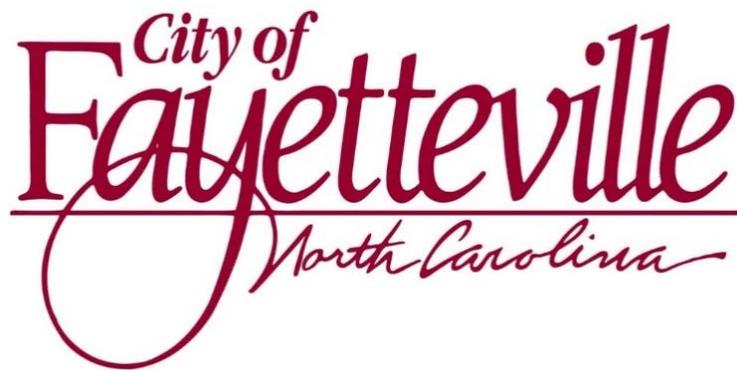


# **REQUEST FOR PROPOSALS**

## **FOOD SERVICE CARTS AND INSTALLATION**

**RFP # 603-COF1516290**



**CITY OF FAYETTEVILLE  
NORTH CAROLINA**

**JULY 19, 2018**

**REQUEST FOR PROPOSALS**  
**RFP # 603-COF1516290**  
**Food Service Carts and Installation**

FEBRUARY 16, 2018

To Potential Food Service Carts Companies:

The City of Fayetteville, North Carolina, is now accepting Proposals for Food Service Carts 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 **AUGUST 7, 2018 at 1:00 PM**, at Fayetteville-City Hall, 433 Hay Street, Fayetteville, North Carolina 28301, in the 1st Floor Lafayette 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 at [KToon@ci.fay.nc.us](mailto:KToon@ci.fay.nc.us).

All Proposals are due to Fayetteville-City Hall, 433 Hay Street, Fayetteville, North Carolina 28301, no later than **AUGUST 16, 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]**

**Food Service Carts and Installation**

**RFP # 603-COF1516290**

RFP questions must be directed to Kimberly Toon, at [KToon@ci.fay.nc.us](mailto:KToon@ci.fay.nc.us) . The City is an equal opportunity purchaser.

**Sincerely,**

**Kimberly Toon, CLGPO**  
**City of Fayetteville, NC**

**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

### 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"
- 2 Copies marked "Copy"

**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](http://www.ips.state.nc.us) for any addenda or changes to this Project. Search for bid # 603-COF1516290 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](mailto: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.

<b>Ballpark Signage Installation Appendix Guide</b>	
Appendix A	Food Cart Design Documents
Appendix B	Barton Malow Insurance Requirements
Appendix C	Barton Malow Safety Manual
Appendix D	Barton Malow Procedure Manual
Appendix E	Barton Malow Construction Schedule
Appendix F	Populous Bid Package Vol 1 - Specifications
Appendix G	Populous Bid Package Vol 2 - Specifications
Appendix H	Populous Bid Package Plans Vol 1
Appendix I	Populous Bid Package Plans Vol 2
Appendix J	Populous Bid Package Plans Vol 3

# Section 1

## Introduction and General Information

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### 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 concession Food Service Carts 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.

#### 1.2. Definitions.

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

*Acceptance:* Refers to receipt and approval by the City of a Deliverable or Service in accordance with the acceptance process and criteria in the Contract.

*Affiliates:* 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.

*Biodegradable:* Refers to the ability of an item to be decomposed by bacteria or other living organisms.

*Fayetteville Combined Statistical Area (CSA):* 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.

*City:* Refers to the City of Fayetteville, North Carolina.

*City Project Manager:* Refers to a specified City employee representing the City's best interests in this Project.

*Company:* 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.

*Company Project Manager:* Refers to a specified Company employee representing the best interests of the Company for this Project.

*Contract:* Refers to a written agreement executed by the City and Company for all or part of the Services.

*Deliverables:* 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.

*Department:* Refers to a department within the City of Fayetteville.

*Documentation:* 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.

*Evaluation Committee:* Refers to a City appointed committee that will evaluate Proposals and identify the Company(-ies) best meeting the needs of the City.

# Section 1

## Introduction and General Information

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<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 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.
<i>LSDBE:</i>	Refers to SBEs, MBEs and WBEs, collectively.
<i>LSDBE Goal:</i>	If an RFP or Contract has separate Subcontracting Goals for MBEs, WBEs, and/or SBEs, the term LSDBE is a shorthand way to refer collectively to all MBE, WBE, and SBE 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.
<i>Project:</i>	Refers to the City's need for a service provider to provide Food Service Carts and Installation for the City.
<i>Project Plan:</i>	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.
<i>Proposal:</i>	Refers to the proposal submitted by a Company for the Services as outlined in this RFP.
<i>Services:</i>	Refers to the Food Service Carts and Installation as requested in this RFP.
<i>Specifications and Requirements:</i>	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.

# Section 1

## **Introduction and General Information**

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*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 Enterprise (WBE):* 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 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. 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;

# Section 1

## Introduction and General Information

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- 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.

### **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

# Section 1

## Introduction and General Information

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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](http://www.ips.state.nc.us), bid# 603-COF1516290. Companies are 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

# Section 1

## Introduction and General Information

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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).
- 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,

## Section 1

# **Introduction and General Information**

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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

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### 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 19, 2018	<i>Issuance of RFP.</i> The City issues this RFP.
AUGUST 6, 2018	<i>Request for Proposals Acknowledgement.</i> Companies that intend to submit a Proposal shall submit the RFP Acknowledgement Form on this date to the email or fax number listed in Section 2.2.
AUGUST 7, 2018	<i>Non-Mandatory Pre-Proposal Conference</i> to be held at the location indicated in Section 2.4 at 1:00 PM
AUGUST 9, 2018	<i>Submission of Written Questions After the Pre-Proposal Conference.</i> Questions are due by TIME5 p.m.
AUGUST 16, 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 16-26, 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 **AUGUST 6, 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-COF1516290  
E-mail: [KToon@ci.fay.nc.us](mailto: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](mailto: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

## Section 2

# Procurement Process

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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](http://www.ips.state.nc.us), referencing solicitation # 603-COF1516290. Companies are required to 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 AUGUST 7, 2018 at 1:00 PM. The meeting will be held at Fayetteville-City Hall, 433 Hay Street, Fayetteville, North Carolina 28301, 1st Floor Lafayette 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, plus two (2) copies shall be submitted to the address listed in Section 2.3 above by **AUGUST 16, 2018 on or before but no later than 5:00 p.m.** The original Proposal and each of the copies 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

## Section 2

### Procurement Process

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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.

**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](mailto:KToon@ci.fay.nc.us) to learn more about becoming a registered city vendor.

~ End of Section ~

## Section 3

### Scope of Services

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**PLEASE NOTE:** Not all of the information below pertains to the food service carts, however these are the standards, requirements and specifications for all food service equipment being installed as a part of the ballpark construction project.

#### 3.0 SCOPE OF FOOD SERVICE CARTS AND INSTALLATION.

<b>PART 1 - SCOPE</b>
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- A. The work referred to in these documents consists of furnishing all labor and materials required to provide and deliver all equipment hereinafter specified into the building, uncrate, assemble, hang, set in place, level, and completely install, exclusive of final utility connections.

#### GENERAL CONDITIONS

- A. General Conditions of the Contract are hereby made a part of these specifications to the same extent as if bound herein. The General Conditions, including Modifications and Supplementary Conditions contained herein, shall become a part of the Contract and shall apply to all Contractors and Subcontractors.

#### DESCRIPTION OF WORK

- A. Furnish all material and labor required to provide completely, deliver, and install all ballpark food carts as specified herein and shown on the contract drawings. This work shall be performed in such a manner as to complete the function for which it is designed. This work shall be in strict accordance with the plans and specifications with all dimensions field verified by the Food Cart Contractor (FCC) prior to the fabrication of any equipment required to be furnished.
- B. Coordinate your work with the respective trades performing preparatory work for installation of equipment under this Contract, including, but not limited to: construction of pits, trenches, receptors, rough-in of supply, waste and vent piping, and electrical connections.
  - 1. Supervise and inspect such preparatory work and determine that openings of adequate size will be provided to permit introduction of this equipment into the building and placing at designated locations.
  - 2. Comply with all Federal, State, and Municipal regulations which bear on the execution of this work.
  - 3. Supervise and inspect the services of the respective Mechanical and Electrical Contractors when disconnecting utility services to existing equipment and when reconnecting equipment being relocated and when connecting new equipment being supplied under this Contract.
  - 4. Secure and pay for all permits, licenses, inspections and tests required by any regulatory agency having jurisdiction. Supply to Owner, through Architect and Consultant, two copies of all certificates of compliance with inspections and tests required by such authorities.
  - 5. Coordinate the equipment work with the respective trades so that electrical and mechanical components built into the equipment will conform to type,

## Section 3

### Scope of Services

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- materials, and characteristics of the building components.
6. Install all heated, heat producing and motor-driven equipment so as to operate efficiently. Provide additional vents, guards, deflectors, and other accessories as needed at no additional cost. Note such additions or modifications on the shop drawings and bring to Architect's and Consultants attention by accompanying letter.
  7. Review field conditions to ensure placement of all motors and compressors have adequate air circulation to allow for peak efficient operation. Notify the General Contractor, Architect and Consultant immediately if placement must be altered to accomplish peak efficiency.
  8. Coordinate and show sizes, utilities, and other requirements as determined by physical inspection for equipment noted as existing to be reused. Include all costs for marking, removing, storing, fully cleaning, redelivering, and installing such equipment. All requirements within the project manual apply to reused equipment except warranty as if FCC furnished including but not limited to code compliance and accessories necessary to conform with the new application.
- C. Related work under this Contract shall not include the following items, unless otherwise shown or specified in the Contract Document:
1. Electrical services including wiring to and final connection of all foodservice equipment.
  2. Water, direct waste piping, gas, steam, and cooling water services to the fixtures including all shut-off valves, traps, and final connections to the fixtures except as otherwise specified.
  3. Exhaust duct work upstream from the exhaust hood collar, connection to the exhaust hood, the complete exhaust, make-up air and ventilation system, all switches, controls, interlocking devices, etc., necessary for complete and proper system operation, unless noted otherwise in item specifications.
  4. Adequate foundation below bases and floors to support the specific equipment when loaded.
  5. Masonry bases for the equipment.
  6. Flooring and quarry tile.
- D. Food Cart Contractor shall be allowed to quote upon a substitute and/or alternate herein, provided that the Food Cart Contractor:
1. Provides a list of substitutions and/or alternates on a separate sheet of paper, outlining them as either an addition or a deduction to the specific brand shown in the specifications.
  2. Provide complete construction details and/or brochure cut-sheets for every item the Food Cart Contractor wishes to substitute.
  3. Food Cart Contractor shall provide (for each item), on a separate sheet, a "side by side" comparison list that shall include but is not limited to:
    - a. Differences in Utility requirements, including wiring diagrams.
    - b. Differences in Features, such as, but not limited to: size, construction material and method, moving parts, electronic controls, door hinges and opening method, unit capacities, food production rates, introduction of heated and/or refrigerated air, listings with third party agencies, maintenance history and service agencies, etc....

## Section 3

### Scope of Services

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- c. Differences in performance standards.
- 4. Upon request, Food Cart Contractor shall provide a list of customers, in similar facilities, using the equipment the Food Cart Contractor wishes to use as an alternate.
- 5. Food Cart Contractor is solely responsible for any and all cost associated with the acceptance of any substitute or alternate piece of equipment.

Food Cart Contractor is required to submit a proposal based on the specified equipment herein along with any bid proposing substitutions and/or alternates. The Owner, Architect, and Foodservice Consultant reserve the right to accept or reject such substitute bids or particular items within a substitute bid. Should alternates be used in place of the originally specified equipment, the Food Cart Contractor shall assume the full cost and responsibility for the accuracy, design integrity, revised drawings, size differences and utility changes that may incur as a result of substituting items. If as a result of such changes, the originally specified item is required to be used after the approval of an alternate; the Food Cart Contractor shall provide the originally specified unit at no additional cost to the Owner and shall notify the Architect and Foodservice Consultant of the change.

- E. The specifications and drawings are complementary and what is called for by one shall be as binding as if called for by both. Contractor shall examine the plans and specifications to be fully satisfied as to the conditions of the project. No allowance shall be subsequently made to the contractor by reason of error on his part or oversight not called to the attention of the Foodservice Consultant. Any differences between these specification and drawings, including but not limited to, equipment shown on drawings, but not accounted for in the spec., shall be brought to the attention of the Foodservice Consultant. If any differences are not brought to the attention of the Foodservice Consultant, the Food Cart Contractor shall be responsible for providing all equipment to complete the intention of the drawings and foodservice specification at no additional cost to the Owner or Foodservice Consultant.

#### PRODUCT HANDLING

- A. Equipment shall be delivered to the building fully protected, then assembled and set in place. All responsibility shall rest with the FCC for any damage or loss incurred prior to the final acceptance. Such items as may be lost or damaged shall immediately be replaced or repaired to a new condition to the complete satisfaction of and at no additional cost to the Owner.
- B. The FCC shall schedule his deliveries and movements upon the site to prevent delays in other contractor's work and shall coordinate all deliveries and on-site activities with the General Contractor. If required, FCC shall make arrangements to hold equipment in warehouse until delivery can be made to job site. Extra charges resulting from special handling or air shipment shall be paid by the FCC unless delays in ordering are the result of the Owner's actions.

#### APPLICABLE CODES AND STANDARDS

- A. Except as otherwise indicated, each item of equipment shall comply with the latest current edition of the following standards as applicable to the manufacture, fabrication, and installation of the work in this section.

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1. NSF Standards: Comply with National Sanitation Foundation standards and criteria and provide NSF "Seal of Approval" on each manufactured item and on major items of custom- fabricated work.
2. UL Standards: For electrical components and assemblies, provide either UL labeled products or, where no labeling service is available, provide a complete index of the components used as selected from the UL "Recognized Component Index."
3. ANSI Standards: For gas-burning equipment, comply with ANSI Z21-series standards. Comply with ANSI B57.1 for compressed gas cylinder connections and with applicable standards of the Compressed Gas Association for water connection air gaps and vacuum breakers.
4. AGA: All gas-fired equipment shall be AGA approved, equipped to operate on the type gas available at the job site, and shall contain 100% automatic safety shut-off devices.
5. NFPA Standards: Comply with NFPA Bulletin 96 for exhaust systems and with NFPA 13, 17, and 96 for fire extinguishing systems.
6. ASME Code: Comply with ASME boiler code requirements for steam-generating and steam-heated equipment; provide ASME inspection, stamps, and certification of registration with National Board.
7. National Electrical Code: Comply with NFPA 70 "National Electrical Code" for electrical wiring and devices included with foodservice equipment.
8. Comply with all authorities having jurisdiction over this type of equipment and/or installation.
9. Where specification and/or drawings require mechanical, electrical, or refrigeration work to be performed, such work shall be done in strict conformance to other portions of the Base Building Specifications which sets forth standards for this type of work.
10. State of North Carolina Building Code.

#### QUALITY ASSURANCE

- A. Standard Products: Materials, products, and equipment furnished under this contract shall be the standard items of manufacturers regularly engaged in the production of such materials, products, and equipment and shall be of the manufacturer's best quality latest design that complies with the specifications.
- B. Manufacturer's Qualifications: Manufacturers shall be regularly engaged in the production of the items furnished and shall have demonstrated the capability to furnish similar equipment that performs the functions specified or indicated herein.
- C. Contractor's Qualifications: shall be firms regularly engaged in contracting for food service installations. They shall have the technical personnel to handle all phases of the work. They shall be able to demonstrate their financial ability to handle this project to the Owner's satisfaction.
- D. Fabricators' Qualifications: shall be firms regularly engaged in the manufacture of the highest quality of custom built Food Service Carts and who has a complete factory with personnel and engineering facility to properly draw, detail and manufacture this equipment.

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#### SUBMITTALS

- A. Upon award of Contract, the Food Cart Contractor shall furnish the Architect, Consultant and Owner with one full sized set of prints of the following drawings, in accordance with the approved project schedule, which shall be made on sheets equal in size and matching the bid set drawing size. CAD-generated computer data is available as an additional expense to the FCC. In the event the FCC chooses to use this data, he accepts all responsibility for its accuracy and will modify the resulting drawings to reflect accurately all current information. Reproduced copies of bid documents will not be accepted for this purpose in any fashion.
1. All equipment specified for fabrication shall be detailed and fully dimensioned to minimum scale of 3/4" = 1'-0" for plan and elevation views, 1" = 1'-0" for sections and 3"=1'-0" for special details. These drawings will be reviewed and sepias will be returned for correction. After approval this contractor shall print the number of prints as required for distribution.
  2. Prepare separate one (1) full sized set of electrical and mechanical dimensioned rough-in drawings at 1/4" = 1'-0" scale. These shall be "rough-in" plans not "point of connection" plans, showing exact point of penetration of floors, walls, and ceilings for all services required to operate the equipment that the FCC shall furnish. FCC shall also show exact point of connection to equipment not included in the Ballpark food carts Contract, for example; existing equipment, soda dispensers, coffee and tea equipment, etc.. These drawings shall also show exact locations of final connection to equipment. Indicate floor drains, floor sink, receptacles, lights, and other special conditions as previously noted in the Foodservice Document Utility Requirement Plan. Include in these plans all utilities for any re-used existing equipment called for in specifications. After approval FCC shall print the number of prints as required for distribution.
  3. Dimensioned drawings shall be submitted showing the location and size of all bases, depressions, special height walls, openings in walls for equipment, and critical dimensions, etc. All such drawings shall be drawn to a scale of not less than 1/4" = 1'-0".
- B. **Manufacturer's Data:** Upon award of the Contract, submit three (3) sets of bound copies of Manufacturers' Illustrations and Technical Data (cutsheets) to the Architect and Consultant for review prior to procurement. All items of Standard Manufacture shall be submitted, including items purchased to be built into fabricated equipment. Each illustration shall be marked to describe accurately the item number and quantity to be furnished as specified, including voltage, phase, load, finish, accessories, etc. The Architect will return one booklet for correction and produce a letter noting status of each item reviewed. Should the FCC require extra sets to be returned to him, the above quantity should be increased accordingly.
- C. **Manufacturers' List:** Submit in writing a list of all manufacturer's representatives of the foodservice equipment, such as convection ovens, ranges, etc., and their authorized service agencies' addresses and telephone numbers.
- D. **Foundation Data:** Data and drawings shall be submitted for each item, if any, requiring special foundations, structures, or supports. Such foundations, structures, or supports will be provided and installed by other appropriate trades in accordance with

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the drawings and specifications which shall be provided by the FCC and reviewed by the Consultant.

- E. Operation and Maintenance Manuals: As project close-out submittal, two (2) bound copies of operation, maintenance, and parts manuals shall be supplied for all equipment items of standard manufacture including standard component assemblies built into all custom-fabricated items. Each manual shall include product data sheets, wiring diagrams, parts list, and service agency.
- F. Review by the Architect, Consultant and Owner of the drawings and brochures submitted by the FCC does not waive the responsibility of the FCC to furnish each item of equipment in complete compliance with the specifications and contract drawings.
- G. The final number of copies of all submittals shall be as determined by the Architect, Consultant and Owner.
- H. Warranty: Refrigeration Service Policy - All self-contained or remote refrigeration systems furnished under this contract shall include start-up, testing and temperature adjustment. Each system shall have a one (1)-year refrigeration service contract providing free service, 24 hours per day, seven days per week, including all parts and labor, refrigerant and mileage
  - 1. Hermetic or semi-hermetic compressors shall be covered by the manufacturer's factory warranty for an additional four years. All other equipment provided shall include one-year warranty covering parts and labor, plus any extended warranties as normally provided by individual manufacturers. All equipment including refrigeration systems both self-contained and remote shall be warranted by the Food Cart Contractor on the project for one year as indicated in the preceding sentence. The first day of the first year commences upon the date the equipment is accepted or partial occupancy by the Owner.
- I. SAMPLES: Samples of material, products, fabrication methods, and reworking of damaged areas or equipment shall be submitted for review upon request at no additional cost, before proceeding with the work.

#### JOB CONDITIONS

- A. Visit the job site to field check actual wall dimensions and rough-ins and be responsible for furnishing, fabricating, and installing the equipment in accordance with the available space and utility services as they exist on the job site. Fabricated equipment shall be built to fit out-of-square corners and to fit out-of-plumb walls.
- B. Check all door openings, passageways, elevators, etc., to be sure that the equipment can be conveyed to its proper location within the building and, if necessary, check with the General Contractor regarding the possibility of holding wall erection, placement of doorjamb, windows, etc., for the purpose of moving the equipment to its proper location. Any removal and rebuilding of walls, partitions, doorjamb, etc., necessary to place the equipment or, if caused by incorrect information on the FCC's drawings, shall be done at the expense of the FCC, at no additional cost to the Owner.

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- C. Notify the Architect and Consultant of any discrepancies between plans and specifications and actual conditions on the job-site before fabrication of equipment.
- D. Physically check the location and utility size of all "rough-ins" at the job site for compatibility with the equipment being installed before finished floors, walls, and/or ceilings are in place. Should the rough-ins not agree with the previously submitted and approved dimensioned rough-in plans, then this contractor shall have the rough-in moved or notify the architect and consultant of the error.
- E. Ensure equipment accurately fits the space as it exists and conforms to actual field dimensions on the job-site. Any changes required after fabrication has been started shall be made at no additional cost to the Owner.
- F. Include the cost as part of the bid for this work of any special hoisting equipment and operators required.

#### MISCELLANEOUS

- A. Review all drawings pertaining to the food facilities and food facilities areas, including the utility load information on the foodservice documents. Provide all equipment in accordance with the requirements of these documents (i.e., voltage characteristics, KW loads, special valves, etc.). Provide all necessary appurtenances to accommodate plumbing, electrical, and refrigeration, etc., rough-in as shown on utility load information; for example, an S.R. (single receptacle) connection shown on the plan requires that the appropriate grounded cord and plug be provided to fit the receptacle as part of the equipment item to which the connection will be made.
- B. Where portions of an item pass through masonry, walls, or partitions, provide complete installation of the item, including trim, field welding, dimensions, and coordinate all other work being performed relative to the item being installed.
- C. All equipment, such as pass-through refrigerators and warmers, which pass through a wall where one side is exposed to the public view shall be provided and installed with the operating controls located on the kitchen or working side of the wall. All equipment such as coffee urns, which are located on or in a counter having a pick-up side and a working side, shall be provided and installed with the operating controls facing the working side of the counter.

<b>PART 2 - PRODUCTS</b>
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#### GENERAL

- A. The equipment and its component parts shall be new and unused unless specified by the consultant as re-using existing equipment. All items of standard manufactured equipment shall be current models at the time of delivery. All parts subject to wear, breakage, or distortion shall be accessible for adjustment, replacement, and repair.
- B. Means shall be provided to ensure adequate lubrication for all moving parts. All oil holes, grease fittings, and filler caps shall be accessible without the use of tools.

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- C. Plastic nameplates, to identify controls on fabricated equipment and when specified elsewhere, shall be provided of two-ply, 1/16", rigid plastic material which shall be specifically manufactured for engraving such nameplates. The Finished nameplate shall be machine engraved with white letters on a black background and shall have edges beveled on a 45 degree angle. Nameplates shall be attached using adhesive recommended by the manufacturer of the engraving material.
- D. The design of the equipment shall be such as to provide for safe and convenient operation. Covers or other safety devices shall be provided for all items of equipment presenting safety hazards. Such guards or safety devices shall not present substantial interference to the operation of the equipment. All guards shall provide easy access to guarded parts.
- E. Trim shall not be an acceptable substitute for accuracy and neatness. When trim is required and accepted in lieu of rejection of items of equipment, it shall be the FCC's responsibility to provide same at no additional cost to the Owner.
- F. Unless otherwise specified herein, no material lighter than #20 gauge shall be incorporated into the work. All gauges for sheet iron and sheet steel shall be US Standard Gauges and finished equipment gauge thickness shall not vary more than 5% plus or minus from the thickness indicated below.

GAUGE	THICKNESS	GAUGE	THICKNESS
#10	.1406	#16	.0625
#12	.1094	#18	.0500
#14	.0781	#20	.0375
- G. Materials or work described in words which have a well-known and accepted technical or trade meaning shall be held to refer to such accepted meanings.

#### MATERIALS

- A. Submit a certified copy of the mill analysis of materials if requested by the Architect or Consultant.
- B. Stainless steel sheets shall conform to ASTM A240, Type 304 Condition A, 18-8, having a No. 4 finish. A No. 2B finish shall be acceptable on surfaces of equipment not exposed to view. All sheets shall be uniform throughout in color, finish, and appearance.
- C. Stainless steel tubing and pipe shall be Type 304, 18-8, having a No. 4 finish, and shall conform to either ASTM A213 if seamless or ASTM A249 if welded.
- D. Rolled shapes shall be of the cold-rolled type conforming to ASTM A36.
- E. Galvanizing shall be applied to rolled shapes in conformance with ASTM A123, coating designation G-90, and to sheets in conformance with ASTM A526, coating designation G-90.
- F. Galvanized steel sheets shall be cold-rolled, stretcher leveled, bonderized, and

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rerolled to ensure a smooth surface.

- G. Casting shall be corrosion-resisting metal containing not less than 30% nickel. All casting shall be rough ground, polished, and buffed to bright luster and free from pit marks, runs, checks, burrs, and other imperfections. In lieu of corrosion-resisting metal castings, die-stamped or cast 18-8 stainless steel will be acceptable.
- H. All millwork materials shall be free from defects impairing strength, durability, or appearance; straight and free from warpage; and of the best grade for their particular function.
- I. Install sealant, wherever required, for sealing backsplashes to walls, cabinet bodies to concrete or tile bases, roll-in refrigerators to floors, or other types of applications.

#### FINISHES

- A. Paint and coatings shall be of an NSF approved type suitable for use in conjunction with foodservice equipment. Such paint or coatings shall be durable, non-toxic, non-dusting, non-flaking, and mildew resistant; shall comply with all governing regulations; and shall be applied in accordance with the recommendations of the manufacturer.
- B. All exterior, galvanized parts, exposed members of framework, and wrought steel pipe where specified to be painted shall be cleaned, properly primed with rust-inhibiting primer, degreased, and finished with two (2) coats of epoxy-based gray hammertone paint, unless otherwise specified. The epoxy shall be in color to be selected, with sample submitted for approval before application.
- C. Stainless steel, where exposed, shall be polished to a #180 grit, or a No. 4 commercial finish. Where unexposed, finish shall be a No. 2B. The grain of the polishing shall run in the same direction wherever possible. Where surfaces are disturbed by the fabricating process, such surfaces shall be finished to match adjacent undisturbed surfaces.
- D. Galvanized Shelving shall not be painted.
- E. Fabricated equipment shall be spray coated with plastic suitable for protecting the equipment during transport and installation. The coating shall be easily removed after the equipment installation is complete at the work-site or, alternatively, when directed.
- F. Exposed Surfaces on brass, bronze, or steel shall be plated with chromium over nickel in accordance with Federal Specifications WW-P-541, Paragraph 9.5 and Table 9.4, unless otherwise specified.

#### FABRICATION

- A. All items of fabricated equipment shall be fabricated in the same factory and shall be similar in construction details, materials, methods, and appearance to similar types of items so fabricated under this contract.

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- B. Each fabricated item of equipment shall include all necessary reinforcing, bracing, and welding with the proper number and spacing of uprights and cross members for strength. Wherever standard sheet size will permit, the tops of all tables, shelves, exterior panels of cabinet type fixtures, and all doors and drain boards shall be constructed of a single sheet of metal. Except where required to be removable, all flat surfaces shall be secured to vertical and horizontal bracing members by welding or other approved means to eliminate all buckle, warp, rattle, and wobble. All equipment not braced in a rigid manner and which is subject to rattle and wobble shall be unacceptable, and the FCC shall add additional bracing in an approved manner to achieve acceptance.
- C. Suitable pipe slots shall be provided on fabricated equipment, as required, to accommodate service and utility lines and mechanical connections. These slots shall be of proper size and shall be neatly made with turned up edges all around to eliminate cutting or defacing of equipment on the job. Cabinet bases shall be provided with an inner panel duct at the ends or rear of the cabinet allowing adequate space to conceal vertical piping. Such work, when performed at the job-site, shall be of the same quality as similar work performed in the shop.
- D. All exposed surfaces shall be free from bolts and screw heads. When bolts are required, they shall be of the concealed type and be of similar composition as the metal to which they are applied. Where bolt or screw threads on the interior of fixtures are visible or may come into contact with hands or wiping cloths, they shall be capped with stainless steel acorn nuts and stainless steel lock washers.
- E. Where screw threads are not visible or readily accessible, they shall be assembled with stainless steel lock washers and nuts. Wherever bolts or screws are welded to the underside of trim or tops, the reverse side of the weld shall be finished uniformly with the adjoining surfaces. Depressions at these points shall not be acceptable.
- F. Rivets shall not be permitted at any location.
- G. All welding shall be the heliarc method with welding rod of the same composition as the sheet or parts welded. Welds shall be complete, strong, and ductile with excess metal ground off and joints finished smooth to match adjoining surfaces. Welds shall be free of mechanical imperfections such as gas holes, pits, cracks, etc., and shall be continuously welded so that the fixtures shall appear as one piece construction. Butt welds made by spot solder and finished by grinding shall not be acceptable.
  - 1. Spot welds shall have a maximum spacing of three (3) inches. Tack welds shall be of at least 1/4" length of welding material at a maximum space of four (4) inches on center. Weld spacing at the ends of the channel battens shall not exceed two inch centers.
  - 2. In no case shall soldering be considered as a replacement for welding, nor shall any soldering operation be done where dependence is placed on stability and strength of the joint.
  - 3. Fixtures shall be shop fabricated of one piece and shipped to the job-site completely assembled wherever possible. Equipment too large to transport or enter the building as one piece shall be constructed so that field joints can be

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- welded at the job-site.
4. All exposed joints shall be ground flush with adjoining materials and finished to harmonize therewith. Whenever material has been sunk or depressed by welding operation, such depression shall be suitably hammered and panned flush with the adjoining surface and, if necessary, again ground to eliminate low spots. In all cases, the grain of rough grinding shall be removed by successive fine polishing operations.
  5. All unexposed welded joints on under shelving of tables of counters in stainless steel construction shall be suitably coated at the factory with an approved metallic-based paint.
  6. After galvanized steel members have been welded, all welds and areas where galvanizing has been damaged shall have a zinc dust coating applied in conformance with US. Government Military Specification Number MIL-P-26915.
- H. Butt joints and contact joints, wherever they occur, shall be close fitting and shall not require a filler. Wherever break bends occur, they shall be free of undue exudence and shall not be flaky, scaly, or cracked in appearance of the material, all such marks shall be removed by grinding, polishing, and finishing to the original finish of the metal. Wherever sheared edges occur, they shall be free of burrs, fins, and irregular projections and all be finished to obviate all danger off cutting or laceration when the hand is drawn over them. In no case shall overlapping materials be acceptable where miters or bullnose corners occur.
- I. The grain of polishing shall run in the same direction on all horizontal and on all vertical surfaces of each item of fabricated equipment except in the case where the finish of the horizontal sections of each shall terminate in a mitered edge. Where sinks and adjacent drain boards are equipped with backsplash, the grain of polishing shall be consistent in direction throughout the length of the backsplash and sink compartment.
- J. Component parts, whether fabricated by the FCC or purchased for building into the fabricated equipment, shall conform to the following.
1. Bolts, screws, nuts, and washers shall be of steel, except where brass or stainless steel is fastened, in which case they shall be of brass or stainless steel, respectively. Where dissimilar metals are fastened, bolts, screws, nuts, and washers shall be of higher grade metal. The spacing and extent if bolts and screws shall be as to ensure suitable fastening and prevent buckling of the metals fastened.

#### MANUFACTURED EQUIPMENT

- A. If any item described in this specification becomes a discontinued item and the manufacturer builds an improved model of the item, the later model shall be provided at no additional cost.
- B. All Manufactured equipment that requires an electric supply shall be UL Listed and shall have the UL Label attached to the equipment.

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- C. Dimensions and capacities of manufactured equipment are approximate only and are given to define the size or capacity required as nearly as possible.

#### ELECTRICAL AND MECHANICAL REQUIREMENTS

- A. Standard UL listed materials, devices, and components shall be selected and installed in accordance with NEMA Standards and Recommendations and as required for safe and efficient use and operation of the foodservice equipment without objectionable noise, vibration, and sanitation problems.
  - 1. Provide recognized commercial grade signals, "on-off" push buttons or switches, and other speed and temperature controls as required for operation of each item, complete with pilot lights and permanent engraved, plastic laminate signs and graphics identifying each item. Provide stainless steel cover plates at controls and signals.
  - 2. Each item requiring electrical power shall be equipped with either a safety disconnect switch (for hard wired connections) or with cord and plug for interruptable connection. Provide NEMA Standard grounding-type plugs, as needed.
  - 3. Furnish all foodservice equipment completely wired internally using wire and conduit suitable for a wet location, including a separate grounding wire. Where an Electrician's services are required, the work shall be done in the FCC's factory or at his expense at the job-site at no additional cost to the Owner. Provide all electrical outlets and receptacles required to be mounted on or in fabricated equipment and interconnect to a suitable terminal box (subpanel, starter, or disconnect switch if so specified) with all wires neatly tagged showing item number, voltage characteristics, and load information. Final connection will be made by the Electrical Contractor.
  - 4. The Electrical Contractor will provide three- or four-wire, grounding-type receptacles for all wall- and floor-mounted outlets to be used for plug-in equipment with characteristics as noted on the drawings. Provide Hubbell Three-wire or four-wire grounding-type connectors and neoprene cords installed on each item of plug-in equipment. Coordinate the work with the Electrical Contractor so that the receptacle provided will match the specific plugs provided as part of the plug-in equipment. Any changes in cords and plugs required in the field due to lack of coordination between the Electrical Contractor and FCC shall be the latter's responsibility. Reduce the length of all cords furnished with the specified equipment to a suitable or appropriate length and so they do not interfere with other equipment or operations.
  - 5. All electrically heated equipment shall be internally wired to a thermostatic control and an "on-off" red indicator light, which shall be mounted in a terminal box on a removable stainless steel access panel.
  - 6. Only rigid steel zinc-coated conduit shall be used. All wiring shall be run concealed where possible.
  - 7. Provide on or for each motor-driven appliance or electrical heating or control unit, a suitable control switch or starter of the proper type and rating and in accordance with Underwriters Code wherever such equipment is not built in. All other line switches, safety cut-outs, control panels, fuse boxes, other control

## Section 3

### Scope of Services

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- fittings, and connections, when not an integral part of the unit or furnished loose by the equipment manufacturer will be furnished and installed by the Electrical Contractor unless otherwise specified. All electrical controls, switched, or devices provided loose for field installation as a part of the item specified shall be installed in the field by the FCC unless otherwise specified.
8. All equipment furnished under this contract shall be so wired, wound, or constructed so as to conform to the characteristics of electrical and other services at the job-site.
  9. Appliances shall be furnished complete with motors, driving mechanism, starters, and controllers, including master switches, timers, cut-off, reversing mechanism, and other electrical equipment if and as applicable. Wiring and connection diagrams shall be furnished with electrically operated machines and for all electrically wired fabricated equipment.
  10. Appliances shall be of rigid construction, free from objectionable vibration. Quietness of operation of all foodservice equipment is a requirement. Remove or repair any equipment producing objectionable noise and/or vibration as directed.
  11. Motors shall be of the drip-proof, splash-proof, or totally enclosed type, having a continuous duty cycle and ball bearing, except small timing motors which may have sleeve bearings. All motors shall have windings impregnated to resist moisture. Motors located where subject to deposits of dust, lint, or other similar matter from a machine on which installed shall be of the totally enclosed type. Motors shall have ample power to operate the machine for which designated under full load operating conditions without exceeding their nameplate rating. Horsepower requirements on driven equipment shall be determined by the manufacturer based on normal operation at maximum capacity. The nominal rated motor horsepower shall be not less than the horsepower required for normal operation of the equipment at maximum capacity. Insulation shall be NEMA Class B, or better.
  12. Cover plates shall be furnished and installed for all electrical outlets, receptacles, switches, etc., furnished by the FCC and shall match the material and finish of the equipment to which they will be fastened.
  13. All switches, controls, etc., shall be conspicuously labeled as to use with plastic nameplates secured to the adjacent surface as previously specified in Article 2.01-C. Submit a sample for approval.
  14. Where specified for custom fabricated equipment, provide compartment with electrical sub- panel which shall be pre-wired in conduit concealed in cabinet body construction and connected to all electrical components built into of set upon the counter. Electrical sub- panel shall be UL listed, 3-phase, 4-wire circuit breaker type with a ground buss main breaker and individual breakers for each serviced load. All buss shall be copper and the circuit breakers shall be the molded case, bolt-on type with thermomagnetic quick-make, quick-break trip. Multi-pole circuit breakers shall have an internal trip bar. The circuit breakers shall have an interrupting capacity of 10,000 amperes at 120 volts and there shall be a separate breaker for each connected load. Each breaker shall be sized for 125% of the connected load and a minimum of two (2) extra, single pole, 20 amp circuit breakers shall be provided. The loads shall be connected through the breakers in a phased sequence to balance the load on each phase. Main connection to the panel shall be made by the electrical Trade Contractor

## Section 3

### Scope of Services

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- at the job-site after the equipment is installed.
15. Where Electrical Equipment Schedules indicate Connection Type as E.C. (Electrical Connection), Food Cart Contractor to provide electrical disconnecting means. Means may be provided by a cord, plug, and receptacle or wall/equipment mounted disconnect switch. Disconnecting means must have rating equal to or greater than amperage of circuit serving equipment.
- B. Water inlets shall be located above the positive water level where possible to prevent siphoning of liquids into the water supply system. Where conditions shall require a submerged inlet, a suitable type of check valve (except in jurisdictions where check valves are prohibited) and vacuum breaker shall be provided with the fixture to prevent siphoning. Where vacuum breaker piping is through equipment, provide chrome-plated escutcheon plates to coverholes.
1. Provide and install indirect waste lines from equipment which will discharge into floor drains or safe wastes. Extend to a point at least 1" (or as required by local or state code) above the rim of the floor drain, cut bottom on 45-degree angle and secure in position.
  2. All horizontal piping lines shall be run at the highest possible elevation and not less than 6" above the finished floor, through equipment where possible.
  3. No exposed piping in or around fixtures or in other conspicuous places shall show tool marks or more than one thread at the fitting.
  4. All steam operating valves on or in fabricated and purchased foodservice equipment shall be provided with composition hand wheels, which shall remain reasonably cool in during operation.
  5. Provide suitable pressure-reducing valves for all equipment with such components that might reasonably be expected to be affected over a period of time by adverse pressure conditions, including but not limited to dishwashers, booster heaters, coffee urns, steam boilers, gas range, convention ovens, etc.
  6. Provide all safety devices that will shut-off gas in case of fire or in the event that the pilot light has been extinguished.
- C. Provide and install complete refrigeration systems; charged, started, and operating properly; including, but not limited to: compressors, condensers, racks, coils, vibration eliminators, sight glasses (moisture indicating type), expansion valves, filters, oil separators, thermostats, defrost time clocks, all controls and control wiring, liquid line dryers, piping, and refrigeration grade copper approved equal silver solder (with as few joints as possible.)
1. Where specifications call for pre-piped lines (i.e., from a fixture to a valve compartment, etc.), provide such work in strict conformance with other sections of the specifications which set forth standards for this type of work or in conformity with the requirements of the Board of Fire Underwriters or ASHRAE Standards, whichever is the greater.
  2. All mechanically refrigerated cold pans shall have a normally closed liquid line electric solenoid valve installed before the expansion valve and wired to a silent-type toggle switch complete with an "on-off" red indicator light and both mounted in a terminal box on a removable access panel. This switch shall be fed by a separate control circuit and shall not be wired into the compressor circuit so that it shall stop the flow of refrigerant to the cold pan and not turn off the compressor. The compressor shall then pump down and turn off through

## Section 3

### Scope of Services

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the action of the pressure control.

3. Each refrigeration item specification is written to provide minimum specifications and scope of work. All refrigeration equipment shall be designed and installed to maintain the following general temperatures unless otherwise specified.

Type	Refrigerators	Freezers
Walk-in	35° F/1.7° C	-10° F/-23.3° C
Reach-in	35° F/1.7° C	-10° F/-23.3° C
Under counter	35° F/1.7° C	-10° F/-23.3° C
Cold Pans		0° F/-17.8° C
Work Rooms		50° F/ 10° C

4. Provide (including payment if subcontracted) all electrical and refrigeration components needed by the completed systems and complete (or have completed by the respective trades) all connections of and to said components.
5. An evaporator coil defrost system shall be provided and installed by the FCC on all walk- ins refrigerator and freezer rooms where the refrigeration systems are designed to operate at room temperature of less than 35 degrees. Fan guards shall be supplied and shall be OSHA approved.
6. Verify the requirements of and provide any or all additional refrigeration specially(s) or component (s) required or recommended by the manufacturer for proper operation under the specific operating conditions and location of each systemspecified.
7. Verify and provide manufacturer's certification (or certification by manufacturer's authorized agent) that the equipment selection hereinafter specified for each refrigeration system is properly sized and shall meet the operating requirements set fourth for each system regarding maintaining specified operating temperature, hours of compressor running time, and system pressures and velocities as recommended by the equipment manufacturer (s).
8. All refrigeration systems shall be installed and wired in strict conformance with the manufacturer's instructions and recommendations.
9. Hang the blower coils per manufacturer's recommendation at the location as shown on the drawings. Unit shall be mounted sloping such that the drain pans are completely pitched to the drain lines. The coils shall be hung using nylon bolts or other approved non- conductive, non-corrosive fasteners. Coils shall be installed 4" from the interior walk-in ceiling. The FCC shall furnish No. 12 gauge galvanized steel fish plates of suitable size and shape on the exterior ceiling of the walk-in to spread the weight of the coils adequately. The coils shall be connected to the condensing unit and the installation shall constitute a complete working system capable of maintaining the interior temperatures specified regardless of the heavy usage the walk-in units may receive.
10. Furnish and install a minimum of 1" O. D copper tubing drain line from each coil outlet to a point 1" above the floor drain. Drain lines shall be trapped immediately above the floor drain. The freezer drain line shall be wrapped with a continuous electrified heater tape and satisfactorily insulated, which shall be furnished as part of the refrigeration system contract.
11. Refrigeration tubing shall be Type L, ACR nitrogen filled, hard drawn degreased, sealed copper and shall be installed with horizontal runs slopped 1" per 20 feet toward the condensing units. All refrigerant piping shall be properly supported by adjustable hangers spaced and adjusted to the drop required. The

## Section 3

### Scope of Services

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- evaporator housing shall protect the refrigerant piping against damage. Where vertical runs of more than 5'-0" occur in the suction line, the risers shall be trapped at the bottom. Piping is to be installed so that refrigerant or oil cannot drain back into the coils from the suction line.
12. All suction and refrigerant lines shall be installed with minimum 1/2" Armstrong Armaflex or equal cellular type insulation. Metal pipe sleeves shall be provided where piping passes through a wall, ceiling, or floor. Space around the tubing shall be filled with mastic insulating compound. All insulation that is outdoors and exposed shall be covered completely with plastic sleeving and secured and sealed in place. Install a permanent suction line filter in each compressor suction line with pressure fitting ahead of the filter to facilitate checking of pressure drop through the filter.
  13. Furnish and completely install a thermostat to control the refrigeration temperatures for each individual compartment. The Electrical Contractor shall interconnect the blower coils with the condensing unit.
  14. The condensing units shall be factory assembled, piped and tested and shall be mounted on a welded steel rack. Units shall include a semi-hermetic motor compressor with built in thermal overload, suction and discharge stop valves, oil sight glass and suction and discharge line vibration isolators as required. Each condensing unit shall have a factory mounted, pre-wired control panel/disconnect switch complete with circuit breakers, contactors, and time clocks as required. The Electrical Contractor shall provide and install the main power to each disconnect (s). Electrical Contractor shall also interwire power from the freezer condensing unit to the freezer blower coil. Control and thermostat wiring shall be the responsibility of the FCC contract, not the responsibility of the Electrical Contractor.
  15. The FCC shall be responsible during check out and initial operation to make sure that:
    - a. All controls are properly adjusted, including refrigeration circuits, room air temperature controls, etc.
    - b. All condensers carry an overload protector.
    - c. That a competent service mechanic is available during the first eight (8) hours of operation.
    - d. That all switches, starters, and controls are identified as to function.
  16. The refrigeration systems shall be furnished with a one-year refrigeration service contract, covering all parts and labor, with service available seven days per week, 24 hours a day. Continuation of the service contract after the first year shall be at the option of the Owner. The refrigeration system shall be warranted for one year and the compressors shall carry the manufacturer's extended five-year warranty.
  17. Furnish four (4) copies of complete remote refrigeration system control wiring and piping diagrams. One (1) copy shall be framed in Plexiglas and mounted at the compressor location.
  18. Unless otherwise specified, all thermometers for walk-in units will be furnished with suitable length armored capillary tubes to allow the sensing bulb to be installed in the incoming air stream to the blower coil with all runs fastened to the walk-in walls to prevent it from damage. This identical requirement applies to alarm systems when specified.

**PART 3 - EXECUTION**

**INSTALLATION**

- A. Begin installing the equipment at the time the building is ready to receive the equipment.
- B. Provide a competent foreman or supervisor for erection of equipment and to coordinate with other trades regarding connections, installation, and inspection. The FCC shall also coordinate his delivery schedule with the General Contractor to ensure adequate openings in the building to receive the equipment.
- C. FCC to set each item of non-mobile and non-portable equipment securely in place, level, and adjust to correct height. Where required, anchor equipment to supporting substrate or to floor and wall for use without shifting and dislocation. Where equipment is indicated to be anchored to floor, provide legs with adjustable flange foot. Conceal anchorage where possible. Adjust countertops and other work surfaces to level tolerance of 1/16" maximum offset.
- D. All refrigeration work where applicable to this Contract shall be accomplished in an approved manner, using first quality fittings, controls, valves, etc. Refrigeration items shall be started up, tested, adjusted, and turned over to the Owner in first class condition and left operating in accordance with the manufacturer's specifications. Refrigeration lines and hook-up shall be by the FCC.
- E. All equipment that rests on masonry bases shall be set level onto a bed of silicone rubber sealant, and securely affixed to the base.
- F. All equipment that butts to a wall or against other equipment shall be sealed with silicone rubber sealant. Trim strips or other items requiring fasteners shall be set in a bed of silicone rubber sealant and fastened with suitable stainless steel fasteners 48" or less on centers. Prior to the application of sealant, all surfaces shall be thoroughly cleaned and degreased. The adhesive sealant shall be one part mildew resistant silicone in either clear or an approved color.
- G. Install and interconnect, when necessary, all electrical controls, switches, or other units which are separately furnished for field installation in or on equipment provided, unless otherwise specified.
- H. Every precaution against injuries to persons or damage to property shall be taken by the FCC at his own expense.
- I. Store all apparatus, materials, supplies, and equipment in an orderly fashion at the job-site so as not to interfere unduly with the progress of his work or of any other Contractor (s).
- J. Do not place or allow to be placed upon the work or any part thereof such loads as are inconsistent with the safety of that portion of the work.

## Section 3

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- K. All cutting, fitting, or patching required during installation shall be accomplished by the FCC, at his own expense, so as to make the work conform to the plans and specifications. The FCC shall not cut or otherwise alter, except with the consent of the General Contractor, the work of any other Contractor.

#### START-UP AND TESTING

- A. Supply a factory authorized service agent who shall start up all equipment, test, and make adjustments as necessary, resulting in each item of equipment performing in accordance with the manufacturer's specifications. Test each item of equipment for balance and adjusted for pressure, voltage and similar considerations. Check for proper functioning of controls and safety devices. Food Cart Contractor shall provide written confirmation of the service agent's visit and testing of equipment. Service agent shall be required to leave a tag in a visible location on each piece of equipment that notifies the Owner on who to call for future service requirements.
- B. All gas-fired equipment shall be checked by local gas company as to calibration, air adjustment, etc., and adjustments made as required. Do not operate steam lines until they have been cleaned and treated for sanitation. The FCC shall arrange and coordinate such visit.
- C. After each piece of equipment has been started-up and tested by an authorized service agent; the Food Cart Contractor shall schedule a demonstration of equipment for the Owner's personnel.

#### CLEAN-UP

- A. After completion of the installation, remove protective coverings, clean up, lubricate, and adjust where necessary all items of equipment and turn them over to the Owner in first-class condition.
  - 1. Where stainless steel surfaces are disturbed by the installation of fabricating process, such surfaces shall be and finished to match adjoining undisturbed surfaces.
  - 2. At the completion of the installation work, all stainless steel finishes shall be gone over with a portable polishing machine and buffed to perfect surface. All painted surfaces shall be carefully gone over and retouched as required.
- B. Frequently clean up all refuse, rubbish, scrap materials, and debris caused by the operations, to the end that at all times the site of work shall present a neat, orderly, and workmanlike appearance.
- C. Before final payment remove all surplus materials, false work, temporary structures, including foundations thereof and debris of every nature resulting from his operations, and shall put the site in a neat, orderly, and broom-clean condition for Owner's sanitizing procedures prior to use.

#### OPERATION INSTRUCTIONS AND WARRANTIES

- A. Arrange for demonstrations and instructions for operating the equipment as requested.

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Schedule training with Owners representative; provide at least 7-day notice to Owners representative of training date. Furnish to the Consultant, for Owner use instructions and service manuals for all items of equipment that are mechanically operated or that require periodic service, in accordance with Article 1.08E, herein. Furnish to the Owner, certificate (s) of warranty for all items of equipment provided, in accordance with Article 1.08H, herein.

#### PART 4 – EQUIPMENT SPECIFICATIONS

#### EQUIPMENT SPECIFICATIONS

- A. All items listed on the contract drawings under the heading "Foodservice Equipment Schedule" shall be furnished in strict accordance with the foregoing specifications and with the following detailed item specifications.
- B. Food Cart Contractor to provide accessories, features, and options indicated for to the specified item. Utilities as shown on utility schedule are as required per the following specified equipment. Insure that utilities requirements for approved selected equipment as listed as acceptable alternate or otherwise approved substitution per instruction included in other section of the General Specifications are provided accurately on rough-in drawings. Coordinate with all trades mechanical and electrical requirements for all approved equipment. All approved equipment must comply with all dimensional constraints.
- C. Provide rough-in drawings for all foodservice areas including future and NIFCC equipment.
- D. Provide matching exterior finish and material (aluminum or stainless steel) trim strips and enclosure panels as required to adjacent walls and ceilings for all walk-in coolers, freezers and exhaust ventilators.
- E. Approved exhaust ventilators must equal specified pre-engineered ventilator requirements, including but not limited to, CFM air volume, duct connections, static pressure, etc. Refer to item B above.
- F. Food Cart Contractor to provide PRV (Pressure Reducing Valves) for foodservice equipment between rough-in utility location and point of connection to kitchen foodservice equipment as required. FCC shall provide Back Flow preventer valves if required.
- G. FCC shall ensure all walk-in cooler/freezer or step-in cooler/freezer refrigeration systems are provided with R404a refrigerant or the R290 Hydrocarbon refrigerant (if available). Refrigerants shall conform to all current laws and use an ozone safe refrigerant, and where refrigeration systems are located above walk-in/step-in within ceiling space, refrigeration condenser must be plenum rated.
- H. FCC shall ensure that all custom fabricated work tables, work counters, shelves and sinks other than millwork items are to be applied with 1/16" thick coat of sound

## Section 3

### Scope of Services

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deadening material secured to underside.

- I. FCC shall ensure that all compartment sink units are to have cantilevered drain boards, except as shown in Elevation and/or where drain boards exceed 36" in length.
- J. All quantities shall be as shown on the foodservice plans.

#### Training Plan.

- A. Explain the training curriculum available to support the Company's Proposed Solution. The Company shall schedule training classes and modules to align with appropriate phases of the Project and all training shall be conducted on site at City facilities.
- B. The Company shall submit a preliminary Training Plan outlining the content, sequence and duration of each segment of each training session necessary to thoroughly and comprehensively train City personnel to fully utilize the Deliverables (the "Training Plan"). Additionally, the Training Plan will:
  - Outline all subjects necessary to train City staff to fully understand and utilize the Deliverables.
  - Provide comprehensive "train the trainer" training for the designated numbers of City designated personnel.
  - Take into account classroom resources and personnel scheduling.
  - Include a written description of the training classes that will be conducted, the number of persons that can be trained in each session, and the total number of hours required for each person to be trained.

The cost of all training referenced in this Section must be included in the Proposal Pricing.

***A detailed scope work, the desired equipment specifications and concession area layout plans are provided as an appendix to this RFP.***

.~ End of Section ~

## Section 4

# Proposal Content and Format

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#### 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. **For each component of the Project described in Section 3, state whether and how your Proposed Solution complies as well as any additional information requested.** 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

## **Section 4**

### **Proposal Content and Format**

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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 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**

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#### **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.

**REQUIRED FORM 1 - REQUEST FOR PROPOSALS ACKNOWLEDGEMENT**

**RFP # 603-COF1516290**

**Food Service Carts and Installation**

The Company hereby certifies receipt of the Request for Proposals for the City of Fayetteville, North Carolina RFP #603-COF1516290, Food Service Carts and Installation. This form should be completed upon receipt of the City's Request for Proposals and faxed in time for the City to receive it by or before **AUGUST 6, 2018**. Failure to submit this form by the designated date shall not preclude the Company from submitting a proposal. Please fax or email the completed Request for Proposals Acknowledgement Form to the attention of:

Kimberly Toon  
City Purchasing Office  
Email: [KToon@ci.fay.nc.us](mailto: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: \_\_\_\_\_

\_\_\_\_\_

**REQUIRED FORM 2 - ADDENDA RECEIPT CONFIRMATION**

**RFP # 603-COF1516290**

**Food Service Carts 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 ADDENDUM  
DOWNLOADED FROM NC IPS:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**REQUIRED FORM 3 - PROPOSAL SUBMISSION FORM**

**RFP # 603-COF1516290**

**Food Service Carts 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 materials or Personally Identifiable Information (“PII”) as detailed in Section 1.6.X. I understand that the City is legally obligated to

## Section 6 Required Forms

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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 of the Proposal are marked as Trade Secret or PII: \_\_\_\_\_
- No portion of the Proposal is marked as Trade Secret or PII.

**Representative (signed):** \_\_\_\_\_

**REQUIRED FORM 4 - PRICING WORKSHEET**

**RFP # 603-COF1516290**

**Food Service Carts 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. \*\* Service Providers MUST provide an itemized quote detailing all the costs that total the number provided as the Total Base Proposed Project Price.**

<b>Food Cart Pricing Form</b>			
Food Cart Type	Quantity	Unit Price	Extended Price
12' Grill	3	\$	\$
10' Mexican/Nacho	1	\$	\$
10' Draft Beer	3	\$	\$
12' Popcorn	2	\$	\$
Single Sided Condiment Cart	2	\$	\$
Double Sided Condiment Cart	3	\$	\$
<i>Sales/Use Tax</i>			\$
<i>Freight</i>			\$
<b>Installation Labor</b>			\$
<b>Total Proposed Project Cost</b>			\$
<b>Proposed Timetable</b>			
Warranty Terms			
Food Cart Manufacturer Lead Time			
Anticipated Installation Completion			

<b>Optional Alternate Unit Pricing</b>		
Food Cart Type	Quantity	Unit Price
Ice Cream	1	\$
Portable Hand Sink	1	\$

**REQUIRED FORM 5 – M/W/SBE UTILIZATION**

**RFP # 603-COF1516290**

**Food Service Carts 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.

<b>Company Name:</b>	
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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):

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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):

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*[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 SBE Utilization	%
<b>Total LSDBE Utilization</b>	<b>%</b>

**Representative (signed):** \_\_\_\_\_

\_\_\_\_\_

Date

\_\_\_\_\_

Representative Name

\_\_\_\_\_

Estimated Total Contract Value

**REQUIRED FORM 6 – COMPANY’S BACKGROUND RESPONSE**

**RFP # 603-COF1516290**

**Food Service Carts 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 Equipment and Installation Services as described in Section 3?	
How many public sector (cities or counties) clients does your company have? How many are using the Services? 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.	

**REQUIRED FORM 7 – REFERENCES**

**RFP # 603-COF1516290**

**Food Service Carts 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.

<b>Reference 1</b>	
Company Name	
Contact Name	
Phone Number	
<b>Reference 2</b>	
Company Name	
Contact Name	
Phone Number	
<b>Reference 3</b>	
Company Name	
Contact Name	
Phone Number	
<b>Reference 4</b>	
Company Name	
Contact Name	
Phone Number	
<b>Reference 5</b>	
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  
FOOD SERVICE CARTS 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-COF1516290) for Food Service Carts 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 Food Service Carts 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. 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 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 Food Service Carts 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:
- 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.
- 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. 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.

22. **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.

23. **CITY OWNERSHIP OF WORK PRODUCT.**

23.1. 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 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.

23.2. 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.

23.3. 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.

24. **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.

- 25. 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).

- 26. 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.

**27. CONFIDENTIAL INFORMATION.**

27.1. **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:

27.1.1. *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 (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.

27.1.2. *Information of the City or its suppliers, contractors or licensors marked “Confidential” or “Proprietary.”*

27.1.3. *Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.*

27.1.4. *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.

- 27.1.5. *Citizen or employee social security numbers collected by the City.*
- 27.1.6. *Computer security information of the City, including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.*
- 27.1.7. *Local tax records of the City that contains information about a taxpayer's income or receipts.*
- 27.1.8. *Any attorney / City privileged information disclosed by either party.*
- 27.1.9. *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.*
- 27.1.10. *The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.*
- 27.1.11. *Building plans of city-owned buildings or structures, as well as any detailed security plans.*
- 27.1.12. *Billing information of customers compiled and maintained in connection with the City providing utility services.*
- 27.1.13. *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.

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

- 27.2.1. It shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information.
- 27.2.2. 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.
- 27.2.3. 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.
- 27.2.4. It shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information of the other.
- 27.2.5. The Company shall use its best efforts to enforce the proprietary rights of the City and the 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.
- 27.2.6. 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.
- 27.2.7. 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.
- 27.3. **EXCEPTIONS.** The parties agree that the Company shall have no obligation with respect to any Confidential Information which the Company can establish:
- 27.3.1. Was already known to the Company prior to being disclosed by the disclosing party;
- 27.3.2. Was or becomes publicly known through no wrongful act of the Company;
- 27.3.3. Was rightfully obtained by the Company from a third party without similar restriction and without breach hereof;
- 27.3.4. Was used or disclosed by the Company with the prior written authorization of the City;
- 27.3.5. 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;
- 27.3.6. 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.
- 27.4. **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.
- 27.5. **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.
- 28. INSURANCE.**
- 28.1. **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:
- 28.1.1. Automobile Liability - Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit - bodily injury and property damage.
- 28.1.2. Commercial General Liability - Bodily injury and property damage liability as shall protect the Company and any subcontractor performing Services under this Contract, from claims of bodily injury or property damage which arise from performance of this Contract, whether such operations are performed by the Company, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal and advertising injury, and contractual liability, assumed under the indemnity provision of this Contract.

- 28.1.3. Workers' Compensation and Employers Liability - meeting the statutory requirements of the State of North Carolina, \$500,000 per accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit.

The Company shall not commence any Services in connection with this Contract until it has obtained all of the foregoing types of insurance and such insurance has been approved by the City. The Company shall not allow any subcontractor to commence Services on its subcontract until all similar insurance required of the subcontractor has been obtained and approved.

28.2. **OTHER INSURANCE REQUIREMENTS.**

- 28.2.1. The City shall be exempt from, and in no way liable for any sums of money, which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.

- 28.2.2. The City of Fayetteville shall be named as an additional insured for operations or services rendered under the general liability coverage. The Company's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Company's operations under this agreement.

- 28.2.3. Certificates of such insurance will be furnished to the City and shall contain the provision that the City be given thirty (30) days' written notice of any intent to amend coverage reductions or material changes or terminate by either the insured or the insuring Company.

- 28.2.4. Should any or all of the required insurance coverage be self-funded/self-insured, a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance shall be furnished to the City.

- 28.2.5. If any part of the Services under this Contract is sublet, the subcontractor shall be required to meet all insurance requirements as listed above. However, this will in no way relieve the Company from meeting all insurance requirements or otherwise being responsible for the subcontractor.

29. **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.

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.

- 30. 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:

For the Company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PHONE: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

For the City:

Kimberly Toon  
City of Fayetteville  
Finance Dept - Purchasing Office  
433 Hay Street – 2<sup>nd</sup> Floor  
Fayetteville, NC 28301

PHONE: 910-433-1358

[KToon@ci.fay.nc.us](mailto: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.

- 31. MISCELLANEOUS.**

- 31.1. **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.
- 31.2. **AMENDMENT.** No amendment or change to this Contract shall be valid unless in writing and signed by both parties to this Contract.
- 31.3. **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.
- 31.4. **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.
- 31.5. **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 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.

- 31.6. FORCE MAJEURE.
- 31.6.1. 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.
- 31.6.2. 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.
- 31.6.3. 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.
- 31.6.4. Strikes, slow-downs, walkouts, lockouts, and individual disputes are not excused under this provision.
- 31.7. 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.
- 31.8. 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.
- 31.9. APPROVALS. All approvals or consents required under this Contract must be in writing.
- 31.10. 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.
- 31.11. 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”
- 31.12. 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.
- 31.13. **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.
- 31.14. **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.
- 31.15. **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.
- 31.16. **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.
- 31.17. **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.
- 31.18. **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.
- 31.19. **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.

31.20. 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]*

**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 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](mailto: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.

<b>Ballpark Signage Installation Appendix Guide</b>	
Appendix A	Food Cart Design Documents
Appendix B	Barton Malow Insurance Requirements
Appendix C	Barton Malow Safety Manual
Appendix D	Barton Malow Procedure Manual
Appendix E	Barton Malow Construction Schedule
Appendix F	Populous Bid Package Vol 1 - Specifications
Appendix G	Populous Bid Package Vol 2 - Specifications
Appendix H	Populous Bid Package Plans Vol 1
Appendix I	Populous Bid Package Plans Vol 2
Appendix J	Populous Bid Package Plans Vol 3