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FAYETTEVILLE PUBLIC WORKS COMMISSION  
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November 17, 2021

**MEMO TO:** Prospective Bidders

**FROM:** Trent Ensley, Procurement Manager

**SUBJECT:** **PWC2122026 / Re-Advertisement for RFP  
Electric System Right-of-Way Line Clearance  
BIDS DUE: Friday, December 17, 2021; 5:00 P.M.**

The Fayetteville Public Works Commission is seeking proposals from qualified contractors for the following services:

**RFP for Electric System Right-of-Way Line Clearance**

Enclosed please find our General Terms and Conditions, Specifications, and Bid Proposal. Proposals shall be submitted on the form provided herein, or an exact copy thereof, and the Bidder shall return one copy of the entire bid package, along with the completed bid proposal form and any other information specified in the bid documents.

Bids may be delivered in person or by express mail to the PWC Procurement Department, Attn: Nikole Bohannon, Procurement Advisor, 955 Old Wilmington Road, Fayetteville, NC 28301.

TE:tke

## NOTICE TO PROSPECTIVE BIDDERS

Sealed proposals will be received by the Fayetteville Public Works Commission in the Procurement Department, 1<sup>st</sup> floor, PWC Administration Building, 955 Old Wilmington Road, Fayetteville, North Carolina, until **5:00 p.m., Friday, December 17, 2021**, for the following services:

### **RFP FOR ELECTRIC SYSTEM RIGHT-OF-WAY LINE CLEARANCE**

The bid package covering this service may be obtained from the PWC Procurement Department, at <https://www.faypwc.com/purchasing/>, and in the offices of PWC Procurement Department, 1<sup>st</sup> floor, 955 Old Wilmington Road, Fayetteville, North Carolina between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, or by e-mail request to [nikole.bohannon@faypwc.com](mailto:nikole.bohannon@faypwc.com).

Proposals must be enclosed in a sealed envelope are to be marked: **“RFP FOR ELECTRIC SYSTEM RIGHT-OF-WAY LINE CLEARANCE”**. Bidders are to mail or deliver their Proposals as follows: Fayetteville Public Works Commission, Attn: Nikole Bohannon, Procurement Advisor, 955 Old Wilmington Road, Fayetteville, NC, 28301.

The Fayetteville Public Works Commission reserves the right to reject any or all bids and to waive all informalities concerning bid, or award bid to the lowest, responsive, responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract.

### **FAYETTEVILLE PUBLIC WORKS COMMISSION**

Trent Ensley  
Procurement Manager

## FAYETTEVILLE PUBLIC WORKS COMMISSION

### GENERAL TERMS AND CONDITIONS

**SCOPE:** The purpose of this invitation to bid is to solicit proposals from qualified contractors to provide proposals for right-of-way clearing services along the Commission's electric lines as outlined in the enclosed specifications. Contractor selected to perform work in the nature of tree pruning, mowing, brush and tree removal, and vegetation control along the FPWC's electric lines according to specifications herein and as set forth in the Bid Proposal.

**DATE, TIME AND LOCATION OF BID:** Bids will be received no later than **5:00 p.m., Friday, December 17, 2021** in the PWC Procurement Department, 1st floor, PWC Administration Building, 955 Old Wilmington Road, Fayetteville, North Carolina. This is an informal bid; therefore, no formal bid opening will be conducted. Bids will be opened as soon as possible on the next business day. Bidders will be notified of the bid results upon evaluation and award of a contract.

**QUESTIONS OR CLARIFICATIONS:** All questions or requests for clarifications shall be submitted in writing to Nikole Bohannon, Procurement Advisor, by e-mail to [nikole.bohannon@faypwc.com](mailto:nikole.bohannon@faypwc.com) no later than **5:00p.m., Monday, November 29, 2021**. Bidders are expressly prohibited from contacting any other PWC official or employee associated with this Invitation to Bid. Violation of this provision is grounds for the immediate disqualification of the bidder.

**ADDENDA:** All changes and clarifications to the bid specifications will be issued in writing in the form of an addendum. Any addenda to the specifications issued during the time of bidding are to be considered covered in the proposal and in closing a contract they will become a part thereof. It shall be the Bidder's responsibility to ascertain prior to bid time the addenda issued and to see that his bid includes any changes thereby required. **Verbal** clarifications shall not be binding on PWC.

**SUBMISSION OF BIDS:** All bids must be submitted in a sealed envelope showing the bid title, date and time of opening on the front of the envelope. All bids must be signed by an authorized official of the firm. Bids must be submitted on the bid proposal form(s) provided herein or exact copies thereof.

**SUPPLEMENTAL INFORMATION:** Bidders are required to submit the following information with their bid proposal:

- a. The number of employees of the organization and length of time the organization has been in business under the present name;
- b. A list of three (3) current or past projects of similar scope and nature, inclusive of contact name, address and phone number, name of supervisor and his/her relevant experience;

- c. List of available manpower including qualifications and experience level of crew members and equipment proposed for this project;
- d. An affidavit stating whether or not any OSHA violations have occurred within the past three (3) years;
- e. Copy of current North Carolina General Contractor Licenses and Certificate of Insurance.

Failure or refusal to furnish any item of information requested by the Commission may constitute a basis for disqualification of any Bidder. Should the Commission adjudge that the apparent low bidder is not the lowest responsible bidder by virtue of the information requested, said apparent low bidder will be so notified.

**ACCEPTANCE AND REJECTION:** The Public Works Commission reserves the right to accept or reject any and all proposals; award contract in the best interest of Commission; and waive all informalities concerning bid. Bids may be rejected if they show any omission, alteration of form, additions not called for, conditional bid, or any irregularities of any kind.

**WITHDRAWAL OF BID:** Bids will be examined promptly after opening and an award made at the earliest possible date. No bids may be withdrawn for a period of ninety (90) calendar days after the bid opening date.

**AWARD OF BID:** The Commission reserves the right to award bid in the best interest of the Commission taking into consideration price, bidder experience, qualifications, references, licensing, and OSHA violations.

The pricing section will be evaluated based upon the total price, whereas the Trim and Removal Unit Rates represent 90% of the estimated total and Group Rates represent the 10% of the estimated total. Bids will be compared based on the total estimated Trim and Removal service price together with Group Rate service pricing.

**ADVERTISING:** In signing his/her proposal, the Contractor agrees not to use the results for any commercial advertising.

**CONTRACTOR'S STATUS:** Contractor shall remain an independent contractor and as such shall be responsible for all financial obligations incurred by it while performing the work described under this agreement, including, but not limited to, labor and insurance. Contractor also determines its own method and manner of all work to be performed.

**CONTRACT PERIOD:** The initial contract period is anticipated to begin on or before January 2022 and shall expire June 30, 2024. The contract may be extended for additional one-year periods, up to a maximum of four (4) additional years.

**QUANTITIES:** Quantities listed in this Invitation to Bid are estimated quantities only, PWC reserves the right to increase or decrease the scope of work during the contract term.

**PRICE ADJUSTMENTS:** All prices shall be firm against any increase for the initial contract period. In the event the contract is extended for additional periods, a request for increase may be submitted (as supported by the CPI) with PWC reserving the right to accept or reject the increase or cancel the contract. Such action by PWC shall occur not later than 15 days after receipt by PWC of a properly documented request for price increase. Any increases accepted by PWC shall become effective the month following approval.

**PWC STANDARD SERVICE AGREEMENT:** The successful Contractor shall be required to sign PWC's Standard Service Agreement, a sample of which is attached. The successful Contractor shall be required to sign PWC's Standard Service Agreement, a sample of which is attached. The Service Agreement contains PWC's terms and conditions and will form the contract along with RFP and any attachments and addenda, the bid and any attachments.

**CANCELLATION:** Standard cancellation of contract requires 60 days written notice by either PWC or the Contractor. This contract is subject to immediate cancellation by PWC in the event of non-compliance, unsatisfactory performance or any other default by the Contractor. PWC will pay only for work performed and reasonable expenses incurred until delivery of the notice of termination of contract.

**PAYMENT:** Payment will be made on a monthly basis based on invoices furnished by the Contractor. The Commission shall upon approval of invoices received by Contractor, pay said invoices within 45 days.

**ASSIGNMENT:** The Contractor may not assign this agreement or any of its rights, duties or obligations hereunder, or subcontract any of the services to be performed hereunder, without the prior written consent of the PWC.

**NON-EXCLUSIVITY:** This agreement is not to be construed as granting the Contractor the sole or exclusive right to provide herbicide application services to PWC, and the PWC hereby expressly reserves the right to contract with any other party for such services, as it deems necessary or appropriate.

**COVID-19:**

As North Carolina and the nation continues to deal with the COVID 19 pandemic, we must all take necessary steps to ensure the health and safety of employees, coworkers, family, friends, associates and people that we come in contact with on a daily basis. At PWC we implemented measures including requiring our employees to conduct temperature and wellness checks, wear a face covering or mask, whenever possible, maintain proper social distancing (minimum of 6 feet) and take other actions such as washing their hands, using approved sanitizer and wiping down surfaces, especially commonly shared equipment or tools. This applies to employees working in our facilities, working in public or at field sites. For firms who are under contract with PWC or working under purchase orders, those firms are expected to comply with all OSHA/EPA guidelines, CDC recommendations including any applicable North Carolina Executive Orders regarding the performance of work under COVID 19 conditions. Examples of such guidance can be found at the following:

## **OSHA COVID-19 Overview**

<https://www.osha.gov/SLTC/covid-19/>

## **OSHA COVID-19 – Control and Prevention / Construction Work**

[https://www.osha.gov/SLTC/covid-](https://www.osha.gov/SLTC/covid-19/construction.html#:~:text=Keep%20in%2Dperson%20meetings%20(including,Fill%20hand%20sanitizer%20dispensers%20regularly.)

[19/construction.html#:~:text=Keep%20in%2Dperson%20meetings%20\(including,Fill%20hand%20sanitizer%20dispensers%20regularly.](https://www.osha.gov/SLTC/covid-19/construction.html#:~:text=Keep%20in%2Dperson%20meetings%20(including,Fill%20hand%20sanitizer%20dispensers%20regularly.)

<https://www.osha.gov/Publications/OSHA4000.pdf>

## **North Carolina COVID-19 Executive Orders**

<https://www.nc.gov/covid-19/covid-19-executive-orders>

## **Center for Disease Control**

<https://www.cdc.gov/coronavirus/2019-ncov/index.html>

## **Implementing Safety Practices for Critical Infrastructure Workers**

<https://www.cdc.gov/coronavirus/2019-ncov/community/critical-workers/implementing-safety-practices.html>

## **Essential Staff- Do's & Dont's**

[https://www.cdc.gov/coronavirus/2019-ncov/downloads/Essential-Critical-Workers\\_Dos-and-Donts.pdf](https://www.cdc.gov/coronavirus/2019-ncov/downloads/Essential-Critical-Workers_Dos-and-Donts.pdf)

## **NC Licensing Board for General Contractors**

<https://www.nclbhc.org/2020/07/02/board-buzz-summer/>

## **NC Association of General Contractors**

[https://www.cagc.org/CAGC/SafetyHR/CAGC/Safety/SafelyHomeInitiative.aspx?hkey=e3439388-0c36-4755-](https://www.cagc.org/CAGC/SafetyHR/CAGC/Safety/SafelyHomeInitiative.aspx?hkey=e3439388-0c36-4755-91bd-4c8fc6d22a41)

[91bd-4c8fc6d22a41](https://www.cagc.org/CAGC/SafetyHR/CAGC/Safety/SafelyHomeInitiative.aspx?hkey=e3439388-0c36-4755-91bd-4c8fc6d22a41)

## **NC Department of Health and Human Services**

<https://covid19.ncdhhs.gov/>

## **Cumberland County Health Department**

<https://www.co.cumberland.nc.us/departments/public-health-group/public-health>

## **Department of Homeland Security**

<https://www.ready.gov/pandemic>

## **Cape Fear Valley- What to do if you have COVID symptoms**

[https://www.youtube.com/watch?time\\_continue=1&v=tD0D7Apa\\_vw&feature=emb\\_logo](https://www.youtube.com/watch?time_continue=1&v=tD0D7Apa_vw&feature=emb_logo)

## **FAYPWC COVID Response**

<https://www.faypwc.com/covid-19-update/>

## **Small Business Administration**

<https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>

As an additional step to ensure the health and safety of contractor employees and PWC employees, should a contractor's employee test positive for COVID 19 the contractor must immediately inform the PWC project manager/supervisor or their primary point of contact at PWC and the employee should be performing work at PWC facilities or field sites until medically cleared. This is necessary so PWC can inform our employees, conduct or own method

of contact tracing for our employees and take any measures necessary such as quarantining PWC employees who may have been in contact with the individual who tested positive.

These actions are necessary to ensure the health and safety of all and to ensure that contract performance can be achieved under the conditions of this pandemic.

Contractor must provide a plan with their proposal that describes their plan for working under COVID-19 conditions. The plan should address the Contractor's approach to protect their employees, PWC employees, along with any other Contractor's working on PWC's locations. This may include the Contractor's approach towards employee use of PPE, such as face masks, sanitizing commonly shared tools or equipment, practicing social distancing as work conditions permit, and working within close proximity of others. The plan may also address any other actions that the Contractor will be taking, such as conducting daily temperature checks, conducting symptom checks and trackers, and any other actions the Contractor deems appropriate to protect the health and safety of their employees, PWC employees, and any other Contractor's working on PWC's locations.



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**PRICING PROPOSAL**

**UNIT RATES:**

Unit Rate Services are estimated as 90% of work to be completed; Therefore, will represent 90% of total bid pricing, in evaluation.

<b>Abbreviation</b>	<b>Description</b>	<b>Estimated Quantities (FY22)</b>	<b>Unit Price</b>
PT	Primary Trim	<b>9,166</b>	\$
ST	Secondary Trim	<b>2,267</b>	\$
BC/BT	Brush Cut/Trim	<b>1,353</b>	\$
R <sub>4</sub>	Removal 4" - 8" DBH	<b>1,450</b>	\$
R <sub>8</sub>	Removal 8" - 12" DBH	<b>310</b>	\$
R <sub>12</sub>	Removal 12" - 16" DBH	<b>90</b>	\$
R <sub>16</sub>	Removal 16" - 20" DBH	<b>58</b>	\$
R <sub>20</sub>	Removal 20" - 24" DBH	<b>12</b>	\$
R <sub>24+</sub>	Removal 24" + DBH	<b>11</b>	\$





**BIDDER INFORMATION:**

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

Address \_\_\_\_\_

Phone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

Email \_\_\_\_\_

Federal ID No. \_\_\_\_\_

ISA Certified Employee Name \_\_\_\_\_

ISA Certification No. \_\_\_\_\_

NC General Contractor's License No. \_\_\_\_\_

NC Herbicide/Pesticide Applicator Name \_\_\_\_\_

Herbicide/Pesticide License No. \_\_\_\_\_

SDBE, Minority or Women Owned Business Enterprise Yes \_\_\_\_\_ No \_\_\_\_\_

Bid Submitted by: \_\_\_\_\_  
(Print)

\_\_\_\_\_  
(Signature)

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

Date: \_\_\_\_\_



# **ELECTRIC LINE CLEARANCE SPECIFICATIONS**

For pruning, removal and re-clearing of trees and brush along energized transmission, primary lines, secondary lines, service and streetlight wires, assemblies, and fiber optic lines.

**Electric Construction**

**2021**

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# Table of Contents

<b><u>I. INTRODUCTION</u></b> .....	<b>XV</b>
<u>A. Purpose</u> .....	<b>xv</b>
<u>B. General Facts</u> .....	<b>xv</b>
<b><u>II. DEFINITIONS (BID UNITS)</u></b> .....	<b>XV</b>
<u>A. Brush</u> .....	<b>xv</b>
<u>B. Trees</u> .....	<b>xvi</b>
<u>C. Removals</u> .....	<b>xvi</b>
<b><u>III. FPWC RESPONSIBILITIES</u></b> .....	<b>XVI</b>
<u>A. Pre-Planning</u> .....	<b>xvi</b>
<u>B. Coordination</u> .....	<b>xvii</b>
<b><u>IV. CONTRACTOR REQUIREMENTS</u></b> .....	<b>XVII</b>
<u>A. Knowledge/Certifications</u> .....	<b>xvii</b>
<u>B. Safety</u> .....	<b>xviii</b>
<u>C. Crews</u> .....	<b>xviii</b>
General .....	<b>xix</b>
Working Hours/Locations.....	<b>xix</b>
Site Clean-up .....	<b>xix</b>
Tools and Equipment.....	<b>xix</b>
<u>D. Code of Conduct</u> .....	<b>xx</b>
<u>E. Communications with Property Owners</u> .....	<b>xx</b>
<u>F. Reports</u> .....	<b>xxi</b>
<u>G. Invoices and Payments</u> .....	<b>xxi</b>
<b><u>V. SCOPE OF WORK</u></b> .....	<b>XXII</b>
<u>A. Line Clearance Specifications</u> .....	<b>xxii</b>
Primary, Transmission/Distribution .....	<b>xxii</b>
Secondary and Service Lines .....	<b>xxiii</b>

<b>B. Pruning .....</b>	<b>xxiii</b>
General Procedures.....	xxiii
Right-of-Way (R/W) Side Pruning.....	xxiv
Pruning in Landscaped Areas .....	xxiv
Re-Clearing .....	xxv
<b>C. Herbicides .....</b>	<b>xxv</b>
General Usage .....	xxv
Stumps.....	xxvi
<b>D. Removal of Debris .....</b>	<b>xxvi</b>
General .....	xxvi
Landscaped and Developed Areas .....	xxvi
R/W and Non-Landscaped Areas.....	xxvii

**APPENDIX A: DESCRIPTION OF “DROP CROTCH” TRIMMING..... XXIX**

**APPENDIX B: SAMPLE SERVICE AGREEMENT..... XXXII**

## I. INTRODUCTION

### A. PURPOSE

The Fayetteville Public Works Commission (hereinafter called FPWC) is a municipal electric/water resources utility. The purpose of this document is to outline requirements for the Contractor selected to perform work in the nature of tree pruning, mowing, brush and tree removal, and vegetation control along the FPWC's electric lines according to specifications herein and as set forth in the Bid Proposal.

In performing its responsibilities under this Contract, the Contractor will be and will function as an independent, outside Contractor and neither it, its employees, nor its subcontractors, (if any), will be deemed to be employees of the Commission.

### B. GENERAL FACTS

The scope of these specifications is to provide requirements and guidelines for line clearance pruning, removing, or re-clearing trees, brush, pad-mounted equipment, saplings and other vegetation in close proximity to FPWC's energized power lines located on public and/or private rights-of-way. Additionally, the scope may include performance of new right-of-way (R/W) clearing for extension of electric service.

Most of the line miles are accessible by truck or other equipment. Of the approximately 1,529 line miles, approximately 1,516.8 line miles are accessible and approximately 12.2 miles are inaccessible.

FPWC will require ground to sky clearance. The tallest pole structure on FPWC's Electric system is a 230kV pole, which is 135' tall.

## II. DEFINITIONS (BID UNITS)

### A. BRUSH

1. Brush is defined as any woody stem plant species of less than four inches (4") diameter at breast height (DBH).

One (1.0) unit of brush is 500 square feet measured from drip line to drip line.

A brush unit can be broken down into tenths with no unit being less than one tenth (0.1).

A unit of brush is then further identified as either Brush Trim or Brush Removal.

## **B. TREES**

1. A tree is defined as any woody stem plant species greater than four inches (4") DBH.
  - a. A Primary Trim Unit is one tree (originating from one root system) to be pruned to gain clearance away from a distribution or transmission electric conductor(s), no matter the number of electrical lines and/or type of electrical lines that need to be cleared.
  - b. Secondary Trim Unit is one tree (originating from one root system) to be pruned to gain clearance away from a secondary or service electric line, no matter the number of electrical lines and/or type of electrical lines that need to be cleared.

## **C. REMOVALS**

1. There are six categories of removals, and all are measured and determined by DBH in 4" increments up to 24" as described on the PWC Line Clearance Control Form. Removals for trees larger than 24" will be planned and negotiated separately from the unit price contract.
2. One root system equals one removal. For multi-stem removals: as long as soil cannot be seen between the stems it is one unit and the category of the removal will be determined by the DBH of the largest stem.
  - a. An exception exists if the tree has reached or is above the neutral. In this case, every stem at DBH will be considered a removal unit.
3. All hardwood removals shall be stump treated immediately after the final cut.

## **III. FPWC RESPONSIBILITIES**

### **A. PRE-PLANNING**

1. A FPWC employee will inspect trees to determine when pruning is needed and when tree/wire clearances are adequate until the next year trim cycle (at least three years). If a tree has greater than 10' and/or five years in re-growth clearance in a rural area or three years in a suburban area, it should not be trimmed until the next cycle.
2. A FPWC employee will summarize the number of removals, trims, and units of brush on the Line Clearance Control Form (accompanied by a Circuit map if requested).

3. The selected contractor will complete all projects in accordance with tasks identified on the Line Clearance Control Form and specifications outlined in this document.
4. A FPWC employee will notify and/or request permission of private property owners, and notify municipal, state or federal authorities, where such authorities have jurisdiction prior to entering their lands. The obtaining of all original consents, easements, or permits for line clearing, pruning, or vegetation control will be coordinated by FPWC. The FPWC will be responsible for acquiring any permits that require a fee. (See Section IV-E-2)
5. Marking will be conducted by a FPWC employee.
  - a. Brush removals will be identified by a vertical painted slash mark on the stem or the boundaries of the brush area, and brush trim will be identified by a horizontal painted mark.
  - b. Trees to be pruned will be marked with a dot of paint, only if it is not obvious which tree is to be pruned. Tree removals will be marked with a painted "X".

## **B. COORDINATION**

1. The Urban Line Clearance Program Supervisor (ULCPS) will serve as the primary point of contact for the FPWC. The Contractor will coordinate all planning, work and administrative efforts with the ULCPS.
  - a. The ULCPS will provide the contractor with a plan of work as documented on the Line Clearance Control Form.
  - b. Upon written request, FPWC will provide Contractor the necessary copies of Substation Circuit Maps to facilitate routing crews.

## **IV. CONTRACTOR REQUIREMENTS**

### **A. KNOWLEDGE/CERTIFICATIONS**

1. The contractor shall employ at least one ISA Certified employee during the term of this contract. The ULCPS will require contact information and certification number for this employee to verify that the certification is valid.
2. The working crew leader shall be knowledgeable on re-growth rates of common tree species of this region. Generally, a line clearance trimmed tree will re-grow 60 to 70% the first year, 20% the second year, and 10% in subsequent years. If a



tree has adequate wire clearance to provide for re-growth until the next trimming cycle, it should not be trimmed.

3. When herbicides are in use, there shall be at least one herbicide applicator licensed employee on site working for the Contractor. The ULCPS will require contact information and confirmation that certification is valid throughout the duration of the contract.

## **B. SAFETY**

The line clearance work included under this agreement will be performed in proximity to energized conductors of Fayetteville Public Works Commission's electric system. The Contractor will establish and conform to safe work practices, rules, and regulations appropriate for such work.

All work procedures and training will comply with all Federal, OSHA (with special attention to Part 1910.266 & 1910.269), ANSI Z-133, and State of North Carolina Safety Standards and requirements.

Contractor will be responsible for developing and implementing proper and effective safety techniques and training as regards to its employees with a view to minimizing the possibility of accidents, injuries, or damage to persons or property in connection with the work contemplated hereby.

- a. It is the responsibility of the Contractor to document instruction and training of his/her employees regarding possible hazards involved in working around energized conductors.
- b. Contractor will forward documentation of crews training prior to the start of the project. A copy of such records must be provided to the ULCPS on a quarterly basis.
- c. Documentation of the qualifications and experience level of the crew members, the safety record of the contracting firm, and a copy of the contracting firm's safety manual must be submitted with the bid documents.

Trees should always be trimmed in a manner as to discourage climbing by children and others and provide maximum safety against possible wire contact by persons in the tree.

Where necessary, the Contractor will install barriers to keep the general public off the work site.

## **C. CREWS**

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## **GENERAL**

1. The contractor will ensure that every member of a line clearance crew has access to the FPWC Line Clearance Specifications for their reference. A copy should be available in each vehicle assigned to a FPWC job.

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## **WORKING HOURS/LOCATIONS**

1. Location of all crews will be reported daily to the ULCPs. The moving or quitting early of any crew will also be reported.
2. Crews will start and quit promptly at hours agreed upon by FPWC and the Contractor.
  - a. The preferred normal workweek will be between 7:00 a.m. and 3:30 p.m., Monday through Friday.
  - b. The contractor, in coordination with the ULCPs, will determine the actual work schedule. Changes to an established workweek will be by mutual agreement.
  - c. The contractor shall not work on Commission designated holidays unless otherwise authorized by the FPWC prior to doing so.
3. In the event the Bid Proposal contemplates a variable or indeterminate contract price dependent upon time charges of Contractor devoted to the work, the time of the Contractor's employees will start when they reach the established meeting place to be mutually agreed upon by the Contractor and the ULCPs, and will cease when they return to the established meeting place, with the usual time off for the noonday meal. An ordinary workweek will consist of forty (40) hours at straight-time rates. Overtime work that does not result in such additional charge may be performed if pre-approved by the ULCPs.

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## **SITE CLEAN-UP**

In order to ensure satisfactory relationships between FPWC and its customers and land owners abutting FPWC easements, the Contractor will clean up its work areas promptly at the end of each day's work to the extent practicable, and remove and dispose of the vegetation and debris resulting from its work, subject to the specifications outlined in this document and any related bid/contractual documents. (See Section D)

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## **TOOLS AND EQUIPMENT**

1. The Contractor will complete work with and according to his own equipment, means and methods, which will belong to and remain in the exclusive charge and

control of the Contractor, and which will not be subject to any control or supervision by the FPWC, except as to the results of said work. It is expressly understood that the FPWC does not hire or rent the use of labor, tools, equipment, transportation, or materials or assume any liability for the use or method of use thereof.

2. All labor, tools, equipment, transportation, and materials will be furnished by the Contractor and they will be in proper operating condition and adequately maintained.
3. In addition to the specific equipment listed in the bid proposal, for time and material projects, the Contractor will provide and maintain the necessary tools with each crew's equipment to safely and efficiently perform their tasks.
4. The Contractor's equipment will be neat appearing, in good operating condition and maintained, at all times. It is the contractor's responsibility to clean up any petroleum fluid spills from its equipment. The FPWC will release crews from its system at its discretion if it is determined that vehicles and/or equipment are not operating or are of an appearance that is not to its satisfaction.
5. Modern tools will be provided by the Contractor and kept in good working order. Appropriate first-aid supplies as required by OSHA will be a part of the standard equipment on all vehicles.
6. The FPWC may elect to install a radio communications system in any of the Contractors' vehicles. The FPWC will pay for the initial installation and general maintenance of this equipment.
7. The FPWC will pay for reinstallation of the equipment into a different vehicle only after it is used in the same vehicle for at least one year.
8. The Contractor will pay for any earlier request for reinstallation.

#### **D. CODE OF CONDUCT**

1. The Contractor's employees will be as neat and presentable as the job conditions permit. Crewmembers will wear clothing that is not ragged or overly worn. Shorts and/or sleeveless shirts will not be allowed.
2. The Contractor and its employees will at all times be responsible for conducting themselves in a courteous, professional, industrious and non-confrontational manner with property owners, customers of the FPWC, and public authorities in order not to jeopardize relationships between the FPWC and its customers.

#### **E. COMMUNICATIONS WITH PROPERTY OWNERS**

1. All work to be performed on private property will be on utility easements or rights-of-way; however, access to these areas will frequently be across private properties. In the interest of public relations, all line clearance work to be performed on Commission property will be planned by the ULCPS or an appointed coordinator. At least an attempt to notify all property owners will be done prior to any work being done.
2. If special arrangements are made between the property owner and the ULCPS, details will be included on the Line Clearance Control Form. The Contractor should not deviate from these directions unless approval is received from the ULCPS.
3. If the Contractor is denied access to the property or is unable to perform the work due to actions taken by the property owner, the ULCPS must be notified immediately in writing.

## **F. REPORTS**

1. The Contractor will document work performed on each plan and/or job using weekly and/or daily time sheets indicating the nature and extent of the work completed on each project. These forms are due to the ULCPS no later than Thursday of the following week.
2. The dates of performance of such work, together with any other pertinent information needed to properly describe or measure the work performed, will be maintained by the ULCPS.
3. On time and material projects, the Contractor must also provide weekly time sheets indicating hours of man and equipment hours spent on FPWC work.
4. On planned unit work, the contractor must provide the number of man hours spent on the FPWC Plan when the work is complete.

## **G. INVOICES AND PAYMENTS**

1. In every instance, and without regard to whether the contract is fixed price or variable rate, the Contractor agrees to render to the FPWC invoices that document work completed and approved by the ULCPS.
2. In the case of a fixed price contract, invoices will be for the FPWC's informational purposes only in monitoring the progress of the job.
3. In the case of variable or an indeterminate contract price contract, the Commission agrees to pay invoices within thirty (30) days of approval of the work covered by such statements.

4. All work performed by the Contractor is subject to inspection and approval by the ULCPs.
  - a. Any work not meeting these specifications will be redone at cost to the Contractor and not the FPWC.
  - b. Any units missed by the ULCPs and discovered during the audit will be considered "Add-Ons" and will be noted and performed as audit re-work at the unit cost to the FPWC.
5. The Commission may withhold payment for work done to the extent necessary to protect itself against loss on account of:
  - a. Defective work not remedied.
  - b. Claims filed or reasonable evidence indicating probable filing of claims.
  - c. Failure of Contractor to make payments promptly to subcontractors, or for material or labor.
  - d. Damages to structures or properties.
  - e. OSHA citations issued to the FPWC as a result of Contractors' violation(s) of the OSHA Standards (to include any legal/attorney fees or other costs).
  - f. Contractor abandons/violates the contract between Commission & Contractor.

## V. SCOPE OF WORK

### A. LINE CLEARANCE SPECIFICATIONS

#### PRIMARY, TRANSMISSION/DISTRIBUTION

1. Trees will be pruned to provide a minimum clearance from primary conductors for three year's re-growth. Additional clearance may be required at the discretion of the ULCPs. The rate of tree re-growth, tree species, line importance, location of the tree, and voltage of conductors should all be considered in determining actual clearance necessary.
2. All dead, dying, defective, or leaning trees that endanger the safe operation and maintenance of primary wires should be removed and/or made safe for the power line as noted on the Line Clearance Control Form.
3. Trees greater than 8 inches DBH that only endanger service or secondary wires will not be removed without specific approval from the ULCPs.

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## SECONDARY, SERVICE LINES, AND FIBER OPTIC LINES

1. Two feet (2') of clearance needs to be obtained when the following is occurring or will potentially occur in the near future, and will be recorded as a secondary trim:
  - a. Tri-plex - pushing out of sag, rubbing on, leaning on
  - b. Bi-plex - pushing out of sag, rubbing on, leaning on
  - c. Open - pushing out of sag, rubbing on, leaning on, and growing through
  - d. Fiber Optic Lines – pushing out of sag, rubbing on, leaning on
2. Street light pruning is recorded as a secondary trim.
  - a. If it's a non-LED light fixture - This type of work will require ten feet (10') of clearance from around the globe and stalk of the light.
  - b. If it's a LED light fixture – This type of work will require a cone of clearance starting from the light head working downward to the ground getting wider (about ten feet (10')) as you go.
3. Area light pruning is recorded as a secondary trim. This type of work will require enough clearance as to keep the wire, globe, and stalk from being damaged. FPWC does not trim for the lamination of area lights.

## B. PRUNING

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### GENERAL PROCEDURES

1. **Drop Crotch or Natural Pruning** is the recommended method of controlling tree shape and should be followed whenever trimming. This method will be used for side, under, and through trimming. (See Appendix A for additional information)
  - a. Converting a tree to this method may require several years to permit proper development.
  - b. The concept behind this type of pruning is to minimize re-growth and leave the tree looking as natural as possible.
  - c. This method also eliminates unsightly stubs that either die or produce a cluster of sprouts.
2. Directional Pruning should be done in conjunction with drop crotch or natural pruning. Cutting the limb off at a point where there is a limb heading away from the conductor will direct and encourage future re-growth away from the conductor.

3. All dead, dying, defective or leaning trees that endanger the safe operation and maintenance of the line shall be routinely removed as part of the landscape, individual tree, or R/W side pruning procedures.

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## RIGHT-OF-WAY (R/W) SIDE PRUNING

1. Will include the pruning of all incompatible (tall growing) species of trees within the utility right-of-way as identified by the ULCPS.
2. For all multi-phase distribution pole structures, the right-of-way width is generally 30' (15' on either side of the centerline).
  - a. Work will be performed to provide ground to sky clearance. The intent is to stormproof the line by removing overhang that would present hazards during ice, heavy wet snowstorms, and strong windstorms.
  - b. The work does not require that the edge of the right-of-way, no matter how wide it is, be an absolute box with everything removed to the sky. However, there should not be any overhang directly over the conductors with exceptions only as authorized by FPWC.
  - c. Hardwood overhangs (oak, beech, hickory, etc.) with greater than 15' clearance on the vertical will not be removed unless the approval is expressly approved by the ULCPS.
3. For single-phase pole structures, the right-of-way width is generally 20' (10' on either side of centerline).
4. For 69kV thru 230kV construction, the right-of-way width is a minimum of 50' (25' on either side of centerline) with ground to sky clearance unless otherwise instructed by the ULCPS.

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## PRUNING IN LANDSCAPED AREAS

1. Pruning should allow for a minimum of three years clearance based on growth. Exceptions will be allowed where this would require the removal of major limbs that would drastically alter the shape of the tree. Such exceptions shall not result in unsafe conditions or interfere with safe operation and maintenance of the line.
2. Landscape or individual trees with low to medium growth rates generally should not be trimmed for more than ten feet of clearance. Trees drastically trimmed for fifteen feet or more clearance only serve to offend the public's sense of aesthetics and cause difficulties in securing future trimming access.

3. Pruning will include the removal of all dead, dying, or defective limbs that may interfere with or endanger the safe operation and maintenance of the line even though they may be outside the clearance specified.
4. Tears in the bark or cambium layer of the tree will not be permitted. All mechanical pruning cuts will be made using a sequence of three cuts: the under cut, the removal cut, and the final (pruning) cut at the branch collar.
5. In general, landscape and individual small trees in developed areas will be shaped to present an acceptable uniform canopy where this will not interfere with existing or proposed conductors. Excessive trimming will encourage sucker re-growth and tree-wire clearances will not last as long as normal trimming.
6. All brush and tree removals shall be stump treated immediately after the final cut.

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## RE-CLEARING

1. **Mechanical Re-clearing** includes the brush hogging of all incompatible (tall growing) species of trees and brush. If there are not incompatible brush species present, then mechanical re-clearing should not be done. The mower operator must use care to avoid damaging lilac and other compatible species.
  - a. Where incompatible tree species are present, but are situated in areas not accessible by the mower, such as near poles, in hollows, or along the tree line edge, the mower operator will be responsible for their removal by hand unless otherwise authorized by ULCPS.
  - b. The equipment operator will be responsible for ensuring that mechanical re-clearing equipment is used in a manner that is safe for and protects the public from flying debris. Such equipment should not be used in close proximity to houses or other dwellings and should be used with caution along highways and roads.
2. **Manual Re-clearing** includes the hand cutting of all incompatible (tall growing) species of trees and brush.

## C. HERBICIDES

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### GENERAL USAGE

1. When herbicides are in use, there shall be at least one herbicide applicator licensed employee on site working for the Contractor.
2. The ULCPS must approve all herbicides used by the Contractor.



3. All herbicides will be used in accordance with manufacturer's product labels, North Carolina Department of Natural Resources Regulations and U.S. Environmental Protection Agency Registration.
4. All herbicides will be applied in strict compliance with all federal, state, and local laws and regulations, to include those issued by the manufacturer, the North Carolina Department of Natural Resources, and the U.S. Environmental Protection Agency. This includes, but is not limited to, transportation, handling, and chemical and container disposal requirements.
5. Contractor will have the ability to perform basal and foliar chemical treatment where applicable.
6. The contractor must guarantee a 90% control rate on all herbicide treatment.

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## **STUMPS**

1. FPWC will approve stump spray selection.
2. Using a hand-held applicator, all newly cut hardwood stumps, to include brush and vines (if there are less than ten (10) brush stumps) will be treated immediately after the tree or brush is cut.
3. Stump treatment involves spraying cut stumps with either an oil-based mixture or a ready mixed non-oil solution. This type of treatment is prescribed when vegetation is cut to ground line. Therefore, its primary use is for initial clearing or re-clearing where it is applied to stumps of selectively cleared non-compatible species.

## **D. REMOVAL OF DEBRIS**

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### **GENERAL**

1. All line clearing by-products (brush, wood chips, logs, wood, etc.) must be removed at the Contractor's expense.
2. All brush from public and privately developed, landscaped property will be completely removed and disposed of immediately upon completion of the work.
3. Any special requests for retention of wood or chips will be identified on the Line Clearance Control Form and/or communicated to the Contractor by the ULCPS.
4. Burning of debris is not permitted.

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### **LANDSCAPED AND DEVELOPED AREAS**

1. Brush or wood should not be allowed to remain on public thoroughfares or on lawns overnight unless arrangements have been made and approved by the ULCPS and the property owner. All brush piles must be properly marked for safety.
2. Wood that is useable as firewood should be left in manageable lengths, if requested on the Line Clearance Control Form.
3. The contractor will be responsible for disposing of all wood chips (from chipper operation) at a legal dump site, at the contractor's expense.
4. Trees and brush located along highways and streets will be cut flush with the ground, unless otherwise specified on the Line Clearance Control Form.
5. No brush will be wind-rowed or left where it will interfere with use and maintenance of fences or trails.
6. No brush will be left in field crop areas or productive orchards.

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#### **R/W AND NON-LANDSCAPED AREAS**

1. Trees and brush scheduled for removal will be cut as close to the ground as root swelling permits except in the cleared R/W center strip, stumps will not exceed one (1) inch in height.
2. When cutting for new line extensions, all stumps will be cut flush with the ground.
3. All wood, other than saw logs, will be cut into lengths that can be handled by two workmen and neatly stacked along the side of R/W unless the Line Clearance Control Form calls for leaving wood as is on the side of R/W or the complete removal of all wood.
4. Saw lags and wood will be arranged in a neat workmen-like manner along the edge of the right-of-way. The logs and wood will be kept separate from the brush at all times. Only those danger trees originating outside the R/W may be left outside the R/W after cutting unless otherwise defined by the ULCPS. Brush disposal must conform to the following specifications
5. Logs and/or wood will not remain within the limits of any state, county, or private roadway overnight. Where the electric line is adjacent to a state, county, or private roadway, all logs will be placed at the edge of the R/W furthest from the road.
6. Cut limbs and brush left for mechanical shredding by brush hogging must be stacked in a single pile, with the ends parallel to the line, near the middle of the R/W in areas easily accessible by the mower, not in hollows, on side hills, near tree lines, poles, guys, etc. Where such debris is left for mowing, care must be

taken to mark guy wires, large rocks, and other obstructions that might not be seen by the mower operator.

7. Brush may be chipped or shredded and spread on the R/W by mechanical means, wind-rowed along sides of R/W if not visible from homes, trails, or roads, only if approval is provided on the Line Clearance Control Form or expressly provided by the ULCPS.
8. Maximum height of wind-rowed brush piles will be four (4) feet tall. An opening should be left in the piles, especially at each pole location.

### DESCRIPTION OF "DROP CROTCH" TRIMMING

The goal of natural trimming or "drop crotch" trimming is to reduce the re-growth and leave the tree looking as natural as possible. This method also eliminates unsightly stubs that either die or produce a cluster of sprouts. Drop crotch trimming is the recommended line clearance trimming technique based on research of subsequent re-growth rates.

The trimmer should look the tree over before ascending to get some idea on where he will make the cuts. When up in the tree, the trimmer should only make enough cuts to obtain the desired clearance. Instead of several small or "pruner" cuts, the trimmer should drop below them and make one larger cut. Every saw cut must be made back at a lateral branch or at a branch bark collar at the trunk. Small mini-chain saws are very useful in this type of trimming. When cutting back to a lateral, it should be at least one third of the diameter of the limb that was removed. If there is more than one lateral to cut back to, the trimmer should pick one growing in a direction away from the conductor.

Most of the trees trimmed should not have any cuts made in the sides or bottom. This is to preserve the natural appearance and make a more economical and efficient crew. There are times, however, when some work on the sides will have to be done. These times are as follows:

- a. When the property owner insists
- b. When the tree looks flat or way out of proportion
- c. When a few small cuts are made to clear a service wire

Trimming from bucket trucks does not lend itself to drop-crotch pruning and frequently rounding over the tree results in many clusters of long sprouts. This situation does not lend itself to drop crotch pruning. The situation can be corrected although it may take several years. The trimmer should cut or thin out the sprouts leaving a few of the healthiest looking ones. These, in most cases, will have few lateral branches. The cut should be made just above a lateral branch or bud at the desired height upon the cluster. It is important the trimmer realize he does not have to cut back to where the cluster is every time, he re-trims. By trimming in this manner, new leaders can be trained, the re-growth will be reduced, and a better-looking tree will be the result over the span of a few years.

This type of trimming, when done correctly, will give us longer lasting clearance than any other method. It should also be mentioned that crews that trim in this manner can do much better on work units. Aesthetically, economically, and efficiently, drop crotch trimming is the way to get the job done.

## **PROPER PRUNING**

"Flush cut" has been the recommended procedure for pruning trees for over a century. Dr. Alex Shigo, Chief Scientist, USDA Forest Service, demonstrated that practice goes against nature's design and the tree's best interest.

"At the base of every branch is a collar," explains Dr. Shigo, "which contains a chemical zone that inhibits the spread of decay into the trunk. When decay develops in a branch, it moves downward until it reaches the protective chemical zone," he observes. "Decay stops there, and after the branch falls off naturally, new wood forms a callus" (Shigo Booklet).

"If the branch is pruned so that the collar is cut off or injured," explains Dr. Shigo, "the chances of infection by decay and canker-causing microorganisms are greatly increased. In addition, improper cuts sometimes cause internal cracks that can weaken the tree." Best practice indicates that crews should adhere to the following procedures:

1. When making a cut, place the saw or pruner in front of the branch bark ridge in the branch crotch.
2. Cut from the outer portion of the branch bark ridge down and slightly out, so as not to injure or remove the collar.
3. Use sharp tools.
4. Do not leave a stub.

## APPENDIX B

**For the internal use of Fayetteville Public Works Commission only** Requester/Responsible

Employee:

Project Title:

Contract Number:

(Assigned by Procurement)

Account String (w/Budget Code):

(for project funding)

Not to Exceed Amount:

Completion or Termination Date:

Work Scope/Purpose:

**Notes: (1) This Service Agreement may be utilized for all services (including legal, accounting, and consulting services). However, (a) for services subject to G.S. 143-64.31 (including but not limited to engineering and surveying services), PWC must first comply with the applicable RFQ requirement, unless exempted by law; and (b) for Information Technology, as defined in G.S. 143B-1320, PWC must first comply with applicable RFP requirements set forth in G.S. 143-129.8.**

**(2) A purchase order must be generated by Procurement and approved by the CFO to encumber funds.**

### SERVICE AGREEMENT

This Service Agreement ("Agreement") is made by and between Fayetteville Public Works Commission ("PWC"), a North Carolina public authority, and \_\_\_\_\_ [insert service provider full legal name] ("Provider"), a \_\_\_\_\_ [identify the type of legal entity and State in which formation was accomplished] (each of PWC and Provider is a "Party" and both are collectively the "Parties"). The Parties agree as follows:

1. Services. PWC retains Provider to perform the following service(s): [INSERT ONE SENTENCE OR MORE DESCRIBING THE SCOPE OF WORK TO BE PERFORMED (including any contemplated contract administration) AND ANY DELIVERABLES TO BE RECEIVED BY PWC or attach a scope of services "as Exhibit A hereto incorporated herein by reference"] (the "Services"). In the event of a conflict between the provisions of this Agreement and the provisions of any attachment or exhibit to this Agreement, the terms of this Agreement shall govern. Provider shall not make any written or verbal statement to any news media or for any marketing purposes concerning the Services without the prior written consent of PWC.

2. Service Standards. Provider shall perform and deliver the Services in accordance with (a) the professional skill and care ordinarily exercised by other providers delivering services on the same or similar projects; (b) Provider's professional licensing obligations; and (c) all applicable laws. Provider shall notify PWC promptly of the discovery of errors, omissions, discrepancies, or inconsistencies in the Services rendered. If any of the Services that Provider renders or work product, which includes but is not limited to reports, analyses, designs, specifications, plans, drawings, and other documents, that Provider delivers to PWC contain errors or omissions, Provider shall

promptly correct or supplement such Services at no additional cost to PWC. PWC's acceptance of, use of, or payment for such Services shall in no way alter or reduce the Service standards set forth herein or PWC's rights hereunder. Provider shall not assign or subcontract or transfer the Services or any rights under or interest in this Agreement without the prior written consent of PWC. Provider shall treat all information from PWC and work product resulting from the Services to be proprietary, unless such information is available from public sources, and Provider shall not publish or disclose proprietary information without the prior written consent of PWC for any purposes other than the performance of the Services. [IT MAY BE NECESSARY TO EXECUTE PWC'S STANDARD NDA AND REFERENCE IT IN THIS SECTION].

3. Delivery of Services and Ownership of Work Product. [INSERT ANY SCHEDULE OF DELIVERY, TIMEFRAME OR DEADLINE AND INSERT ANY NECESSARY FORMAT AND METHOD OF DELIVERY] In the event of suspension or termination of the Services, Provider shall promptly deliver to PWC all work product completed or in progress as of the date of termination along with reproducible documents, drawings, plans, specifications, and electronic records of the completed portion of the Services upon PWC's payment of the undisputed portion(s) of Provider's invoices in accordance with Section 8, Billing and Payment. Provider grants PWC an irrevocable license to use the work product resulting from the Services of Provider. The work product delivered by Provider to PWC in connection with the performance of the Services shall not infringe any intellectual property rights of any third party. Except as otherwise specified in this Agreement, Provider shall not use for its own purposes or allow a third party to use the work product resulting from the Services without the prior written consent of PWC.

4. Compensation. [INSERT HOW THE SERVICES ARE TO BE PAID: FIXED FEE, HOURLY RATE, PIECE RATE; IF RELEVANT, WHO IS TO PROVIDE THE SERVICE BY NAME OR JOB TITLE AND EACH PERSON'S OR JOB'S RATE] Provider's rates shall not be increased during the performance of the Services without the prior written consent of PWC.

5. Payment Limitation. Notwithstanding any other provision in this Agreement, the total fees and expenses for the Services to be performed and delivered shall not exceed [INSERT MAXIMUM FEE - **THIS IS MANDATORY for pre-auditing;**] (the "Cap"). [RETAIN THE WORDING IN BRACKETS IF PAYMENT IS NOT FIXED FEE: Provider shall promptly notify PWC in writing when Provider has reached ninety percent (90%) of the Cap. The Cap is not a fixed fee to which Provider is entitled. PWC shall be obligated to pay only for Provider's actual time devoted to providing the Services and documented expenses incurred, up to the Cap.]

6. PWC's Duties. PWC shall: (a) timely provide such information in its possession, custody, or control as is reasonably necessary for Provider to perform the Services; (b) communicate promptly to Provider all decisions of PWC and clarifications

that are reasonably needed by Provider; and (c) make payments to Provider in accordance with Section 8, Billing and Payment.

7. Representations and Warranties. Provider represents and warrants to PWC that Provider is duly licensed in the State of North Carolina to perform the Services. Each Party (the "First Party") represents and warrants to the other Party that the First Party is duly organized, validly existing and in good standing and has all requisite powers, rights, and authority to execute, enter into, and perform this Agreement in accordance with the terms and conditions of this Agreement, and this Agreement constitutes a legal, valid, and binding obligation of such First Party enforceable against it in accordance with its terms.

8. Billing and Payment. Provider shall invoice PWC monthly for services performed and expenses incurred during the preceding calendar month. All invoices shall provide reasonable detail of the services performed and expenses for which reimbursement may be sought, along with supporting documentation for such expenses. PWC shall pay the undisputed portion of each invoice within forty-five (45) calendar days after PWC's receipt of the invoice. PWC shall reimburse expenses at the lower of actual or reasonable cost, except with regard to expenses that are specifically pre-approved in writing by PWC or are set forth and included in a fixed price service arrangement. All payments from PWC to Provider shall be transferred electronically to Provider's designated financial institution, and Provider shall prior to delivery of its first monthly invoice to PWC supply the name of Provider's financial institution, routing number, and account number on the form available from PWC. Provider has the right to impose a late payment charge of one percent (1%) per month for amounts unpaid by PWC by the date due. [RETAIN THE WORDING IN BRACKETS IF PAYMENT IS NOT FIXED FEE: Provider shall maintain on a generally recognized accounting basis and retain for at least three (3) years the records supporting Provider's invoices to PWC.] In the event of a dispute regarding a monthly invoice or any portion thereof: (a) Provider shall deliver to PWC all records supporting Provider's invoice(s) in dispute within ten (10) calendar days after PWC notifies Provider of the dispute, and Provider shall cooperate with PWC to verify the accuracy of all invoices; (b) Provider shall continue to proceed diligently with the performance of the Services pending resolution of the dispute; and (c) PWC shall pay Provider in accordance with this Agreement for all Services rendered by Provider which are not the subject of the dispute.

9. Termination. Except with regard to Services to be provided for a fixed price, PWC has the right to terminate the provision of services, with or without cause, by delivering written notice of termination to Provider, and PWC shall be obligated to pay Provider only for work performed and reasonable expenses incurred until delivery of the notice of termination. Either Party may terminate an Agreement to provide Services for a fixed price for cause by delivering written notice of the cause and termination to the other Party, provided that the Party receiving the notice of termination shall have seven (7) calendar days to cure the cause cited in the termination notice. Cause shall include, but



is not limited to, failure to adhere to a schedule, failure to timely pay, and material failure to produce work product that is consistent with the applicable service standards.

10. Insurance. Provider shall maintain during the provision of Services and for at least three (3) years thereafter (collectively, the “coverage period”) the following insurance coverages, which insurance shall be placed with insurance companies authorized to do business in the State of North Carolina and rated A minus VII or better by the current edition of Best’s Key Rating Guide or otherwise approved in writing by PWC:

- (a) professional liability errors and omissions or malpractice insurance including contractual liability coverage with limits of not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) aggregate;
- (b) commercial general liability insurance with a combined single limit of liability of not less than \$1,000,000 for each occurrence of bodily injury and/or property damage and an annual aggregate of liability of not less than \$2,000,000 for bodily injury and/or property damage, and an annual aggregate of liability of not less than \$2,000,000 for Completed Operations and Products Liability;
- (c) worker’s compensation insurance as required by State law; and
- (d) automobile liability insurance with limits not less than \$100,000 each person and \$300,000 each accident for bodily injury and property damage.

Prior to initiating the Services, Provider shall deliver certificates of insurance confirming each such coverage, and Provider shall direct its insurers to provide to PWC annually certificates confirming each such coverage during the coverage period. PWC shall be named as an additional insured in the comprehensive automobile and commercial liability insurance policies. Commercial general liability coverage shall be written on an “occurrence” basis. Upon PWC’s request, Provider shall give prompt written notice to PWC of any and all claims made against the professional liability errors and omissions or malpractice insurance policy during the coverage period. Provider shall not reduce or allow the required insurance coverages to lapse without PWC’s prior written approval. All policies for insurance must be endorsed to contain a provision giving PWC a thirty (30) calendar day prior written notice by certified mail of any cancellation of that policy or material reduction in coverage. Should a notice of cancellation be issued for non-payment of premiums or any part thereof, or should Provider fail to provide and maintain certificates as set forth herein, PWC shall have the right, but shall not the obligation, to pay such premium to the insurance company or to obtain such coverage and to deduct such payment from any sums that may be due or become due to Provider, or to seek reimbursement for said payments from Provider. Any such sums paid by PWC shall be due and payable immediately by Provider upon notice from PWC. The insurance provisions of this Agreement shall not be construed as a limitation on Provider’s

responsibilities and liabilities pursuant to the terms and conditions of this Agreement. Provider's obligation to maintain insurance for three (3) years after completion of the Services shall survive the termination of this Agreement.

11. Indemnification. Provider shall indemnify, defend, and hold harmless PWC and its Commissioners, officers, employees, agents and representatives ("Indemnitees") from and against all claims, actions, liabilities, damages, losses, costs and expenses (including, without limitation, injury to or death of any persons and damage to property, economic and consequential damages and attorneys' fees) asserted by third parties against one or more of the Indemnitees arising out of negligent or willful acts, violations of law, errors or omissions or breach of the obligations set forth in this Agreement by Provider or any of its employees, agents, representatives, and subcontractors. Provider's obligation to indemnify and hold harmless the Indemnitees shall survive the termination of this Agreement and shall include the duty to pay for the reasonable attorney's fees and costs associated with defending the Indemnitee(s) by the legal counsel of each Indemnitee's choice.

12. Notices. Any notice which either Party is required or desires to give the other hereunder shall be deemed sufficiently given if, in writing, it is delivered personally, or sent by certified U.S. mail, return receipt requested, postage prepaid, to the addresses listed herein below, or such other addresses either Party shall give to the other Party by written notice in accordance herewith. Any notice given herein by personal delivery shall be deemed delivered when received. Any properly addressed notice given herein by certified mail shall be deemed delivered on third Business Day after the same is deposited in an official United States Post Office, postage prepaid, or if sooner upon the date when the return receipt thereon is signed, or refusal to accept the mailing by the addressee is noted thereon by the postal authorities.

To PWC:

Fayetteville Public Works Commission  
Attn: David W. Trego, CEO/General Manager  
PO Box 1089  
Fayetteville, NC 28302

To Provider:

[INSERT MAILING ADDRESS]

"Business Day" means each calendar day that is not a Saturday, Sunday, holiday observed by the federal government for its employees, or holiday observed by the State of North Carolina for its employees.

13. Compliance. Provider hereby acknowledges that "E-Verify" is the federal EVerify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General

Statutes. Provider further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). Provider hereby pledges, attests and warrants through execution of this Agreement that Provider complies with the requirements of Article 2, Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that all subcontractors currently employed by or subsequently hired by Provider shall comply with all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Agreement. Provider hereby further acknowledges that the execution and delivery of this Agreement constitutes Provider's certification to PWC and to the North Carolina State Treasurer that, as of the date of the effective date of this Agreement, Provider is not listed on (a) the Final Divestment List created and maintained by the North Carolina Department of State Treasurer pursuant to the Iran Divestment Act of 2015 (Chapter 147, Article 6E of the General Statutes of North Carolina (the "Iran Divestment Act")); or (b) the list of companies that the North Carolina State Treasurer determines to be engaged in a boycott of Israel in accordance with Article 6G of Chapter 147 of the General Statutes of North Carolina. Provider also shall at all times during the term of this Agreement comply with Executive Order 11246, including but not limited to the Equal Opportunity Clause requirements set forth in 41 C.F.R. § 60-1.4. Provider shall abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a) prohibiting discrimination against qualified individuals on the basis of protected veteran status or disability and requiring affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

14. Miscellaneous Provisions. Provider is and shall remain an independent contractor and shall undertake performance of the Services pursuant to the terms of this Agreement as an independent contractor. Nothing contained in this Agreement shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture, or any association whatsoever between the Parties. No breach or nonperformance of any term of this Agreement shall be deemed to be waived by either Party unless said breach or non-performance is waived in writing and signed by the Parties. No waiver of any breach or non-performance under this Agreement shall be deemed to constitute a waiver of any subsequent breach or non-performance, and for any such breach or non-performance each party shall be entitled to such remedies as provided by law. No consent or waiver by a Party shall be effective unless it is in writing and then only to the extent specifically stated. The invalidity, illegality, or un-enforceability of any portion or provision of this Agreement shall in no way affect the validity, legality and/or enforceability of any other portion or provision of this Agreement. Any invalid, illegal or unenforceable provision of this Agreement shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced the same as if the Agreement had not contained any portion or provision which was invalid, illegal or unenforceable; provided, however, severability shall not prevent this entire Agreement from being void in the event any portion or provision of this Agreement that is of the essence of this Agreement shall be void. This is the entire agreement of the Parties on

the subject matter hereof, and all prior negotiations, representations, proposals, letters, agreements, understandings, or other communications between the Parties, whether written or oral, are hereby merged into the Agreement and superseded by this Agreement. This Agreement shall not be modified unless such modifications are evidenced in writing, signed by both Parties. Nothing herein shall be construed to give any right or benefits hereunder to anyone other than the Parties. This Agreement shall be governed by the laws of the State of North Carolina without the application of the laws of any other state. The exclusive venue for all mediations and litigation and any proceedings regarding this Agreement shall be the State and Federal Courts serving Cumberland County, North Carolina, and Provider consents to personal jurisdiction in such courts. This Agreement may be executed in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement. For purposes of this Agreement, a facsimile copy or scanned copy or photocopy of a party's signature shall be sufficient to bind such party. This Agreement shall be subject to execution by electronic means in accordance with Article 40 of Chapter 66 of the North Carolina General Statutes. The titles of the paragraphs throughout this Agreement are for convenience only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this instrument.

15. Morality Clause. If, in the sole opinion of PWC, at any time Provider or any of its owner(s) or employee(s) or agent(s) (each party, owner, employee, and agent is an "Actor") engages in any one or more actions that bring disrepute, contempt, scandal, or public ridicule to the Actor or subject the Actor to prosecution or offend the community or public morals or decency or denigrate individuals or groups in the community served by PWC or are scandalous or inconsistent with community standards or good citizenship or may adversely affect PWC's finances, public standing, image, or reputation or are embarrassing or offensive to PWC or may reflect unfavorably on PWC or are derogatory or offensive to one or more employee(s) or customer(s) of PWC, PWC may immediately upon written notice to Provider terminate this Agreement, in addition to any other rights and remedies that PWC may have hereunder or at law or in equity.

16. [FOR LAWYERS ONLY] Legal Services. Deposits of funds belonging to PWC shall be made to a bank trust account, and Provider shall account to PWC for the receipt and disbursement of all trust funds. Any interest earned on trust deposits shall be transferred by the custodial bank directly to the NC State Bar IOLTA foundation in accordance with applicable NC State Bar Rules. In order for Provider to represent PWC effectively, PWC shall disclose fully and accurately all relevant facts and keep Provider apprised of all developments relating to Provider's representation of PWC. All information from PWC shall be treated as privileged and confidential in accordance with applicable NC State Bar rules. Provider shall use Statewide Title as the title insurer for PWC unless PWC gives prior written consent to the use of an alternative title insurer. Provider does not guarantee the outcome of any legal representation. Statements regarding expected outcomes of legal matters are Provider's best professional estimate only, and are limited by Provider's knowledge at the time the estimates are expressed. Provider has the right

to exercise its discretion to elect to withdraw from legal representation of PWC at any time upon delivery of written notice of termination to PWC. If Provider elects to withdraw from representation of PWC in pending litigation, PWC shall promptly cooperate in taking all steps necessary to free Provider from any obligation to perform further services or incur additional costs or expenses, including the execution of any documents necessary for Provider to complete its withdrawal. Copyright and other intellectual property rights in all attorney work product generated in the course of performance of the Services by Provider shall belong to Provider and may be used by Provider, subject to the foregoing confidentiality and privilege restrictions and subject to PWC's irrevocable license to use such work product for the purposes for which it was provided. PWC is the sole intended beneficiary of the work product. Provider shall not be liable for damages caused by reliance on work product for any purpose other than that for which it was prepared.

[FOR CONSULTANTS, ARCHITECTS, ENGINEERS OR SURVEYORS] Professional Services. Except with PWC's knowledge and prior written consent, the Provider shall not engage in any activity or accept any employment, interest or contribution that would reasonably appear to compromise the Provider's professional judgment with respect to the Services. The Provider shall disclose to PWC any business or personal relationship with any Commissioner, officer, director, manager, or supervisor of PWC.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives effective the day and year first above written.

Fayetteville Public Works Commission [INSERT PROVIDER FULL LEGAL NAME]

By: \_\_\_\_\_ By: \_\_\_\_\_  
Elaina L. Ball, CEO/General Manager (Printed Name) (Title)

Date: \_\_\_\_\_ Date: \_\_\_\_\_

**This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act (N.C. Gen. Stat. § 159-1 et seq.).**

By: \_\_\_\_\_  
Rhonda Haskins, Chief Financial Officer

Date: \_\_\_\_\_

(Title)