tax			\$
Installation Labor			\$
Total Project Cost			\$

Annual System Support and Maintenance		
Year 1	\$	Price Per Year
Years 2-5	\$	Price for 4 years
Total 5 Year Support Cost	\$	

Optional Additional Units - If Needed		
Description	Quantity	Unit Price
Wired Concessions Terminals	1	\$
Portable (Wireless) Terminals	1	\$
Premium Terminals	1	\$

Service Provider understands that the City reserves the right to accept or reject in whole or part any or all proposed pricing received. Furthermore, the City reserves the right to waive any informalities or irregularities therein, to accept a proposal that represents the best value to the City for this construction project.

Signature

Date: _____

Section 6
Required Forms

REQUIRED FORM 5 – M/W/LSBE UTILIZATION

RFP # 603-COF1516289

Point of Sale System and Installation

The City maintains a strong commitment to the inclusion of LSDBEs in the City’s contracting and procurement process when there are viable subcontracting opportunities.

Companies must submit this form with their proposal outlining any supplies and/or services to be provided by each City certified Small Business Enterprise (SBE), and/or City registered Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE) for the Contract. If the Company is a City-registered LSDBE, note that on this form.

The City recommends you exhaust all efforts when identifying potential LSDBEs to participate on this RFP.

Company Name:	
----------------------	--

Please indicate if **your company** is any of the following:

___ MBE ___ WBE ___ SBE ___ None of the above

If your company has been certified with any of the agencies affiliated with the designations above, indicate which agency, the effective and expiration date of that certification below:

Agency Certifying: _____ Effective Date: _____ Expiration Date: _____

Identify outreach efforts that *were employed* by the firm to maximize inclusion of LSDBEs to be submitted with the firm’s proposal (attach additional sheets if needed):

Identify outreach efforts that *will be employed* by the firm to maximize inclusion during the contract period of the Project (attach additional sheets if needed):

[Form continues on next page]

Section 6 **Required Forms**

List below all **LSDBEs** that you intend to subcontract to while performing the Services:

Subcontractor Name	Description of work or materials	Indicate either "M", "S", and/or "W"	City Vendor #

Total MBE Utilization	%
Total WBE Utilization	%
Total LSBE Utilization	%
Total LSDBE Utilization	%

Representative (signed): _____

Date

Representative Name

Estimated Total Contract Value

Section 6
Required Forms

REQUIRED FORM 6 – COMPANY’S BACKGROUND RESPONSE

RFP # 603-COF1516289

Point of Sale System and Installation

Companies shall complete and submit the form below as part of their response to this RFP. Additional pages may be attached as needed to present the information requested.

Question	Response
Company’s legal name	
Company Location (indicate corporate headquarters and location that will be providing the Services).	
How many years has your company been in business? How long has your company been providing the services detailed in section 3.	
How many construction installation projects similar to this have you completed? Identify by name some of the clients similar to City (e.g., similar in size, complexity, location, type of organization).	
List any projects or services terminated by a government entity. Please disclose the government entity that terminated and explain the reason for the termination.	
List any litigation that your company has been involved with during the past two (2) years for Services similar to those in this RFP.	
Provide an overview and history of your company.	
If your company is a subsidiary, identify the number of employees in your company or division and the revenues of proposing company or division.	
Provide a management organization chart of your company’s overall organization, including director and officer positions and names and the reporting structure.	
Describe the key individuals along with their qualifications, professional certifications and experience that would comprise your company’s team for providing the Services.	
Explain how your organization ensures that personnel performing the Services are qualified and proficient.	

Section 6
Required Forms

REQUIRED FORM 7 – REFERENCES

RFP # 603-COF1516289

Point of Sale System and Installation

Companies shall complete the form below. The City’s preference is for references from organizations of similar size or where the Company is performing similar services to those described herein. If such references are not available, individuals or companies that can speak to the Company’s performance are adequate.

Reference 1	
Company Name	
Contact Name	
Phone Number	
Reference 2	
Company Name	
Contact Name	
Phone Number	
Reference 3	
Company Name	
Contact Name	
Phone Number	
Reference 4	
Company Name	
Contact Name	
Phone Number	
Reference 5	
Company Name	
Contact Name	
Phone Number	

EXHIBIT A – *SAMPLE CITY CONTRACT*

As used in this Section of the RFP, the term “Contract” shall refer to the agreement entered into between the City and the Company, and the term “Company” shall refer to the vendor that has been awarded a contract.

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

**AGREEMENT TO PROVIDE
POINT OF SALE SYSTEM AND INSTALLATION**

THIS PROFESSIONAL SERVICES CONTRACT (the “Contract”) is made and entered into as of this _____ day of _____ 201_ (the “Effective Date”), by and between _____, a corporation doing business in North Carolina (the "Company"), and the City of Fayetteville, a North Carolina municipal corporation (the "City").

RECITALS

WHEREAS, the City issued a Request for Proposals (RFP # 603-COF1516289) for Point of Sale System and Installation dated FEBRUARY 16, 2018. This Request for Proposals together with all attachments and addenda, is referred to herein as the “RFP”; and

WHEREAS, the City desires that the Company provide certain Point of Sale System and Installation (“Services”), and the Company desires to provide such Services; and

WHEREAS, the City and the Company have negotiated and agreed regarding the above-referenced Services and desire to reduce the terms and conditions of their agreement to this written form.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

CONTRACT

1. **EXHIBITS.** The Exhibits below are hereby incorporated into and made a part of this Contract. In interpreting this Contract and resolving any ambiguities, the main body of this Contract will take precedence over the Exhibits, and any inconsistency between the Exhibits will be resolved in the order in which the Exhibits appear below. Each reference to **COMPANY NAME** in the Exhibits and Appendices shall be deemed to mean the Company.

EXHIBIT A: PRICE SCHEDULE

EXHIBIT B: SCOPE OF WORK

2. **DEFINITIONS.** This section may include, but not be limited to, terms defined in Section 1 of the RFP.

3. **DESCRIPTION OF SERVICES.**

3.1. The Company shall be responsible for providing the Services described in Exhibit B attached to this Contract and incorporated herein by reference. Without limiting the foregoing, the Company will perform the Services and meet the requirements as set forth in Exhibit B. However, the Company shall not be responsible for tasks specifically assigned to the City in this Contract or in Exhibit B.

3.2. The Company shall perform the Services on site at the City’s facility in Fayetteville, North Carolina, except as mutually agreed upon in writing in specific instances by the City.

4. **COMPENSATION.**

4.1. **TOTAL FEES AND CHARGES**

The City agrees to pay the Company a fixed price (the “Purchase Price”) as full and complete consideration for the satisfactory performance of all the requirements of this Contract. This amount constitutes the maximum total fees and charges payable to the Company under this Contract including Expenses and will not be increased except by a written instrument duly executed by both parties, which expressly states that it amends this Section of the Contract. The Payment Cap constitutes the maximum total fees and charges payable to the Company under this Contract including Expenses and will not be increased except by a written instrument duly executed by both parties.

4.2. **MILESTONE PAYMENT PLAN.** The Company shall invoice the City for the Purchase Price in accordance with the Milestone Plan, which shall be attached as Appendix B to the Statement of Work.

Section 7

Sample City Contract

The Company shall not invoice the City for any Services or Deliverables within a particular Milestone until all Services and Deliverables required in connection with that Milestone have been fully delivered, completed and Accepted by the City.

The Company shall not be entitled to charge the City for any travel, mileage, meals, materials or other costs or expenses associated with this Contract.

- 4.3. **EMPLOYMENT TAXES AND EMPLOYEE BENEFITS.** The Company represents and warrants that the employees provided by the Company to perform the Services are actual employees of the Company, and that the Company shall be responsible for providing all salary and other applicable benefits to each Company employee. The Company further represents, warrants and covenants that it will pay all withholding tax, social security, Medicare, unemployment tax, worker's compensation and other payments and deductions that are required by law for each Company employee. The Company agrees that the Company employees are not employees of the City.
- 4.4. **INVOICES.** Each invoice sent by the Company shall detail all Services performed and delivered which are necessary to entitle the Company to the requested payment under the terms of this Contract. All invoices must include an invoice number and the City purchase order number for purchases made under this Contract. Purchase order numbers will be provided by the City. Invoices must be submitted with lines matching those on the City-provided purchase order.
- 4.5. **DUE DATE OF INVOICES.** Payment of invoices shall be due within thirty (30) days after receipt of an accurate, undisputed properly submitted invoice by the City.
- 4.6. **PRE-CONTRACT COSTS.** The City shall not be charged for any Services or other work performed by the Company prior to the Effective Date of this Contract.
- 4.7. **AUDIT.** During the term of this Contract and for a period of one (1) year after termination of this Contract, the City shall have the right to audit, either itself or through an independent auditor, all books and records and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of this Contract or the City's payment obligations. The City shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Company. However, if non-compliance is found that would have cost the City in excess of \$10,000 but for the audit, then the Company shall be required to reimburse the City for the cost of the audit.
5. **RECORDS.** The Company shall be responsible for keeping a record that accurately states the type of Service performed. The City shall have the right to audit the Company's invoices, expense reports and other documents relating to the Services performed under this Contract, and shall not be required to pay for Services which did not occur, or which occurred in breach of this Contract. The Company shall make such documents available for inspection and copying by the City in Fayetteville, North Carolina between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, whenever requested by the City.
6. **TIME IS OF THE ESSENCE.** Time is of the essence in having the Company perform all Services and deliver all Deliverables within the time frames provided by this Contract and Exhibit B, including all completion dates, response times and resolution times (the "Completion Dates"). Except as specifically stated in this Contract, there shall be no extensions of the Completion Dates. All references to days in this Contract (including the Exhibits) shall refer to calendar days rather than business days, unless this Contract provides otherwise for a specific situation.
7. **NON-APPROPRIATION OF FUNDS.** If the Fayetteville City Council does not appropriate the funding needed by the City to make payments under this Contract for any given fiscal year, the City will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the City will promptly notify the Company of the non-appropriation and this Contract will be terminated at the end of the fiscal year for which the funds were appropriated. No act or omission by the City, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Contract.
8. **COMPANY PROJECT MANAGER.** The duties of the Company Project Manager include, but are not limited to:
 - 8.1. Coordination of Project schedules and the Company's resource assignment based upon the City's requirements and schedule constraints;
 - 8.2. Management of the overall Project by monitoring and reporting on the status of the Project and actual versus projected progress, and by consulting with the City's Project Manager when deviations occur and by documenting all such deviations in accordance with agreed upon change control procedures;
 - 8.3. Provision of consultation and advice to the City on matters related to Project implementation

strategies, key decisions and approaches, and Project operational concerns/issues and acting as a conduit to the Company's specialist resources that may be needed to supplement the Company's normal implementation staff;

- 8.4. Acting as the Company's point of contact for all aspects of contract administration, including invoicing for Services, and status reporting;
 - 8.5. Facilitation of review meetings and conferences between the City and the Company's executives when scheduled or requested by the City;
 - 8.6. Communication among and between the City and the Company's staff;
 - 8.7. Promptly responding to the City Project Manager when consulted in writing or by E-mail with respect to Project deviations and necessary documentation;
 - 8.8. Identifying and providing the City with timely written notice of all issues that may threaten the Company's Services in the manner contemplated by the Contract (with "timely" meaning immediately after the Company becomes aware of them);
 - 8.9. Ensuring that adequate quality assurance procedures are in place throughout the Contract; and
 - 8.10. Meeting with other service providers working on City projects that relate to this effort as necessary to resolve problems and coordinate the Services.
- 9. CITY PROJECT MANAGER.** The duties of the City Project Manager are to (i) ensure that the Company delivers all requirements and specifications in the Contract; (ii) coordinate the City's resource assignment as required to fulfill the City's obligations pursuant to the Contract; (iii) promptly respond to the Company Project Manager when consulted in writing or by E-mail with respect to project issues; and (iv) act as the City's point of contact for all aspects of the Services including contract administration and coordination of communication with the City's staff. The City shall be allowed to change staffing for the City Project Manager position on one (1) business days' notice to the Company.
- 10. PROGRESS REPORTS.** The Company shall prepare and submit to the City bi-weekly (or at such other times as may be agreed in Exhibit B) written progress reports, which accomplish each of the following:
- 10.1. Update the project schedule set forth in Exhibit B, indicating progress for each task and Deliverable.
 - 10.2. Identify all information, personnel, equipment, facilities and resources of the City that will be required for the Company to perform the Services for the subsequent month.
 - 10.3. Identify and report the status of all tasks and Deliverables that have fallen behind schedule.
 - 10.4. Identify and summarize all risks and problems identified by the Company, which may affect the performance of the Services.
 - 10.5. For each risk and problem, identify the action and person(s) responsible for mitigating the risk and resolving the problem.
 - 10.6. For each risk and problem identified, state the impact on the project schedule.
- 11. DUTY OF COMPANY TO IDENTIFY AND REQUEST INFORMATION, PERSONNEL AND FACILITIES.** The Company shall identify and request in writing from the City in a timely manner: (i) all information reasonably required by the Company to perform each task comprising the Services, (ii) the City's personnel whose presence or assistance reasonably may be required by the Company to perform each task comprising the Services, and (iii) any other equipment, facility or resource reasonably required by the Company to perform the Services. Notwithstanding the foregoing, the Company shall not be entitled to request that the City provide information, personnel or facilities other than those that Exhibit B specifically requires the City to provide, unless the City can do so at no significant cost. The Company shall not be relieved of any failure to perform under this Contract by virtue of the City's failure to provide any information, personnel, equipment, facilities or resources: (i) that the Company failed to identify and request in writing from the City pursuant to this Section; or (ii) that the City is not required to provide pursuant to this Contract. In the event the City fails to provide any information, personnel, facility or resource that it is required to provide under this Section, the Company shall notify the City in writing immediately in accordance with the notice provision of this Contract. Failure to do so shall constitute a waiver by Company of any claim or defense it may otherwise have based on the City's failure to provide such information, personnel, facility or resource.
- 12. COMPANY PERSONNEL REMOVAL, REPLACEMENT, PROMOTION, ETC.**
- 12.1. The City will have the right to require the removal and replacement of any personnel of the Company or the Company's subcontractors who are assigned to provide Services to the City based on experience, qualifications, performance, conduct, compatibility, and violation of City policy or any other reasonable grounds. The addition or promotion of any personnel to key positions within the

Project must be approved by the City in writing. The Company will replace any personnel that leave the Project, including but not limited to Key Personnel, with persons having at least equivalent qualifications who are approved by the City in writing. As used in this Contract, the “personnel” includes all staff provided by the Company or its subcontractors, including but not limited to Key Personnel.

12.2. Unless approved by the City in writing, the Company's personnel set forth in Exhibit B (the "Key Personnel") shall stay on the Project until termination without any material reduction of such Key Personnel's duties, time on the Project or level of involvement. In the event of a breach or potential breach of the foregoing sentence, the Company will use its best efforts to maintain such Key Personnel on the Project (if necessary, in a subcontracting role).

13. **BACKGROUND CHECKS.** Prior to starting work under this Contract, the Company is required to conduct a background check on each Company employee assigned to work under this Contract, and shall require its subcontractors (if any) to perform a background check on each of their employees assigned to work under this Contract (collectively, the “Background Checks”). Each Background Check must include: (i) the person’s criminal conviction record from the states and counties where the person lives or has lived in the past seven (7) years; and (ii) a reference check.

After starting work under this Contract, the Company is required to perform a Background Check for each new Company employee assigned to work under this Contract during that year, and shall require its subcontractors (if any) to do the same for each of their employees. If the Company undertakes a new project under this Contract, then prior to commencing performance of the project the Company shall perform a Background Check for each Company employee assigned to work on the project, and shall require its subcontractors (if any) to do the same for each of their employees.

If a person’s duties under this Contract fall within the categories described below, the Background Checks that the Company will be required to perform (and to have its subcontractors perform) shall also include the following additional investigation:

- If the job duties require driving: A motor vehicle records check.

The Company must follow all State and Federal laws when conducting Background Checks, including but not limited to the Fair Credit Reporting Act requirements, and shall require its subcontractors to do the same.

The Company shall notify the City of any information discovered in the Background Checks that may be of potential concern for any reason.

The City may conduct its own background checks on principals of the Company as the City deems appropriate. By operation of the public records law, background checks conducted by the City are subject to public review upon request.

14. **ACCEPTANCE OF DELIVERABLES AND MILESTONES.** Within a reasonable time after a particular Deliverable or Milestone has been completed (or such specific time as may be set forth in Exhibit B), the Company shall submit a written notice to the City’s Project Manager stating the Deliverable(s) or Milestone that have been met. This notice shall include a signature page for sign-off by the City Project Manager indicating acceptance of such Deliverable(s) or Milestone.

If the City Project Manager is not satisfied that the Deliverable(s) or Milestone has been met, a notice of rejection (a “Rejection Notice”) shall be submitted to the Company by the City Project Manager that specifies the nature and scope of the deficiencies that the City wants corrected. Upon receipt of a Rejection Notice, the Company shall: (i) act diligently and promptly to correct all deficiencies identified in the Rejection Notice, and (ii) immediately upon completing such corrections give the City a written, dated certification that all deficiencies have been corrected (the “Certification”). In the event the Company fails to correct all deficiencies identified in the Rejection Notice and provide a Certification within thirty (30) days after receipt of the Rejection Notice, the City shall be entitled to terminate this Contract for default without further obligation to the Company and without obligation to pay for the defective work.

Upon receipt of the corrected Deliverable(s) or Milestone, or a Certification, whichever is later, the above-described Acceptance procedure shall recommence. The City shall not be obligated to allow the Company to recommence curative action with respect to any deficiency previously identified in a Rejection Notice, or more than once for any given Deliverable or Milestone (and shall be entitled to terminate this Contract for default if the Company does not meet this time frame).

15. **NON-EXCLUSIVITY.** The Company acknowledges that it is one of several providers of Professional Services to the City and the City does not represent that it is obligated to contract with the Company for any

particular project.

- 16. EACH PARTY TO BEAR ITS OWN NEGOTIATION COSTS.** Each party shall bear its own cost of negotiating this Contract and developing the exhibits. The City shall not be charged for any Services or other work performed by the Company prior to the Effective Date.

17. REPRESENTATIONS AND WARRANTIES OF COMPANY.

17.1. GENERAL WARRANTIES.

- 17.1.1. The Services shall satisfy all requirements set forth in this Contract, including but not limited to the attached Exhibits;
- 17.1.2. The Company has taken and will continue to take sufficient precautions to ensure that it will not be prevented from performing all or part of its obligations under this Contract by virtue of interruptions in the computer systems used by the Company;
- 17.1.3. All Services performed by the Company and/or its subcontractors pursuant to this Contract shall meet the highest industry standards and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
- 17.1.4. Neither the Services nor any Deliverables provided by the Company under this Contract will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party;
- 17.1.5. The Company and each Company employee provided by the Company to the City shall have the qualifications, skills and experience necessary to perform the Services described or referenced in Exhibit B;
- 17.1.6. All information provided by the Company about each Company employee is accurate; and
- 17.1.7. Each Company employee is an employee of the Company, and the Company shall make all payments and withholdings required for by law for the Company for such employees.

17.2. ADDITIONAL WARRANTIES. The Company further represents and warrants that:

- 17.2.1. It is a legal entity and if incorporated, duly incorporated, validly existing and in good standing under the laws of the state of its incorporation or licensing and is qualified to do business in North Carolina;
- 17.2.2. It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;
- 17.2.3. The execution, delivery, and performance of this Contract have been duly authorized by the Company;
- 17.2.4. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Contract;
- 17.2.5. In connection with its obligations under this Contract, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and
- 17.2.6. The performance of this Contract by the Company and each Company employee provided by the Company will not violate any contracts or agreements with third parties or any third party rights (including but not limited to non-compete agreements, non-disclosure agreements, patents, trademarks or intellectual property rights).

18. OTHER OBLIGATIONS OF THE COMPANY.

- 18.1. **WORK ON CITY'S PREMISES.** The Company and all its employees will, whenever on the City's premises, obey all instructions and City policies that are provided with respect to performing Services on the City's premises.
- 18.2. **RESPECTFUL AND COURTEOUS BEHAVIOR.** The Company shall assure that its employees interact with City employees and the public in a courteous, helpful and impartial manner. All employees of the Company in both field and office shall refrain from belligerent behavior and/or profanity. Correction of any such behavior and language shall be the responsibility of the Company.
- 18.3. **REPAIR OR REPLACEMENT OF DAMAGED EQUIPMENT OR FACILITIES.** In the event that the Company causes damage to the City's equipment or facilities, the Company shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to the Company's action.
- 18.4. **REGENERATION OF LOST OR DAMAGED DATA.** With respect to any data that the Company

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or any Company employees have negligently lost or negligently damaged, the Company shall, at its own expense, promptly replace or regenerate such data from the City's machine-readable supporting material, or obtain, at the Company's own expense, a new machine-readable copy of lost or damaged data from the City's data sources.

- 18.5. E-VERIFY. The Company shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and shall require each of its subcontractors to do so as well.
- 18.6. IRAN DIVESTMENT ACT. The Company certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58; (ii) it will not take any action causing it to appear on any such list during the term of this Contract; and (iii) it will not utilize any subcontractor that is identified on any such list to provide goods or services hereunder.

19. REMEDIES.

- 19.1. RIGHT TO COVER. If the Company fails to meet any completion date or resolution time set forth in this Contract (including the Exhibits) or the Project Plan, the City may take any of the following actions with or without terminating this Contract, and in addition to and without limiting any other remedies it may have:
 - a. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the Company is again able to resume performance under this Contract; and
 - b. Deduct any and all expenses incurred by the City in obtaining or performing the Services from any money then due or to become due the Company and, should the City's cost of obtaining or performing the services exceed the amount due the Company, collect the amount due from the Company.
- 19.2. RIGHT TO WITHHOLD PAYMENT. If the Company breaches any provision of this Contract, the City shall have a right to withhold all payments due to the Company until such breach has been fully cured.
- 19.3. SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF. The Company agrees that monetary damages are not an adequate remedy for the Company's failure to provide the Services or Deliverables as required by this Contract, nor could monetary damages be the equivalent of the performance of such obligation. Accordingly, the Company hereby consents to an order granting specific performance of such obligations of the Company in a court of competent jurisdiction within the State of North Carolina. The Company further consents to the City obtaining injunctive relief (including a temporary restraining order) to assure performance in the event the Company breaches this Contract.
- 19.4. SETOFF. Each party shall be entitled to setoff and deduct from any amounts owed to the other party pursuant to this Contract all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Contract.
- 19.5. OTHER REMEDIES. Upon breach of this Contract, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

20. TERM AND TERMINATION OF CONTRACT.

- 20.1. TERM. This Contract shall commence on the Effective Date and shall continue in effect for warranty period provided by the telecom equipment provider and installer.
- 20.2. TERMINATION BY THE CITY. The City may terminate this Contract at any time without cause by giving thirty (30) days prior written notice to the Company. As soon as practicable after receipt of a written notice of termination without cause, the Company shall submit a statement to the City showing in detail the Services performed under this Contract through the date of termination. The foregoing payment obligation is contingent upon: (i) the Company having fully complied with Section 20.8; and (ii) the Company having provided the City with written documentation reasonably adequate to verify the number of hours of Services rendered by each Company employee through the termination date and the percentage of completion of each task.
- 20.3. TERMINATION FOR DEFAULT BY EITHER PARTY. By giving written notice to the other party, either party may terminate this Contract upon the occurrence of one or more of the following events:

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- a. The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Contract, provided that, unless otherwise stated in this Contract, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or
- b. The other party attempts to assign, terminate or cancel this Contract contrary to the terms hereof; or
- c. The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under the Contract shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

Any notice of default shall identify this Section of this Contract and shall state the party's intent to terminate this Contract if the default is not cured within the specified period.

Notwithstanding anything contained herein to the contrary, upon termination of this Contract by the Company for default, the Company shall continue to perform the Services required by this Contract for the lesser of: (i) six (6) months after the date the City receives the Company's written termination notice; or (ii) the date on which the City completes its transition to a new service provider.

- 20.4. **ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE CITY.** By giving written notice to the Company, the City may also terminate this Contract upon the occurrence of one or more of the following events (which shall each constitute separate grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):
- a. Failure of the Company to complete a particular task by the completion date set forth in this Contract;
 - b. The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Contract, or any covenant, agreement, obligation, term or condition contained in this Contract; or
 - c. The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Contract, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Contract, or failure to provide the proof of insurance as required by this Contract.
- 20.5. **NO SUSPENSION.** In the event that the City disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in this Contract, the Company agrees that it will not terminate this Contract or suspend or limit the Services or any warranties or repossess, disable or render unusable any software supplied by the Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.
- 20.6. **CANCELLATION OF ORDERS AND SUBCONTRACTS.** In the event this Contract is terminated by the City for any reason prior to the end of the term, the Company shall, upon termination, immediately discontinue all service in connection with this Contract and promptly cancel all existing orders and subcontracts, which are chargeable to this Contract. As soon as practicable after receipt of notice of termination, the Company shall submit a statement to the City showing in detail the Services performed under this Contract to the date of termination.
- 20.7. **AUTHORITY TO TERMINATE.** The following persons are authorized to terminate this Contract on behalf of the City: (i) the City Manager, any Assistant City Manager, or any designee of the City Manager; or (ii) the Department Director of the City Department responsible for administering this Contract.
- 20.8. **OBLIGATIONS UPON EXPIRATION OR TERMINATION.** Upon expiration or termination of this Contract, the Company shall promptly return to the City (i) all computer programs, files, documentation, media, related material and any other material and equipment that is owned by the City; (ii) all Deliverables that have been completed or that are in process as of the date of termination; and (iii) a written statement describing in detail all work performed with respect to Deliverables which are in process as of the date of termination. The expiration or termination of this Contract shall not relieve either party of its obligations regarding "Confidential Information," as defined in this Contract.

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- 20.9. NO EFFECT ON TAXES, FEES, CHARGES OR REPORTS. Any termination of this Contract shall not relieve the Company of the obligation to pay any fees, taxes or other charges then due to the City, nor relieve the Company of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Company from any claim for damages previously accrued or then accruing against the Company.
- 20.10. OTHER REMEDIES. The remedies set forth in this Section and **Section 19** shall be deemed cumulative and not exclusive, and may be exercised successively or concurrently, in addition to any other remedies available under this Contract or at law or in equity.

21. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

As time is of the essence, the Contractor is required to commence work to be performed under this agreement within ten (10) calendar days after written notice (Notice to Proceed) from the Contracting Officer to proceed with construction. Failure by the Contractor to complete the work within the contract time will cause considerable damage to the City. Therefore, a liquidated damage charge will be assessed for each day of overrun as \$1,000 a day and/or \$50,000 per Minor League Baseball game. The Contractor hereby agrees by executing the contract that such liquidated damages are considered a just and reasonable compensation to the City.

22. TRANSITION SERVICES UPON TERMINATION. Upon termination or expiration of this Contract, the Company shall cooperate with the City to assist with the orderly transfer of the Services provided by the Company to the City. Prior to termination or expiration of this Contract, the City may require the Company to perform and, if so required, the Company shall perform certain transition services necessary to shift the Services of the Company to another provider or to the City itself as described below (the "Transition Services"). Transition Services may include but shall not be limited to the following:

- Working with the City to jointly develop a mutually agreed upon Transition Services Plan to facilitate the termination of the Services;
- Notifying all affected service providers and subcontractors of the Company;
- Performing the Transition Services;
- Answering questions regarding the Services on an as-needed basis; and
- Providing such other reasonable services needed to effectuate an orderly transition to a new service provider.

23. CHANGES. In the event changes to the Services (collectively "Changes"), become necessary or desirable to the parties, the parties shall follow the procedures set forth in this Section. A Change shall be effective only when documented by a written, dated agreement executed by both parties that expressly references and is attached to this Contract (a "Change Statement"). The Change Statement shall set forth in detail: (i) the Change requested, including all modifications of the duties of the parties; (ii) the reason for the proposed Change; and (iii) a detailed analysis of the impact of the Change on the results of the Services and time for completion of the Services, including the impact on all Milestones and delivery dates and any associated price. In the event either party desires a Change, the Project Manager for such party shall submit to the other party's Project Manager a proposed Change Statement. If the receiving party does not accept the Change Statement in writing within ten (10) days, the receiving party shall be deemed to have rejected the Change Statement. If the parties cannot reach agreement on a proposed Change, the Company shall nevertheless continue to render performance under this Contract in accordance with its (unchanged) terms and conditions.

Changes that involve or increase in the amounts payable by the City may require execution by the City Manager or a designee depending on the amount. Some increases may also require approval by Fayetteville City Council.

24. CITY OWNERSHIP OF WORK PRODUCT.

- 24.1. The parties agree that the City shall have exclusive ownership of all reports, documents, designs, ideas, materials, reports, concepts, plans, creative works, and other work product developed for or provided to the City in connection with this Contract, and all patent rights, copyrights, trade secret rights and other intellectual property rights relating thereto (collectively the "Intellectual Property"). The Company hereby assigns and transfers all rights in the Intellectual Property to the City. The Company further agrees to execute and deliver such assignments and other documents as the City may later require to perfect, maintain and enforce the City's rights as sole owner of the Intellectual

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Property, including all rights under patent and copyright law. The Company hereby appoints the City as attorney in fact to execute all such assignments and instruments and agree that its appointment of the City as an attorney in fact is coupled with an interest and is irrevocable.

24.2. The City grants the Company a royalty-free, non-exclusive license to use and copy the Intellectual Property to the extent necessary to perform this Contract. The Company shall not be entitled to use the Intellectual Property for other purposes without the City's prior written consent, and shall treat the Intellectual Property as "Confidential Information" pursuant to Section 27 of the Contract.

24.3. The Company will treat as Confidential Information under the Confidentiality and Non-Disclosure Contract all data in connection with the Contract. City data processed by the Company shall remain the exclusive property of the City. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by the Contract.

25. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties established by this Contract is solely that of independent contractors, and nothing contained in this Contract shall be construed to (i) give any party the power to direct or control the day-to-day administrative activities of the other; or (ii) constitute such parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking; or (iii) make either party an agent of the other, or any Company employee an agent or employee of the City, for any purpose whatsoever. Neither party nor its agents or employees is the representative of the other for any purpose, and neither has power or authority to act as agent or employee to represent, to act for, bind, or otherwise create or assume any obligation on behalf of the other.

26. **INDEMNIFICATION.** To the fullest extent permitted by law, the Company shall indemnify, defend and hold harmless each of the "Indemnitees" (as defined below) from and against any and all "Charges" (as defined below) paid or incurred as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Services or any products or deliverables provided to the City pursuant to this Contract ("Infringement Claims"); (ii) seeking payment for labor or materials purchased or supplied by the Company or its subcontractors in connection with this Contract; (iii) arising from the Company's failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the Company or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from any claim that the Company or an employee or subcontractor of the Company is an employee of the City, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like. For purposes of this Section: (a) the term "Indemnitees" means the City and each of the City's officers, officials, employees, agents and independent contractors (excluding the Company); and (b) the term "Charges" means any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts).

If an Infringement Claim occurs, the Company shall either: (i) procure for the City the right to continue using the affected product or service; or (ii) repair or replace the infringing product or service so that it becomes non-infringing, provided that the performance of the overall product(s) and service(s) provided to the City shall not be adversely affected by such replacement or modification. If the Company is unable to comply with the preceding sentence within thirty (30) days after the City is directed to cease use of a product or service, the Company shall promptly refund to the City all amounts paid under this Contract.

This Section 25 shall remain in force despite termination of this Contract (whether by expiration of the term or otherwise).

27. **SUBCONTRACTING.** Should the Company choose to subcontract, the Company shall be the prime contractor and shall remain fully responsible for performance of all obligations that it is required to perform under the Contract. Any subcontract entered into by Company shall name the City as a third party beneficiary.

28. **CONFIDENTIAL INFORMATION.**

28.1. **CONFIDENTIAL INFORMATION.** Confidential Information includes any information, not generally known in the relevant trade or industry, obtained from the City or its vendors or licensors or which falls within any of the following general categories:

28.1.1. *Trade secrets.* For purposes of this Contract, trade secrets consist of *information* of the City or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and

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(b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.

- 28.1.2. *Information of the City or its suppliers, contractors or licensors marked “Confidential” or “Proprietary.”*
- 28.1.3. *Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.*
- 28.1.4. *Information contained in the City’s personnel files, as defined by N.C. Gen. Stat. 160A-168. This consists of all information gathered and/or maintained by the City about employees, except for that information which is a matter of public record under North Carolina law.*
- 28.1.5. *Citizen or employee social security numbers collected by the City.*
- 28.1.6. *Computer security information of the City, including all security features of electronic data processing, or information technology systems, and telecommunications networks. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.*
- 28.1.7. *Local tax records of the City that contains information about a taxpayer’s income or receipts.*
- 28.1.8. *Any attorney / City privileged information disclosed by either party.*
- 28.1.9. *Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.*
- 28.1.10. *The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.*
- 28.1.11. *Building plans of city-owned buildings or structures, as well as any detailed security plans.*
- 28.1.12. *Billing information of customers compiled and maintained in connection with the City providing utility services.*
- 28.1.13. *Other information that is exempt from disclosure under the North Carolina public records laws.*

Categories stated in Sections 27.1.3 through 27.1.13 above constitute “Highly Restricted Information,” as well as Confidential Information. The Company acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) the Company will also comply with any more restrictive instructions or written policies that may be provided by the City from time to time to protect the confidentiality of Highly Restricted Information.

The parties acknowledge that in addition to information disclosed or revealed after the date of this Contract, the Confidential Information shall include information disclosed or revealed within one (1) year prior to the date of this Contract.

28.2. **RESTRICTIONS.** The Company shall keep the Confidential Information in the strictest confidence, in the manner set forth below:

- 28.2.1. It shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information.
- 28.2.2. It shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information of the other to any third party or to any individual employed by the Company, other than an employee, agent, subcontractor or vendor of the City or Company who: (i) has a need to know such Confidential Information, and (ii) has executed a confidentiality agreement incorporating substantially the form of this Section of the Contract and containing all protections set forth herein.
- 28.2.3. It shall not use any Confidential Information of the City for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
- 28.2.4. It shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information of the other.
- 28.2.5. The Company shall use its best efforts to enforce the proprietary rights of the City and the

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City's vendors, licensors and suppliers (including but not limited to seeking injunctive relief where reasonably necessary) against any person who has possession of or discloses Confidential Information in a manner not permitted by this Contract.

28.2.6. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, the Company shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.

28.2.7. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the City or destroyed upon satisfaction of the purpose of the disclosure of such information.

28.3. **EXCEPTIONS.** The parties agree that the Company shall have no obligation with respect to any Confidential Information which the Company can establish:

28.3.1. Was already known to the Company prior to being disclosed by the disclosing party;

28.3.2. Was or becomes publicly known through no wrongful act of the Company;

28.3.3. Was rightfully obtained by the Company from a third party without similar restriction and without breach hereof;

28.3.4. Was used or disclosed by the Company with the prior written authorization of the City;

28.3.5. Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, the Company shall first give to the City notice of such requirement or request;

28.3.6. Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Company shall take use its best efforts to obtain an agreement or protective order providing that, to the greatest possible extent possible, this Contract will be applicable to all disclosures under the court order or subpoena.

28.4. **UNINTENTIONAL DISCLOSURE.** Notwithstanding anything contained herein in to the contrary, in the event that the Company is unintentionally exposed to any Confidential Information of the City, the Company agrees that it shall not, directly or indirectly, disclose, divulge, reveal, report or transfer such Confidential Information to any person or entity or use such Confidential Information for any purpose whatsoever.

28.5. **REMEDIES.** The Company acknowledges that the unauthorized disclosure of the Confidential Information of the City will diminish the value of the proprietary interests therein. Accordingly, it is agreed that if the Company breaches its obligations hereunder, the City shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.

29. INSURANCE.

29.1. **TYPES OF INSURANCE.** The Company shall obtain and maintain during the life of this Contract, with an insurance company rated not less than "A" by A.M. Best, authorized to do business in the State of North Carolina, acceptable to the City of Fayetteville, Risk and Legal managers the following insurance: See Appendix B Barton Malow Insurance Requirements.

30. COMMERCIAL NON-DISCRIMINATION. As a condition of entering into this Contract, the Company represents and warrants that it will fully comply with the City's Commercial Non-Discrimination Policy, as described in Section 2, Article V of the Fayetteville City Code, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors or suppliers in connection with a City contract or contract solicitation process, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The Company understands and agrees that a violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the Company from participating in City contracts or other sanctions.

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As a condition of entering into this Contract, the Company agrees to: (a) promptly provide to the City in a format specified by the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Contract; and (b) if requested, provide to the City within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Company has used on City contracts in the past five years, including the total dollar amount paid by the Company on each subcontract or supply contract. The Company further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Non-Discrimination Policy, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such Policy.

The Company agrees to provide to the City from time to time on the City's request, payment affidavits detailing the amounts paid by the Company to subcontractors and suppliers in connection with this Contract within a certain period of time. Such affidavits shall be in the format specified by the City from time to time. The Company understands and agrees that violation of this Commercial Non-Discrimination provision shall be considered a material breach of this Contract and may result in contract termination, disqualification of the Company from participating in City contracts and other sanctions.

31. NOTICES AND PRINCIPAL CONTACTS. Any notice, consent or other communication required or contemplated by this Contract shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below:

<u>For the Company:</u>	<u>For the City:</u>
_____	Kimberly Toon
_____	City of Fayetteville
_____	Finance Dept - Purchasing Office
_____	433 Hay Street – 2 nd Floor
_____	Fayetteville, NC 28301
PHONE: _____	PHONE: 910-433-1358
E-MAIL: _____	KToon@ci.fay.nc.us

Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice, which is sent by telefax or electronic mail, shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

32. MISCELLANEOUS.

- 32.1. ENTIRE AGREEMENT. This Contract is the entire agreement between the parties with respect to its subject matter, and there are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Contract supersedes all prior agreements, negotiations, representations and proposals, written or oral.
- 32.2. AMENDMENT. No amendment or change to this Contract shall be valid unless in writing and signed by both parties to this Contract.
- 32.3. GOVERNING LAW AND JURISDICTION. The parties acknowledge that this Contract is made and entered into in Fayetteville, North Carolina, and will be performed in Fayetteville, North Carolina. The parties further acknowledge and agree that North Carolina law shall govern all the rights, obligations, duties and liabilities of the parties under this Contract, and that North Carolina law shall govern interpretation and enforcement of this Contract and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles). The parties further agree that any and all legal actions or proceedings relating to this Contract shall be brought in a state or federal court sitting in Cumberland County, North Carolina. By the execution of this Contract, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections, which they may have with respect to venue in any court sitting in Cumberland County, North Carolina.
- 32.4. BINDING NATURE AND ASSIGNMENT. This Contract shall bind the parties and their successors and permitted assigns. Neither party may assign any of the rights and obligations thereunder without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void.
- 32.5. CITY NOT LIABLE FOR DELAYS. It is agreed that the City shall not be liable to the Company, its agents or representatives or any subcontractor for or on account of any stoppages or delay in the

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performance of any obligations of the City or any other party hereunder caused by injunction or other legal or equitable proceedings or on account of any other delay for any cause beyond the City's reasonable control. The City shall not be liable under any circumstances for lost profits or any other consequential, special or indirect damages.

32.6. **FORCE MAJEURE.**

32.6.1. The Company shall be not liable for any failure or delay in the performance of its obligations pursuant to this Contract (and such failure or delay shall not be deemed a default of this Contract or grounds for termination hereunder if all of the following conditions are satisfied: (i) if such failure or delay: (a) could not have been prevented by reasonable precaution, and (b) cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and (ii) if and to the extent such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, or court order.

32.6.2. Upon the occurrence of an event which satisfies all of the conditions set forth above (a "Force Majeure Event") the Company shall be excused from any further performance of those of its obligations pursuant to this Contract affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the Company continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

32.6.3. Upon the occurrence of a Force Majeure Event, the Company shall immediately notify the City by telephone (to be confirmed by written notice within two (2) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than five (5) days, the City may terminate this Contract.

32.6.4. Strikes, slow-downs, walkouts, lockouts, and individual disputes are not excused under this provision.

32.7. **SEVERABILITY.** The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Contract shall not affect the validity of the remaining portion of the Contract so long as the material purposes of the Contract can be determined and effectuated. If any provision of this Contract is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

32.8. **NO PUBLICITY.** No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Contract or the City in any manner absent the written consent of the City.

32.9. **APPROVALS.** All approvals or consents required under this Contract must be in writing.

32.10. **WAIVER.** No delay or omission by either party to exercise any right or power it has under this Contract shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Contract shall not be constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Contract shall be effective unless in writing and signed by the party waiving the rights.

32.11. **SURVIVAL OF PROVISIONS.** The following sections of this Contract shall survive the termination hereof:

- Section 4.3 "Employment Taxes and Employee Benefits"
- Section 17 "Representations and Warranties of Company"
- Section 20 "Term and Termination of Contract"
- Section 23 "City Ownership of Work Product"
- Section 25 "Indemnification"
- Section 27 "Confidential Information"
- Section 28 "Insurance"
- Section 30 "Notices and Principal Contacts"

Section 31 “Miscellaneous”

- 32.12. **CHANGE IN CONTROL.** In the event of a change in “Control” of the Company (as defined below), the City shall have the option of terminating this Contract by written notice to the Company. The Company shall notify the City within ten (10) days of the occurrence of a change in control. As used in this Contract, the term “Control” shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Company or (ii) the power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.
- 32.13. **DRAFTER’S PROTECTION.** Each of the Parties has agreed to the use of the particular language of the provisions of this Contract and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the drafters, but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred upon the Parties hereto and the limitations and restrictions upon such rights and benefits intended to be provided.
- 32.14. **FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES.** The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Company further agrees that it will at all times during the term of this Contract be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to, workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the Services.
- 32.15. **CONFLICT OF INTEREST.** The Company covenants that its officers, employees and shareholders have no interest and shall not acquire any interest, direct or indirect that would conflict in any manner or degree with the performance of Services required to be performed under the Contract.
- 32.16. **NO BRIBERY.** The Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the foregoing has bribed or attempted to bribe an officer or employee of the City in connection with the Contract.
- 32.17. **HARASSMENT.** The Company agrees to make itself aware of and comply with the City's Harassment Policy. The City will not tolerate or condone acts of harassment based upon race, sex, religion, national origin, color, age, or disability. Violators of this policy will be subject to termination.
- 32.18. **TRAVEL UPGRADES.** The City has no obligation to reimburse the Company for any travel or other expenses incurred in connection with this Contract unless this Contract specifically requires reimbursement. If this Contract requires reimbursement by the City: (a) the City will only pay coach/economy rate airline fares, and (b) the Company’s invoices shall include sufficient detail of travel expenses to demonstrate that fares were at coach/economy rates. Notwithstanding the foregoing, nothing in this provision shall preclude complimentary upgrades to first class or business class seating, mileage, points, or credits based upgrades, or upgrades paid for by the contractor so long as the City is not charged for or asked to reimburse the upgrade charge or the value of the miles, points, or credits used.
- 32.19. **TAXES.** Except as specifically stated elsewhere in this Contract, the Company shall pay all applicable federal, state and local taxes which may be chargeable against the performance of the Services. The Company consents to and authorizes the City to collect any and all delinquent taxes and related interest, fines, or penalties of the Company by reducing any payment, whether monthly, quarterly, semi-annually, annually, or otherwise, made by the City to the Company pursuant to this Contract for an amount equal to any and all taxes and related interest, fines, or penalties owed by the Company to the City. The Company hereby waives any requirements for notice under North Carolina law for each and every instance that the City collects delinquent taxes pursuant to this paragraph. This paragraph shall not be construed to prevent the Company from filing an appeal of the assessment of the delinquent tax if such appeal is within the time prescribed by law.
- 32.20. **COUNTERPARTS.** This Contract may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the parties.

[Signature Page Follows]

Appendices

IN WITNESS WHEREOF, and in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have caused this Contract to be executed as of the date first written above.
[INSERT COMPANY NAME]

BY: _____
(Signature)

PRINT NAME: _____

TITLE: _____

DATE: _____

**CITY OF FAYETTEVILLE:
CITY MANAGER**

BY: _____
(Signature)

PRINT NAME: _____

TITLE: _____

DATE: _____

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

BY: _____
(Signature)

DATE: _____

APPENDICES

PLEASE NOTE: Due to the large size of the files that make up the appendices an electronic drop box has been set up. Interested Service Providers need to email Kimberly Toon at KToon@ci.fay.nc.us to gain access to the electronic drop box. Access to the drop box may not be shared among colleagues, therefore please provide the **Name, Company, Email** address for each individual your firm will want to review the documents listed in the chart below.

Point of Sale System and Installation Appendix Guide	
Appendix A	Barton Malow Insurance Requirements
Appendix B	Barton Malow Safety Manual
Appendix C	Barton Malow Procedure Manual
Appendix D	Barton Malow Construction Schedule
Appendix E	Populous Bid Package Vol 1 - Specifications
Appendix F	Populous Bid Package Vol 2 - Specifications
Appendix G	Populous Bid Package Plans Vol 1
Appendix H	Populous Bid Package Plans Vol 2
Appendix I	Populous Bid Package Plans Vol 3