

PURCHASING

TO: Prospective Bidders

FROM: Kimberly Toon, Purchasing Manager

SUBJECT: Request for Proposals: Operation of Food, Beverage and/or Retail Services at the New FAST Transit Center Downtown Fayetteville, NC 28301

DATE AND TIME: Thursday, August 2, 2018; 5:00 p.m.

The City of Fayetteville, is currently seeking proposals from qualified vendors for the project entitled "Operation of Food, Beverage and/or Retail Services at the New FAST Transit Center Downtown Fayetteville".

Proposals for use these spaces will be received in the City Purchasing Office, 433 Hay Street, Fayetteville, NC until 5:00 p.m., Thursday, August 2, 2018. Proposals received after the stated date and time will not be considered. A pre-proposal meeting will be held on July 20, 2018 at 10:00 a.m. at the FAST Transit Center, 505 Franklin Street, Fayetteville, NC 28301 in the second floor community room.

Enclosed are instructions for presenting competitive proposals covering this work. Please review these documents carefully and use the forms provided to submit your proposals.

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

Kimberly Toon
Purchasing Manager

433 Hay Street Fayetteville, NC 28301-5537
(910) 433-1942 | www.cityoffayetteville.org | www.faytv7.com

The City of Fayetteville, North Carolina does not discriminate on the basis of race, sex, color, age, national origin, religion, or disability in its employment opportunities, programs, services, or activities.

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

I. Notice

The City of Fayetteville and Fayetteville Area System of Transit (FAST) will receive and evaluate Proposals from qualified and interested parties to lease and operate food, beverage and/or retail services at the new FAST Transit Center in downtown Fayetteville, NC.

Proposals will be received in the City Purchasing Office, 433 Hay Street, Fayetteville, NC until 5:00 p.m., local time, August 2, 2018. Proposals received after the stated date and time will not be considered.

Enclosed are instructions for submitting proposals covering this request. Please review these documents carefully.

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

Proposals must be prepared and submitted in accordance with the instructions contained in this Request for Proposals (RFP).

A pre-proposal meeting and tour the facility will be conducted on July 20, 2018 at 10:00 a.m. at the FAST Transit Center, 505 Franklin Street, second floor community room.

Proposers should note that the City has not prescribed any minimum rent or capital investment. Each Proposer should propose the combination of capital investment and revenue to the City it deems most appropriate. The City will select the proposal(s) that, in its sole and absolute opinion, will provide the highest quality products and services to customers and provide a reasonable revenue stream to the City.

The City reserves the right to reject any and all proposals.

II. Background

The City of Fayetteville has constructed a new state of the art transit center in downtown Fayetteville. The new FAST Transit Center (505 Franklin Street, Fayetteville, NC 28301) is located on the city block bound by Robeson Street, Franklin Street, Winslow Street and Russell Street. The transit center is within walking distance of City Hall, Fayetteville Police Department Headquarters, Highsmith Rainey Hospital, the Medical Arts Building, Airborne and Special Operations Museum and Fayetteville's Amtrak station. In addition to FAST transit buses, the new center also houses Greyhound intercity buses and include a stop on Russell Street for MegaBus.

FAST buses generally operate from 5:30 a.m. until 10:30 p.m. on weekdays, from 7:30 a.m. to 10:30 p.m. on Saturday and 9:00 a.m. to 7:00 p.m. on Sundays. Currently, an average 1,350 FAST transit customers use the FAST Transit Center each day. FAST also has administrative/operations offices located on the second floor of the new center to accommodate 12 employees in addition to those employees operating buses.

Greyhound operates 24 hours per day and seven days per week. Greyhound, who also serves Southeastern Stage Lines, currently has 14 buses that will use the center each day with (10) through routes and four (4) terminating and four (4) originating routes. Greyhound has a staff of four (4) station employees assigned to the center to provide ticketing, baggage/freight and supervision. MegaBus has six (6) buses using the center, but no station employees. Over 400 Greyhound passengers currently are using the new Transit Center each day.

The new center was designed as a city-center destination. The center is safe, attractive and conveniently located with numerous amenities to assist transit customers. The two-story building has approximately 26,500 SF of space for transit/Greyhound operations and 5,700 SF of leasable office/retail area (Exhibits A & B). The first floor provides a FAST ticket sales/information counter and kiosk, indoor customer waiting area, restrooms and a drivers' lounge. The outside area (Exhibit C) will have 16 bus bays for FAST and Greyhound buses as well as sheltered waiting areas with seating and kiosks with route information.

The new FAST Transit Center has leasable space available for uses that will support and/or complement the transit center operations, provide added value to the transit customer, as well as enhance the center as an amenity to the downtown area. The purpose of this Request for Proposals is to determine interest and seek proposals for retail/food service tenants. The FAST Transit Center is a public building designed for LEED certification. The center will be a tobacco-free zone. Sales of alcoholic beverages (including beer and wine), tobacco products (including smokeless, e-cigarettes/vapor) or tobacco paraphernalia will not be permitted.

III. Objective

The City and FAST desire to provide transit center customers and employees, as well as downtown area workers, with food, beverage and retail opportunities commensurate with the market, in a clean, welcoming environment, offered at reasonable prices with a perceived high value.

Based on the proposals received, the City intends to enter into negotiations for the terms and conditions for agreements with responsible business entities that demonstrate expertise and success with food, beverage and retail outlets in an urban setting.

The following spaces available for third party occupancy. These are shell spaces that can be designed for a wide range of uses, but require significant tenant improvement.

First Floor/Storefront

Franklin Street	1,570 SF	Exhibit A – Future Retail C-1
Franklin Street	1,234 SF	Exhibit A – Future Retail C-2

Second Floor

Franklin Street	3,027 SF	Exhibit B – Future Office C1 & C2
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IV. Important Dates

RFP Publication	July 16, 2018
Pre-Proposal Meeting and Facility Tour	July 20, 2018
Questions Due date, 5:00 pm Local Time	July 24, 2018
Proposals Due Date, 5:00 pm Local Time	August 2, 2018
Proposer Presentations (if necessary)	August 14-15, 2018
Negotiations	August 15-27, 2018
Contract Award	September 10, 2018

V. Proposal Format

Proposals should indicate the ability of the Proposer to successfully establish and maintain an ongoing business venture that provides quality products and services to the public. Proposals should generally conform to the following general format:

- A. Business Experience – Describe the experience of the Proposer and key personnel, including direct experience on projects of similar size, scope and complexity. Provide details on product line, location, dates of operation, and reason for closure or cessation of interest if no longer in business. Provide a minimum of three (3) business/professional references.
- B. Business Success Plan - Describe proposed business line, product and/or service offerings. Please indicate which building space the enterprise would utilize. Provide a brief operating plan to include days and hours of operation, staffing, conceptual layout of space, equipment to be installed/used, and available financing. Provide a description and estimate of the capital investment plan including tenant improvements or facility modifications along with a proforma financial plan for the first 24 months of operation, including revenue and costs.
- C. Proposers Financing Plan – Describe how the proposers plan for providing the necessary capital investment to prepare the space for business (tenant improvements, equipment, etc.)

and the ongoing business operation. Indicate any rent abatements, concessions or other costs that are proposed to be paid by the City.

- D. Revenue to the City – Provide a description of revenues the Proposer would pay to the city. Include a proposed schedule of rent to be paid to the City for a minimum of five (5) years. Indicate any rent abatements, concessions or other costs that are proposed to be paid by the City. Note any other revenues that may be shared with the City.
- E. Merchandising Plan – Provide a listing of proposed menu or retail items to be sold with proposed pricing. Describe any promotion plans or themes.
- F. Implementation Schedule – Provide a proposed schedule indicating the steps and time required until being fully operational.

Proposers should feel free to include as much relevant information as necessary, but brevity is appreciated. Proposals shall be typewritten and must be signed by an authorized officer of the Proposer. **Proposers are to provide one (1) originally signed hardcopy and one (1) electronic copy (PDF format).**

VI. Proposal Procedures

Written proposals or submittals will be reviewed by an Evaluation Committee based on the evaluation criteria set forth in Section VIII. Proposals within a competitive range (reasonably comparable in price and technical merit) will be identified. Oral presentations may be conducted with those Proposers if deemed necessary. The Evaluation Committee will review information from the oral presentations and call for negotiations with Proposers whose proposals are most advantageous to the City. The City reserves the right to award one or more contracts.

Information contained in the proposals will not be released by the City prior to the contract award in order to protect the integrity of the procurement process unless required by applicable law. Proposers are further advised that City may be required to release proposal information after contract award. If a Proposer feels that any information is confidential or proprietary in nature, the Proposer must submit all such information in a separately sealed envelope prominently marked with the Proposer's name and "PROPRIETARY INFORMATION". FAST shall not release or divulge such information to third parties without the consent of the Proposer unless required to do so by applicable law or order of a court of competent jurisdiction.

This Request for Proposal does not commit the City to any costs incurred in the preparation of a proposal or the negotiations for the contract with any Proposer. Further the City does not commit to contract with any Proposer and the City may cancel this solicitation at any time.

The City will accept questions and inquiries in writing up to and including 5:00 p.m. local time, July 24, 2018. Responses to questions will be sent to all entities having a record of having received this RFP. Any responses to questions that, in the opinion of the City, might significantly impact proposals will be issued in the form of an addendum to this RFP, which will be sent to all entities having a record of having received this RFP.

A pre-proposal meeting and tour the facility will be conducted on July 20, 2018 at 10:00 a.m. at the FAST Transit Center, 505 Franklin Street, second floor community room.

VII. Time and Place to Submit Proposals

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

In order to be considered Proposals must be received by 5:00 p.m., EDT, on Thursday, August 2, 2018 at the City Purchasing Office, 433 Hay Street, Fayetteville, NC 28301. Proposals received after the stated date and time will not be considered. Proposers are to provide one (1) originally signed hardcopy and one (1) electronic copy (PDF format). Oral, email, telephone, or facsimile proposals will not be accepted. There will **not** be a public opening of the proposals.

The submission of a proposal will be deemed conclusive evidence that the Proposer has independently investigated relevant data, conditions, circumstances, procedures and requirements associated with this RFP and has read and is familiar with all RFP documents.

VIII. Selection Criteria

The City will evaluate proposals based on the criteria listed below which are listed in relative importance:

- Business experience
- Business success plan
- Revenue to the City
- Financing Plan
- Merchandising plans (selections and pricing)
- Implementation schedule

IX. Additional Terms, Conditions and Consideration for Proposers

- A. Proposers may be required, at the discretion of the City, to make a presentation of their proposals to the Evaluation Committee or other City officials.
- B. The City reserves the right to negotiate for modification of the proposal.
- C. All proposal materials will become property of the City and will not be returned.
- D. No agreements arising out of proposals submitted hereunder (including any negotiations that follow) shall be binding upon the City, its officers, employees or agents unless and until reduced to writing and executed by the City in accordance with applicable laws.
- E. Proposals may be reviewed and evaluated by any person at the sole discretion of the City.
- F. The City reserves the right to select one or more Proposers with whom the City may pursue negotiations pursuant to this RFP.
- G. The City reserves the right to reject any and all proposals.
- H. Any lease or agreement arising out of this RFP is subject to the approval of the Federal Transit Administration (FTA) as an “incidental use” of the FAST Transit Center which the City will request.

X. The following Federal Provisions apply:

1. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

2. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

3. LOBBYING
31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal

loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

4. FEDERAL CHANGES 49 CFR Part 18

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

5. CLEAN AIR 42 U.S.C. 7401 et seq

40 CFR 15.61
49 CFR Part 18

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

6. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government.

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

7. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves

the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

8. TERMINATION

49 U.S.C. Part 18

FTA Circular 4220.1E

Opportunity to Cure (General Provision) The City of Fayetteville, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to the City of Fayetteville's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, the City of Fayetteville shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the City of Fayetteville from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach In the event that the City of Fayetteville elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the City of Fayetteville shall not limit the City of Fayetteville's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

Termination for Convenience The City of Fayetteville, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Termination for Default If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the City of Fayetteville may terminate this contract for default. The City of Fayetteville shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

9. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by **the City of Fayetteville**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **the City of Fayetteville**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and

selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

11. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18

FTA Circular 4220.1E

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City of Fayetteville. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the City of Fayetteville. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the City of Fayetteville shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the City of Fayetteville, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Fayetteville and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City of Fayetteville is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City of Fayetteville or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**12. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS
FTA Circular 4220.1F**

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

13. E-Verify

STATE OF _____
COUNTY OF _____

I, _____(the individual attesting below), being duly authorized by and on behalf of _____ ("Employer") after first being duly sworn hereby swears or affirms as follows:

1. Employer understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with NCGS §64-25(5).
2. Employer understands that Employers Must Use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a).
3. Employer is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. (Mark Yes or No)
 - a. YES _____, or
 - b. NO _____
4. Employer and Employer's subcontractors comply with E-Verify, and if Employer subsequently retains any subcontractors on this project Employer will ensure their compliance with E-Verify.

This ____ day of _____, 2016.

Signature of Affiant
Print or Type Name: _____

State of _____ County of _____
Signed and sworn to (or affirmed) before me, this the ____
day of _____, 2016.
My Commission Expires:

Notary Public

|||
Official/Notarial
Seal)
(Affix