



REQUEST FOR PROPOSALS

PWC2223022

**CYBER, DIRECTORS AND OFFICERS, EXCESS
LIABILITY, WORKERS COMPENSATION EXCESS
LIABILITY INSURANCE BROKERAGE SERVICES**

Issued: November 4, 2022
Fayetteville Public Works Commission
955 Old Wilmington Road
Fayetteville, NC 28301

DUE DATE: NOVEMBER 30, 2022, 5:00 PM

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1. INTRODUCTION/PURPOSE

The Fayetteville Public Works Commission (hereafter referred to as PWC) is soliciting proposals for a qualified Insurance Broker to establish a contract for the Services specified herein from an entity or entities that will provide prompt and professional service. Specifically, the purpose is to select a qualified insurance broker to market PWC's Cyber, Directors and Officers, Property, Excess Liability, and Excess Liability Insurance Programs in accordance with the terms, conditions, and Scope of Services contained in this RFP.

PWC reserves the right to award contract(s) to one or more Proposers, as determined to be in the best interest of PWC. PWC anticipates awarding contract(s) by January, 2023 with an expected start date no later than February, 2023 for the selected Proposer(s).

2. BACKGROUND/CURRENT STATE

PWC operates as a public authority owned by the City of Fayetteville, and is governed by four Commissioners appointed by the Fayetteville City Council. PWC manages, operates, and supervises three utilities – electric, water, and sanitary sewer services - serving more than 112,000 customers daily. See Appendix A for more information about PWC's staff, organization, and other key facts.

PWC seeks a qualified insurance broker to market the Fayetteville PWC's Cyber, Directors and Officers, Property, Excess Liability, and Workers Compensation Excess Liability Insurance Programs with the result being a successful renewal of each policy with a reputable carrier that meets the needs and budget of PWC. Broker shall provide professional advice, have access to competitive markets, negotiate on behalf of PWC and be effectively evaluate alternatives. PWC wishes to partner with a broker/carrier that has appropriate technology for this service that also leverages other value-added services to the benefit of PWC and its Risk Management Program.

3. TERMS AND CONDITIONS

3.1 ACCURACY OF RFP AND RELATED DOCUMENTS

The PWC assumes no responsibility for conclusions or interpretations derived from technical and background information presented in the RFP, or otherwise distributed or made available during the procurement process. In addition, the PWC will not be bound by or be responsible for any explanation, interpretation or conclusions of this RFP or any documents provided by the PWC other than those given in writing by the PWC through the issuance of addenda. In no event may a Proposer rely on any oral statement by the PWC or its agents, advisors, or consultants.

3.3 PWC RIGHTS

The PWC, at its sole discretion, reserves the following rights:

- A. To supplement, amend, substitute, or otherwise modify the RFP at any time;
- B. To cancel this RFP with or without the substitution of another RFP;

- C. To reject any or all proposals produced in response to the RFP; to take any action affecting this RFP, this RFP process, or the Services or facilities subject to the RFP that would be in the best interests of the PWC;
- D. To issue additional requests for information, and/or;
- E. To require one or more Proposer(s) to supplement, clarify or provide additional information in order for the PWC to evaluate the responses submitted.

3.4 **EXPENSE OF SUBMITTAL PREPARATION**

The PWC accepts no liability for the cost and expenses incurred by the Proposer in response to this RFP, including preparing requests for clarification. Each Proposer that prepares a Response shall do so at its own expense and with the express understanding that they cannot make any claims whatsoever for reimbursement from the PWC for the costs and expenses associated with the Response.

3.5 **TRADE SECRETS/CONFIDENTIALITY**

Upon receipt at the PWC, your Response is considered a public record, except for material which qualifies as "Trade Secret" information under N.C.G.S. 66-152(3). Your Response will be reviewed by PWC staff and members of the general public who submit public records request.

THE RESPONDER IS REQUIRED TO IDENTIFY ALL CONTENT DESIGNATED AS A TRADE SECRET AS DEVINED PURSUANT TO N.C.G.S. 66-152(3) AND WHICH MEETS THE CRITERIA FOR CONFIDENTIALITY PURSUANT TO N.C.G.S. 132.1.2(1). ALL NOTED TRADE SECRETS MUST FOLLOW PROCEDURES NOTED BELOW AND REQUIRE ATTACHED DOCUMENTATION SPECIFYING HOW THE CONTRENT QUALIFIES AS A TRADE SECRET UNDER NORTH CAROLINA LAW. IF AN ENTIRE RESPONSE IS MARKED CONFIDENTIAL OR TRADE SECRET, IT WILL BE DISQUALIFIED FROM CONSIDERATION.

To properly designate material as "trade secret" under these circumstances, each Proposer must take the following precautions.

- A. Any trade secrets submitted by Proposer should be submitted separately in a sealed enveloped marked "Trade Secret – Confidential and Proprietary Information – Do Not Disclose Except for the Purpose of Evaluation this Response"
- B. Offer documentation specifying how the content qualifies as a trade secret under North Carolina law, and
- C. The "trade secret" should be stamped on each page of the trade secret materials contained in the envelope.

3.6 **NON-DISCLOSURE/SERVICE AGREEMENT**

PWC requires that the selected proposer enter into a Non-Disclosure and Service Agreement for the services provided as a part of this RFP. Samples of the Non-Disclosure and Service Agreement are attached to this Request for Proposals as Appendix B. Any exceptions to the Non-Disclosure and/or Service Agreement should be included within the Proposer's response to this RFP.

4. SCHEDULE AND PROCESS

The following chart shows the schedule of events to prepare your organization's response. The key events and deadlines for this process are as follows:

<u>DATE</u>	<u>EVENT</u>
November 4, 2022	Advertisement of RFP
November 16, 2022	Cut-off for Submitted Questions
November 30, 2022	Response Submission due by 5:00 p.m. on this date.
December, 2022	Presentations from top Proposers
January, 2023	PWC anticipates awarding contracts on or before this date
February 1, 2023	Proposers are expected to start on or before this date

Requests for information or clarification of this RFP must be made in writing and addressed to Tanga Anderson-Solomon at: Tanga.Anderson-Solomon@faypwc.com . Questions should reference the RFP title. Proposer shall plainly mark the outside of the sealed envelope with the following information: SEALED BID: **RFP GROUP CYBER, DIRECTORS AND OFFICERS, PROPERTY, EXCESS LIABILITY, AND EXCESS LIABILITY INSURANCE BROKERAGE SERVICES**, Proposer's name, address, proposal due date, and time. Communication regarding this RFP via any medium other than the designated fax number or e-mail address, including phone, personal visits, etc., is prohibited.

Proposers shall provide seven (7) copies of the proposal and include a flash drive containing a PDF version of their complete proposal. PWC will accept sealed proposals until 5:00 PM, November 30, 2022, in the PWC Procurement Office, 1st floor, PWC Administration Building, 955 Old Wilmington Road, Fayetteville, NC 28301. Proposals may be delivered via mail or delivery service, proposals received after the stated date and time will not be considered and will be returned to the Proposer unopened. Electronic proposals will not be accepted via email.

5. PROPOSAL CONDITIONS

5.1 Proposals must include the following information:

- 5.1.1 **Cover Letter** signed by an authorized individual who commits to the terms and conditions of the company's proposal.
- 5.1.2 **Executive Summary**, not to exceed two (2) pages. Include a description and history of the company, services provided, and explanation of how the proposed services/solution best fits PWC's needs.
- 5.1.3 **Statement of Qualifications** to demonstrate ability to meet RFP requirements:
 - A. Include a description of office location(s), organizational structure, number of years in business, and annual revenue.

- B. Demonstrate capacity to fully perform all scope requirements, including experience, reliability, staffing capacity, competent subcontractors, and financial stability.
- C. Demonstrate understanding and experience of executing best practices related to commercial insurance products.
- D. Describe any experience with or knowledge of North Carolina legal requirements and/or regulations pertinent to municipal/public utilities.
- E. Provide names, qualifications, and percentage of time commitment for staff or other resources that will be assigned to PWC associated with these services. PWC reserves the right to accept or reject any proposed assigned staff or subcontractor.
- F. Provide resumes of project team members, to include subcontractors. Include time/experience with the Proposer.
- G. Provide an organizational chart to demonstrate how the project team fits within the larger organization.
- H. Disclose any litigation you are currently involved in, or have been, within the past five (5) years in which the Proposer or your partners/subcontractors were a party.
- I. Provide details of how and why your company will best serve the needs of PWC.

5.1.4 **References** Proposer shall include a total of five (5) References. This must include three (3) references from current clients and two (2) references from former clients. References must be comparable in size and nature to PWC (Municipal/ Public Utility References are preferred).

5.1.5 **Scope of Work** that includes a detailed account of how the Proposer will meet the requirements/scope of work outlined in the RFP.

5.1.6 **Price** that includes cost details for the proposed services. The proposer shall include pricing for their services. PWC is open to a flat fee arrangement or a commission-based compensation structure.

6. SCOPE OF WORK

The Proposer must provide details on the project approach and structure. The Statement of Work should, at a minimum, address the following objectives.

6.1.1 Provide a description of the Proposer's process for analysis of PWC's current insurance program, what recommendations are provided, and how often is the review conducted after the initial review.

6.1.2 Provide a description of the Proposer's process for monitoring the insurance market, aligning current and long-term trends with PWC's insurance program. To include forecasting, new developments, potential gaps in coverage, duplicative insurance coverage.

- 6.1.3 Provide a description of the Proposer's entire claims process, including an explanation of the claim notification and the claim submission procedures through to the final resolution of the claim.
- 6.1.4 Provide an approach for enhancements to PWC's current insurance program, including performance measures or reporting, to claim processing and reporting that would better serve PWC. The Proposal shall indicate which enhancements, if any, are included within the Cost Proposal or the amount of an additional charge associated with the enhancement.
- 6.1.5 Ability to provide insurance certificates to third parties as requested by PWC.
- 6.1.6 Ability to provide insurance consultation services to PWC associated third-party small businesses with lack of insurance coverage or no access to insurance coverage.
- 6.1.7 Approach for working with PWC to develop, and present PWC's risk profile and insurance coverage to insurance underwriters.
- 6.1.8 Approach for for reviewing all PWC's third-party agreements/contracts and current policies and procedures to insure proper standard insurance language/coverage is in place and that adequate insurance coverage is provided by PWC and the contracting party to mitigate risk and gaps in coverage.
- 6.1.9 Agree that the PWC will award a contract under this RFP directly to the carriers or companies that provide the requested services and will require a signature from an authorized representative with the authority to commit the carrier or company to all requirements of the RFP.
- 6.1.10 Agree that all data exchanges containing HIPAA-protected and sensitive data (file transmission, email, media, etc.) between Proposer and PWC will be encrypted, and only decrypted by the specified recipient.
- 6.1.11 Have significant experience administering insurance programs and providing similar services listed in this RFP with 650 employees and assets of one billion dollars or more.

MINIMUM QUALIFICATIONS:

Proposers shall:

- 6.1.12 Hold designation as North Carolina Insurance Brokerage Company, or any entity allowed under North Carolina Statutes to provide the aforementioned referenced insurance plans in the State of North Carolina.
- 6.1.13 Have been licensed to transact the appropriate insurance and administrative products for at least five (5) years in the State of North Carolina (and sub-

contractors if applicable) and/or provide documentation that allows the Proposer to conduct the referenced services within the State of North Carolina and has a licensed to transact the appropriate insurance and administrative products for at least five (5) years in other states.

MANAGEMENT AND PERSONNEL

The Proposer shall include the following information in the Proposal:

6.1.14 Profile of the Firm – State whether your firm is national or international. Additionally, state the following:

Age and size of the firm and local office.

Location of the office where the work on the services to be performed.

Number and nature of the staff to be assigned to the services on a full-time basis (resumes are preferred).

Number and nature of staff to be assigned to these services on a part time basis (resumes are preferred).

6.1.15 Identify staff who will be assigned to PWC's account as primary account manager, claims manager, other appropriate staff and indicate whether each holds any certifications and licenses applicable to the proposed services. Provide resumes for each person that will be assigned to this PWC's Account. Proposer should note whether employees or subcontractor employees.

6.1.16 The successful Proposer must provide details of any legal challenges experienced within the last five (5) years to any written examination, oral review boards, or scenario-based assessment centers. Documents must provide the full legal summary and resulting judgments or disposition.

6.1.17 Proposer must be operating as the same business entity for a minimum of five (5) years and have been successful in the business of all aspects of insurance brokerage and administrative services including staffing, training, software and hardware continuously for a minimum of five (5) years.

7. EVALUATION OF PROPOSALS

7.1 All qualified proposals will be reviewed and evaluated. At any time during the review, PWC may request additional information from the Proposer. Such information requests and Proposer's responses must be in writing. Information may be requested from sources other than the submitted proposal to evaluate the Proposer.

7.2 Top evaluated proposers may be asked to make a presentation of the proposed approach/solution.

7.3 Evaluation criteria will include, but will not be limited to:

- A. Strength and stability of the Proposer to provide the requested services
- B. Experience and success with similar projects of comparable size and scope

- C. Ability to meet the objectives of PWC.
- D. Overall responsiveness, viability, and completeness of the proposal
- E. Demonstrated understanding of and ability to meet or exceed PWC's expectations
- F. Scope of goods/services being proposed
- G. Personnel/subcontractor qualifications
- H. Cost of proposed services
- I. Any other facts considered relevant by the PWC

7.4 PWC reserves the right to select and negotiate with the successful Proposer any combination of bid line items and options.

8. AWARD OF CONTRACT

8.1 PWC requires that the selected proposer enter into a Non-Disclosure and Service Agreement for the services provided as a part of this RFP. Samples of the Non-Disclosure and Service Agreement are attached to this Request for Proposals as Appendix B.

APPENDIX A



PWC At a Glance

Customers

- In Operation since 1905 (115 years)
- Provide Electric, Water and Wastewater Services
- Total Customers: 118,069
- Number of Services: 271,047
- Annual Customer Turnover: 20-25%



Electric System

- Purchase Wholesale Power from Duke Energy
- Only NC municipal system to own/operate a generation plant (Dispatched for use by Duke Energy)
- Generation Capacity: 268 MW
- Annual MWH Sold: 2.2 Million
- System Peak: 499 MW (Feb 9, 2015)
- Reliability Rate: 99.9906%
- Electric Distribution Substations: 32
- Distribution Lines: 1,300 miles
- Transmission Lines: 142 miles
- Streetlights/Area Lights: 37,000



Customer Service

- Annual Customer Contacts: 502,484
- Average Monthly Calls: 34,228
- Annual Bills Generated : 1.4 Million
- Customer Incentive Programs: 13
- Annual Water Leak Notifications: 21,850



Customers by Service

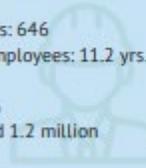
- Electric: 81,608
- Water: 89,577
- Wastewater: 88,713
- Customers with 2+ Services: 75%



Employees

- Number of Employees: 646
- Average Tenure of Employees: 11.2 yrs.
- Average Age: 44.2
- Annual Turnover*: 7.6
- Annual Hours Worked 1.2 million

* Non retirement



Water/Wastewater Operations

- Population Served: 205,383
- Drinking Water Treated: 10.2 Billion Gallons/Year
- 100% Compliant for all EPA Drinking Water Standards
- Daily Water Treatment Capacity: 57.5 Million Gallons
- Daily Wastewater Treatment Capacity: 46 Million Gallons
- Water/Wastewater Infrastructure: 2,700 miles
- Hydrants: 8,300
- Sanitary Sewer Lift Stations: 82



Facilities

- Operate:
 - Butler-Warner Generation Plant (268 MW)
 - PO Hoffer Water Treatment Facility (39.5 MGD)
 - Glenville Lake Water Treatment Facility (18.0 MGD)
 - Cross Creek Water Reclamation Facility (25 MGD)
 - Rockfish Creek Water Reclamation Facility (21 MGD)
- Electric Service Area: 147 Sq. Miles
- Water Sewer Area: 163 Sq. Miles
- Wastewater Service Area: 142 Sq. Miles



Financial

- Annual Operating Budget: \$401.9 Million
- Total Assets: \$1.44 Billion
- Bond Rating: Aa2 (Moody's), AA (Standard and Poor), AA (Fitch)
- Annual Local Purchases: \$25 Million
- Annual Payroll: \$67.3 million
- Operations & Maintenance Expenses per Customer: \$379 (\$544 National Median)
- Annual Contributions to City of Fayetteville in Lieu of Taxes: \$11.4 Million
- Annual Streetlight Services: \$3.9 million
- Annual Economic Development: \$1.2 million (thru 2021)

Updated Sept. 2020

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 address as 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 therefore 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: Marion J. Noland, Interim 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 E-Verify 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 of any association whatsoever between the Parties. No breach or non-performance 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: _____
Marion J. Noland, Interim CEO/General Manager

By: _____
_____, _____
(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

SAMPLE

NONDISCLOSURE AGREEMENT

This Nondisclosure Agreement ("Agreement") is made effective this ____ day of _____, 20____, by and between Fayetteville Public Works Commission, a public authority organized under the laws of the State of North Carolina with its principal place of business located at 955 Old Wilmington Road, Fayetteville, North Carolina 28302 ("PWC"), and _____, a _____ with its principal place of business at _____ ("Vendor")(PWC and Vendor are each a "Party" and collectively the "Parties"). In consideration of the mutual covenants contained herein, the Parties intending to be legally bound, agree as follows:

1. "Confidential Information" means all records, communications, and other information, whether written, electronic, or oral, given by one Party ("Disclosing Party") to the other Party ("Receiving Party") that are not subject to disclosure as a public record under North Carolina law when such information is in the possession, custody, or control of PWC, which information includes but is not limited to trade secrets, personnel records, and customer billing records. All Confidential Information shall either be marked or otherwise identified as "confidential" or be such information that a reasonable person would be expected to understand is confidential under the circumstances. Confidential Information excludes information which:

- a. Was known to Receiving Party prior to its receipt from Disclosing Party free of any obligation to keep it confidential;
- b. Is or becomes publicly available, by other than unauthorized disclosure;
- c. Is independently developed by Receiving Party without knowledge of the Confidential Information;
- d. Is disclosed to any non-agent third party by Disclosing Party without restriction;
- e. Is lawfully received from a third party whose disclosure would not violate any confidentiality or other legal obligation; or
- f. Is required to be disclosed pursuant to North Carolina law.

2. Receiving Party will: (a) protect and safeguard the Confidential Information with at least the same degree of care as it uses to protect its own Confidential Information, which will be no less than a commercially reasonable degree of care; (b) use the Confidential Information of Disclosing Party only for the purpose for which Disclosing Party provided such information to Receiving Party ("Purpose") and for no other purpose or otherwise in any manner to Disclosing Party's detriment; (c) not disclose, publish, or furnish Confidential Information, in any manner, except to its employees, agents, attorneys, accountants or advisors (collectively "Representatives") who (i) need to know such Confidential Information to assist Receiving Party in relation to the Purpose, (ii) are informed by Receiving Party of the confidential nature of the Confidential Information, and (iii) are subject to confidentiality duties or obligations to Receiving Party that are no less restrictive than those in this Agreement; (d) not copy Confidential Information without the written consent of Disclosing Party, unless necessary for the Purpose, and (e) be responsible for any breach of this Agreement caused by any of its Representatives. The Receiving Party shall give the Disclosing Party notice immediately upon becoming aware that any Confidential Information has or may have been disclosed or released.

3. If Receiving Party or its Representatives is requested or required by applicable federal, state or local law, including but not limited to, subpoena, civil investigative demand or similar process (collectively, a "Legal Order"), to disclose any Confidential Information, the Receiving Party will (a) promptly notify Disclosing Party of such request, except as prohibited by law, so that Disclosing Party may seek an appropriate protective order or other remedy; and (b) provide commercially reasonable assistance to Disclosing Party in opposing such disclosure and/or obtaining a protective order or other remedy to the extent such opposition is reasonably warranted by law. If, after providing such notice and assistance as required in this Section, Receiving Party remains subject to a Legal Order to disclose any Confidential Information, Receiving Party or its Representatives, as the case may be, will disclose no more than the portion of the Confidential Information, which, on the advice of Receiving Party's legal counsel, is specifically required to be disclosed by such Legal Order. If Vendor designates information as Confidential Information, Vendor shall defend, indemnify, and hold harmless PWC, its Commissioners, officers, employees, and agents, from every claim, demand, loss, expense, cost, damage or injury, including reasonable attorney's fees, resulting from any third party bringing an action under Chapter 132

of the North Carolina General Statutes, to the extent such may result from the decision of PWC or its staff to withhold information in accordance with G.S. 132-1.2 and this Agreement. PWC agrees to maintain the confidentiality of Confidential Information during the pendency of any such action consistent with its statutory obligations and the commitments undertaken herein.

4. The Parties agree that, upon the written request of a Disclosing Party, Receiving Party and its Representatives will promptly return to Disclosing Party or provide written certification of the destruction of all Confidential Information of Disclosing Party, including all Confidential Information contained in internal documents, without retaining any physical or electronic copy, extract or summary of any part thereof. Notwithstanding the foregoing, a Receiving Party may retain copies of Confidential Information to the extent required by law and, in addition, solely to the extent necessary for purposes of such Party's ordinary course internal document retention and backup requirements and procedures, provided that such Confidential Information will remain subject to the terms and conditions of this Agreement for so long as it is retained.

5. The Parties agree that (a) all Confidential Information disclosed under this Agreement, and all copies thereof, will be and remain the property of Disclosing Party; (b) nothing contained in this Agreement grants or implies any grant of any right, license or authority in or to the Confidential Information; and (c) neither Party will be under any legal obligation of any kind whatsoever, or otherwise be obligated to enter into any business or contractual relationship, investment, or transaction, by virtue of this Agreement, except for the matters specifically agreed to herein. THE PARTIES HEREBY AGREE THAT ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS," AND NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS OR PERFORMANCE THEREOF.

6. The Parties agree that (a) money damages alone would not be a sufficient remedy for any breach of this Agreement, and that, in addition to all other remedies, each Party will be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such breach; (b) neither Party will oppose any injunctive relief sought by the other Party on the grounds of failure to prove actual damage; and (c) each Party waives any requirement for the securing or posting of any bond in connection with such remedy.

7. Either Party may terminate this Agreement at any time by providing written notice to the other Party. Notwithstanding the foregoing, the confidentiality provisions of this Agreement shall survive and continue to apply to Confidential Information in perpetuity after such Confidential Information was disclosed to Receiving Party.

8. This Agreement sets forth the entire agreement and understanding between the Parties on the subject matter hereof and supersedes all prior discussions and agreements between them. This Agreement may not be modified or amended except in a writing signed by all Parties. This Agreement will be binding upon and will inure to the benefit of each Party hereto and its successors and assigns. Neither Party may assign its rights and obligations under this Agreement without the prior written consent of the other Party, except that upon prior written notice to the other Party, either Party may assign this Agreement to: (1) an entity that purchases all or substantially all of the equity or assets of the assigning Party; or (2) a successor entity into which the assigning Party merges or consolidates. The Parties agree that if at any time a Party elects not to assert any of its rights under this Agreement, this election will not be construed as a waiver of such Party's rights under such provision or any other provision of this Agreement, nor shall any exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy granted herein or by law. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement shall be governed by, and construed in accordance with, the laws of the State of North Carolina. Venue for any proceedings arising under or relating to this Agreement shall be in the courts serving Cumberland County, North Carolina, and Vendor consents to the exercise of personal jurisdiction over Vendor by such courts and waives all objections and defenses relating to *forum non conveniens* and venue. All notices under this Agreement will be in writing and will be deemed to have been duly given upon receipt, if personally delivered or if sent by certified mail, return-receipt requested, postage prepaid or by a nationally recognized overnight courier service (e.g. Federal Express) to the

addresses set forth on the first page of this Agreement. 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.

IN WITNESS WHEREOF, the Parties have executed this Nondisclosure Agreement effective the date first written above.

FAYETTEVILLE PUBLIC WORKS COMMISSION

[VENDOR]

By: _____
Elaina L. Ball, CEO/General Manager

By: _____
_____, _____
(Printed Name) (Title)

SAMPLE