



REQUEST FOR PROPOSALS

PWC2223038

**Land Applications of Biosolids
From the Cross Creek Water Reclamation Facility and
the Rockfish Creek Water Reclamation Facility**

**Date of Issue: February 13, 2023
Proposal Deadline: March 14, 2023
2:00 p.m.**

Direct all inquiries concerning this RFP to:

**Tanya Hazlett
Procurement Advisor
Tanya.hazlett@faypwc.com
910-223-1429**

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INSTRUCTION TO BIDDERS

1. Scope

The successful bidder shall furnish all materials, equipment and labor necessary for performing all work of loading, transporting and properly land applying biosolids produced by the Cross Creek Water Reclamation Facility and Rockfish Creek Water Reclamation Facility, for a 3-year period commencing on or about July 1, 2023, and ending on or about June 30, 2026, in accordance with FPWC's specifications.

FPWC shall be responsible for obtaining all applicable permits for biosolids land application. A listing of all applicable permits has been included with this Request for Proposal. This listing of applicable permits includes the following information: permit number, issuing agency, issue date and expiration date.

The Bidder shall keep and maintain records which will enable FPWC, as well as the Bidder, to ascertain and determine clearly and accurately the total volume of all biosolids removed from the two facilities. Records shall conform to those required under federal, state and local regulations relating to biosolids.

2. Estimated Quantities

An estimated volume of 30 MG of biosolids will be generated for land application per year for the duration of this contract with an undetermined maximum dependent upon any additional services provided. A minimum of 2.5 MG (not including dredging volumes), weather permitting, of biosolids is required to be land applied monthly. Contractor shall remain on-site if storage volumes at each facility are above the following levels: Cross Creek WRF – 2.75 MG; Rockfish Creek WRF – 1.0 MG. The Contractor will be responsible for handling 100% of the daily production. The Contractor shall remove the total actual quantities produced at FPWC's two facilities in accordance with federal, state and local regulations.

3. RFP Schedule

Action	Responsibility	Date/Time
Issue RFP	PWC	Monday February 13, 2023
Submit Written Questions/Question Deadline	Bidders	Tuesday February 28, 2023, 5:00 p.m.
Provide Response to Questions/Addendum	PWC	Tuesday March 7, 2023, 5:00 p.m.
Proposal Deadline	Bidders	Tuesday March 14, 2023, 2:00 p.m.
Award Contract	PWC	TBD
Contract Start Date	PWC/Bidders	Tuesday July 1, 2023

4. Questions About Proposal

Any questions or clarifications regarding this RFP shall be directed to Tanya Hazlett, Procurement Advisor, in writing, via e-mail to Tanya.Hazlett@faypwc.com. Changes or clarifications to the scope of work or bid documents will be issued in writing in the form of an addendum and will be forwarded to all prospective bidders. Receipt of addenda shall be acknowledged on the proposal form. Verbal clarifications or changes shall not be binding

upon FPWC. Prospective bidders are expressly prohibited from contacting any FPWC official or employee regarding this RFP except in the manner noted above. Violation of this provision may result in the disqualification of the bidder.

5. Interpretation of Documents

If any person contemplating submitting a proposal for the proposed contract is in doubt as to the true meaning of any part of the Contract Documents or finds discrepancies in or omissions from the Contract Documents, he/she may submit to FPWC a request for an interpretation or correction thereof. Any interpretation or correction of the documents will be made only by Addendum duly issued and a copy of such Addendum will be mailed or delivered to each person receiving the RFP Documents. FPWC will not be responsible for any other explanations or interpretations of the documents. Receipt of Addenda shall be noted on the proposal form.

6. Delivery of Proposal

All Proposal documents shall be printed or written in black ink clearly and legibly in conformance with the instructions for submitting proposals and shall be submitted in a sealed envelope plainly marked on the outside, "**SEALED PROPOSAL FOR LAND APPLICATION OF BIOSOLIDS.**"

The emphasis of the proposal should be on providing information sufficient to demonstrate compliance with the requirements set forth in this Request for Proposals. The proposal shall be typed on standard 8½" x 11" paper and in a format corresponding to the proposal specifications. Any oversized documents must be folded to standard size and secured in the proposal. The Bidder shall submit one (1) original, plus four (4) copies of the proposal. The proposal shall be signed by an officer, or officers, authorized to execute legal documents on behalf of the Bidder.

The date the proposal must be submitted and received by FPWC is hereby set forth as no later than Tuesday, February 28, 2023, on or before the hour of 5:00 p.m.

Proposals shall be properly executed upon the Proposal Forms included with this Request for Proposals, or exact copies thereof. Numbers shall be stated both in writing and in figures where so required, and the signatures of all persons signing shall be in longhand. The completed forms shall be without inter-lineation, alterations, or erasures. In case of a difference in written words and figures in a Proposal, the amount stated in written words shall govern unless obviously in error. In the event of a discrepancy in the extension of a quantity times the unit price, the correct extension of the quantity times the unit price shall prevail.

It is the Bidder's responsibility alone to ensure that the proposal is received by FPWC prior to the hour and date specified for the receipt of proposals in the Notice of Request for Proposals. Any proposals received after that hour and date shall be returned unopened.

7. Withdrawal of Proposal

Any bidder may withdraw his/her proposal by written request, at any time prior to the scheduled closing time for receipt of proposals. Proposals shall remain valid for acceptance by FPWC for a period of 60 days after the submittal due date.

8. Award or Rejection of Proposals

Contract will be awarded to the lowest responsive, responsible bidder taking into consideration the evaluation criteria set forth in page 12 of this Request for Proposals. Fayetteville Public Works Commission reserves the right to award contract in the best interest of said Commission or to reject any or all bids and to waive all informalities concerning bid.

9. Contract Term

The successful Contractor shall enter into a written contract binding all the terms, conditions, and provisions of the Specifications defined herein and associated Contract Documents. The initial contract period will be three (3) years beginning on or about July 1, 2023. FPWC may, at their option and with approval of the Contractor, extend the period of this agreement for an additional period of two (2) years. Contractor shall be notified in writing of FPWC's intention to extend the contract period at least six months prior to the expiration of the original contract period.

10. Price Adjustments

The initial bid price shall be firm for a period of one year. After the first year of the contract, the Contractor may request a price adjustment for the next 12-month period. The first request for adjustment may be requested on July 1, 2024, and can be repeated at the end of each twelve-month period thereafter. The price adjustment must be supported by and may not exceed the percent increase or decrease in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. All items, 1982 – 84 = 100, as published by the U.S. Department of Labor. The adjustment will be made by multiplying the percent increase or decrease in the CPI-U over the most recent twelve months reported times the current unit price and adding or subtracting the adjustment to the price used during the previous twelve months.

11. Payments

Payment shall be made for the amount of biosolids removed at the end of each monthly period in which biosolids were removed. Payment will be determined by multiplying the unit contract price by the actual quantity of biosolids removed. Quantities will be determined by the following measurement procedure: Cross Creek and Rockfish Creek Water Reclamation Facilities shall utilize the facility flow meter. Dredging flows will be recorded by a flow meter provided by the Contractor. Payment will be made within 30 days of receipt of a correct invoice.

12. Cancellation of Contract

FPWC shall have the right to cancel this contract for convenience upon thirty (30) days written notice to Contractor. Contractor shall terminate performance of services on a schedule acceptable to FPWC. In the event of cancellation for convenience, FPWC shall pay Contractor for all services performed prior to the date of cancellation.

This contract is subject to immediate cancellation by FPWC in the event of non-compliance, unsatisfactory performance, or any other default by the Contractor.

13. Force Majeure

In the event that either party is unable to perform any of its obligations under this Agreement, or to enjoy any of its benefits because of any event which is unavoidable and beyond the control of the defaulting party, including, but not restricted to, a labor stoppage, strike action or unrest, a judicial or governmental decree, regulation or other direction not the fault of the party who has been affected, the threat or initiation of any legal action, communication line failure, power failure and any natural disaster or Act of God, the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance.

Upon receipt of such notice, this Agreement shall be immediately suspended. If the period of non-performance exceeds fifteen (15) days from the receipt of notice of the Force Majeure Event, the party who has not been so affected may, by giving written notice, terminate this Agreement.

14. Assignment of Contract

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 Fayetteville Public Works Commission. FPWC reserves the right to accept or reject any proposed subcontractor(s).

15. Proposal Bond

Each proposal shall be accompanied by a cash deposit or certified check drawn on a bank or trust company insured by the Federal Deposit Insurance Corporation, payable to Public Works Commission of the City of Fayetteville in an amount equal to not less than 5 percent (5%) of the proposal or in lieu thereof a Bidder may offer a bid bond of five percent (5%) of the bid executed by a surety company licensed under the laws of North Carolina to execute the contract in accordance with the bid bond and upon failure to forthwith make payment, the surety shall pay the obligee an amount equal to the amount of said bond. Said deposit shall be retained by the Owner as liquidated damages in event of failure of the successful Bidder to execute the contract within ten days after the award or give satisfactory surety as required by law.

16. Performance Bond and Payment Bond

- a. The Contractor, at the time of the execution of the Contract shall be required to furnish a Performance Bond and Payment Bond in an amount equal to at least one-hundred percent (100%) of the Contract price as security for the faithful performance of this Contract and as security for the payment of all persons performing labor and furnishing materials and equipment in connection with this Contract in accordance with N.C.G.S. Chapter 44A, Article 3. These bonds shall be renewed annually.

- b. The corporate surety furnishing the bonds shall be authorized to do business in the state of North Carolina, and shall be acceptable to the Fayetteville Public Works Commission. All contract payment bonds and contract performance bonds shall be countersigned by a regularly authorized agent of the corporate surety who is resident in North Carolina and who is licensed by the North Carolina Department of Insurance.
- c. In all Performance and Payment Bonds, the provision that no suit, action, or proceeding by reason of any default whatsoever shall be brought on this Bond after a specified number of months shall be fixed at twelve (12) months. The face value of the Bond shall be one-hundred percent (100%) of the Contract price for a period of twelve (12) months following the day when the last of the labor was performed, or equipment was furnished, or final settlement was made with the Contractor, whichever occurs last.
- d. Whenever the Surety or Sureties on the bond so furnished shall be deemed by the Fayetteville Public Works Commission to be insufficient or unsatisfactory, the Contractor, within ten (10) days after notice to that effect shall furnish and deliver a new bond to the Fayetteville Public Works Commission in the same penalty and on the same conditions with Surety satisfactory to the Fayetteville Public Works Commission and this duty shall continue on the part of the Contractor, whenever and so often as the Fayetteville Public Works Commission shall require a new bond with a satisfactory Surety or Sureties. If the Contractor shall fail to furnish such bond, within ten (10) days after said notice is mailed to his address, the Fayetteville Public Works Commission through its proper agent or agents, may stop all further work under said Contract and complete the unfinished work at the expense of the Contractor.

17. Warranties, Representations And Additional Covenants Of The Contractor:

The Contractor shall:

- a. Obtain all of the appropriate governmental licenses and permits necessary to perform the services described in the attached specifications and shall maintain such licenses and permits at all times during the contract period. The Contractor shall provide FPWC, or its designee, with a copy of such licenses and permits upon request.
- b. Comply with all applicable provisions of federal, state, local and OSHA laws, regulations and environmental standards.
- c. Be responsible for the conduct and discipline of its employees and provide personnel to perform the services described in the specifications with the proper and necessary skills, experience, knowledge and technical training.

PROPOSAL INFORMATION

Proposal Format

The Proposal shall be submitted in the following format with all the requested information and documentation. Failure to provide the required information and documentation will be grounds for rejection of the Proposal.

1. Executive Summary (Not to exceed five (5) pages)

The Proposal shall include a brief introduction describing the experience of the Bidder, the size of the Bidder, and the services provided by the Bidder along with the following information:

- i. Name of Bidder(s), address, telephone number of main office and any branch office which will be involved in any way with the project.
- ii. Identification of project team including information regarding all subcontractors to be used for hauling or other purposes and the experience of the proposed subcontractors.
- iii. Basic overview of the program proposed.

If a joint venture or association of bidders is proposed, the requested information shall be provided for each member, and a discussion on why the joint venture or association of bidders was established, shall be included.

2. Key Personnel

The following information shall be furnished for each key member from the project team that will be responsible for coordinating efforts that may affect FPWC operations:

- iv. Relevant experience record.
- v. Provide a description of the responsibilities the individual will assume.
- vi. Project organization chart.

3. Bidder Experience

The Bidder shall have a minimum of five (5) consecutive years of actual operating experience with projects of similar size and scope. The Bidder shall currently be providing similar services for a minimum of two (2) generators.

The following information shall be furnished for at least three (3) contracts similar in size and scope, either completed or currently underway by the Bidder:

- a. Name of Client
- b. Name and telephone number of reference
- c. Contract description (type of process used, number of tons processed, was hauling involved, etc.)
- d. Duration of each Contract.
- e. Permitted acreage.

Any Notice of Violations (NOV's) reported on any land application projects managed or worked on by the Bidder. Provide an explanation on the cause of the NOV and how the Bidder resolved the NOV.

4. Ability to Provide Scope of Services

In this section of the Proposal, the Bidder shall describe, in detail, its capability to meet the demands of the Scope of Services and any proposed modifications or additions to the Scope of Services. Information shall include:

a. Management and Operations Plan

The Bidder shall submit a management and operations plan for the project. The plan shall describe the Bidder's goals, major tasks, schedule for these tasks, staffing, organization of the project, administrative procedures, regulatory compliance procedures, monitoring, record keeping and reporting procedures, marketing, public acceptance, coordination with land application farms, and other appropriate information. Please review the list of land application sites as listed in the land application permit.

The Bidder shall describe how they envision billing FPWC and how this procedure is compatible with FPWC's payment procedures. Describe the mechanisms used to assure that billings are accurate and timely. Describe the types of information to be provided with the billings to document performance.

b. Schedules

Provide schedules for start-up of the project including the dates for initiating hauling, site delivery, processing and production, or on-site application of product.

c. Transportation System and Routing

Describe the transportation system to be used and the routes to be followed to the application sites. Describe the facilities and or equipment, whether the facilities and or equipment is owned or leased, the age of the facilities and or equipment along with any planned upgrading. Describe the factors affecting route selection and alternative routes that are available to reach the project sites in response to reasonably anticipated emergencies. A list of land application sites has been provided within the land application permit.

d. Spill and Emergency Response Program

Describe the emergency response program for spills and other contingencies. Supply a copy of the plan used by managers, supervisors, operators, and drivers, if these plans are different from each other. Describe the frequency and nature of training exercises and the process of maintaining and updating the program and how it will be integrated into FPWC's existing response program. Provide the communications methods and procedures to maintain contact with FPWC. Contracts or agreements with response organizations or demonstration that adequate

resources exist to respond to emergencies shall be documented.

e. Quality Assurance and Control Program

Describe the Bidder's quality assurance and control programs for their biosolids operations. Supply a copy of the plan and program. This should include personnel, equipment, regulatory program monitoring and compliance, financial management and product quality. Specific examples of how the program(s) have been effective should be provided.

f. Odor Management

Describe the management techniques used to control odors. Describe any odor problems that have developed in the past at sites that have been used and how they were resolved. Describe the odor monitoring and response program.

g. Surface Water Protection

Describe the measures that will be taken to protect local surface waters and drainage courses associated with the various sites to be used for this project.

h. Groundwater Protection

Describe the measures that will be taken to prevent groundwater contamination from site operations. Discuss the specific measures and/or operational practices that are taken to protect groundwater.

i. Soil Compaction

Describe equipment and procedures that will be used for minimizing compaction of soils during a land application event.

j. Public Acceptance of Bidder, Site and Product

Bidders shall operate sites in consideration of the public and as a good neighbor. In consideration of this, the Bidder shall describe the programs and efforts undertaken to gain public acceptance of their project, process sites, and products. The Bidder shall supply examples of brochures, advertisements, or promotional products. Examples of the effectiveness of these programs shall be described. Describe the types of public information and education programs that the Bidder has in place and how these are used. Describe the relationship between these programs and regulatory permitting and marketing programs. Describe the success of this program.

5. Regulatory Compliance

The Bidder shall include a detailed description of how the Bidder's operation will meet the requirements of the EPA Part 503 Sewage Sludge Regulations and applicable state and local regulations and the anticipated role of the FPWC with regard to testing, monitoring, and record keeping requirements. Include sample copies of compliance records and reports.

The Bidder will comply with the following laws and regulations and will explain in their proposal how they will ensure compliance with the requirements of these laws and regulations, which include but are not limited to:

- i. Federal Water Pollution Control Act, 33 USC 1251;
- ii. EPA Standards for the Use or Disposal of Sewage Sludge, 40 CFR 503;
- iii. Resource Conservation and Recovery Act, 42, USC 6901;
- iv. Emergency Planning and Community Right-To-Know Act, 42 USC 1101;
- v. Hazardous Materials Transportation Act, 49 USC 5101;
- vi. Occupational Safety and Health Act, 29 USC 657;
- vii. Age Discrimination in Employment Act, 29 USC 621;
- viii. Fair Labor Standards Act;
- ix. Family and Medical Leave Act;
- x. Immigration Reform and Control Act;
- xi. State Unemployment Insurance Law; and
- xii. State Worker's Compensation Law.

6. Proposed Equipment for Project

The Bidder shall provide a list of all proposed equipment assigned to this project. Also include a listing of equipment available for back-up use.

7. Optional Approaches

The Bidder may submit optional approaches and suggestions in addition to the base information requested.

8. Statement Regarding Work Not Completed

Bidder shall submit a list of all work which has been awarded to the company which has not been completed and of any contracts where there has been a default, along with a statement explaining the reason for uncompleted work or default.

Price for Services

The Bidder is required to provide a per unit price for the services proposed. Prices shall include all costs associated with the work and materials required to meet all of the conditions described in the Scope of Services.

Financial Information

Upon request by FPWC, the Bidder shall provide copies of annual reports or audited financial statements for the past three years for the Bidder (or parent company if applicable). FPWC may also request, and Bidder shall provide a copy of the most recent 10-Q statement, if applicable. Financial statements will be treated with the fullest confidentiality allowed by law and returned upon selection of the successful Bidder.

PROPOSAL EVALUATION CRITERIA

Proposals will be evaluated on the following criteria:

Project Description and Approach Method of Operation Public Relations Plan	20
Bidder Qualifications and Experience Financial Strength	25
Regulatory Reporting and Compliance Program	20
Price of Services	35
	100

Proposals will be reviewed by an evaluation team comprised FPWC management and other staff members familiar with this type of service.

Prior to selection of a successful Bidder, FPWC may require Bidder's to provide an oral presentation on their operation. FPWC may also request to see the Bidder's operations and visit one or more application sites during the evaluation process. FPWC reserves the right to select the Bidder that receives the most favorable evaluation based on the above review.

PROPOSAL PRICING FORM

Date: _____

Proposal of: _____

Address: _____

This proposal is submitted to:
Fayetteville Public Works Commission
Post Office Box 1089
Fayetteville, NC 28301
Attn: Tanya B. Hazlett

The undersigned Bidder proposes and agrees, if this proposal is accepted, to enter into a contract with FPWC to complete all work as specified or indicated in the Contract Documents for the specified price, within the time frames outlined and in accordance with the Service Agreement.

The Bidder has included with their proposal a Bid Deposit or Bid Bond in the amount of five percent (5%) of the annual contract amount as outlined in the Information for Bidders.

In submitting this Proposal, Bidder represents, as more fully set forth in the Information for Bidders, that:

- (a) Bidder has examined copies of all the Contract Documents and of the following addenda:

Date	Number
_____	_____
_____	_____
_____	_____

- (b) Bidder has examined the sites and locality where the work is to be performed, the legal requirements (federal, state and local laws, ordinances, rules and regulations) and the conditions affecting cost, progress or performance of the work and has made such independent investigations as Bidder deems necessary;

- (c) This Proposal is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Proposal; Bidder has not solicited or induced any person, firm or a corporation to refrain from Proposing; and Bidder has not sought by collusion to obtain for himself any advantage over any other bidder or over the FPWC; and

(d) Bidder will complete the work as described in the Contract Documents for the following price:

LAND APPLICATION OF BIOSOLIDS

Estimated Annual Quantity	Unit Price/gal	Annual Total
Minimum 30,000,000 gallons	\$ _____	\$ _____

INCORPORATION

Price per acre for incorporation if requested by FPWC \$ _____ /acre

***Refer to Special Conditions, Section 8.3 - Pricing for incorporation is included to cover the cost of the work should FPWC request that Contractor perform the work. This price will not be a factor in determining the lowest responsive, responsible bidder.**

Bidder certifies that he has read, fully understands and will comply with applicable provisions of the United State Environmental Protection Agency (U.S. EPA), applicable state and local agencies.

BIDDER INFORMATION

Name of Company _____

Address _____

Phone No. _____ Fax No. _____

E-Mail Address _____

Federal I.D. No. _____

SDBE, Minority or Woman Owned Business Enterprise _____ Yes _____ No

Bid Submitted By: _____
(Name Printed Out)

(Signature)

Title: _____

Date: _____

SPECIAL CONDITIONS

1. General

- 1.1 No residuals management operations shall occur on Sundays or legal holidays without the approval of the Water Resource Treatment Facilities Manager. Hauling and application shall also be done only during daylight hours, from dawn to dusk. The Contractor must have the equipment on site to transport and apply a minimum of 2.5 MG of biosolids monthly. Typically the total percent solids of the biosolids generated by FPWC's water reclamation facilities vary from 4% to 6%.
- 1.2 The Contractor must have a licensed soil scientist on staff to advise and supervise the application method and rates.
- 1.3 All operators shall be well versed in the regulations and requirements stipulated in the EPA 503 regulations, 15A NCAC 02T.1100 Rules and the Fayetteville Public Works Commission's (FPWC) land application permit. When the 15A NCAC 02T.1100 Rules are implemented, no additional fees shall be added to the contract unit price. In addition, the Contractor shall be responsible for safety throughout the projects.
- 1.4 Contractor shall remove all unused materials, tools, equipment and machinery, waste materials, refuse and other debris from loading areas and land application sites daily. Contractor shall see that these sites are, at all times, left in a neat and orderly condition.
- 1.5 Liquid biosolids shall be transported in sealed tank bodies.
- 1.6 All application and transportation vehicles shall be cleaned no less than once per month. If biosolids are spilled onto vehicles, Contractor shall insure that the vehicles are cleaned by the next working day. Contractor shall maintain their tractor/trailers in acceptable condition at all times. A copy of the land application permit and all site maps shall be maintained by the application operator and field supervisor at all times when biosolids are being applied.
- 1.7 Contractor shall be responsible for repair/replacement of all pavement, driveways, fences, shrubs, lawns, trees and any other public or private property damaged as a result of work performed under agreement with FPWC. Roads utilized on land application sites must be returned to their original condition after each land application event.
- 1.8 Contractor shall at all times have a competent project manager, or other representative on the work site, who shall have full authority to act for Contractor. The project manager shall insure that the work under the agreement is executed in accordance with the agreement documents and shall provide adequate supervision of its employees to insure proper application techniques are being utilized at all times. All written communications with the project manager shall be binding as if given to Contractor.

- 1.9 Any Fines/Penalties rendered to FPWC due to the actions of Contractor shall be the responsibility of Contractor.
- 1.10 Project Manager and designated field representative shall possess certification as a Land Application Operator through the State of North Carolina Operators Certification Commission.
- 1.11 The Contractor shall be responsible for all fuel and power needed for operation of equipment. No fuel surcharges shall be allowed due to annual CPI adjustments.
- 1.12 FPWC shall be responsible for collecting all monthly biosolid samples for analysis. FPWC shall deliver samples to the Contractor's designated certified laboratory for analysis for parameters determined by Non-Discharge Permit WQ0000527. Laboratory analysis for the monthly biosolid samples shall be paid by the Contractor.
- 1.13 FPWC shall notify Contractor weekly on the quantities of biosolids available for land application.
- 1.14 All monthly and annual reports shall be submitted and forwarded by the Contractor to the responsible agencies of the federal, state or local government and to FPWC.
- 1.15 No residuals generated by FPWC shall be stored or land applied on land not permitted/approved in FPWC's land application permit form the North Carolina DENR.
- 1.16 All buffer zones shall be clearly marked by the Contractor at least 24 hours prior to land application.
- 1.17 Contractor is responsible for removing buffer zone markers (flags) after land application event completion.
- 1.18 Any interruption (other than inclement weather) during a land application event, for a period of time longer than one (1) day shall be reported to the Land Application Supervisor immediately.
- 1.19 The Contractor shall provide individuals who are capable of maintaining good relations with the program participants. Failure to do so shall be grounds for the immediate suspension of work and the possible revocation of this contract.
- 1.20 Contractor shall coordinate application sites with farmers for land application events and make every effort to provide biosolids distribution to all program participants. The Contractor shall be responsible for providing to the FPWC land application supervisor, a written two week work schedule for permitted sites which will receive biosolids.
- 1.21 Contractor shall provide the landowner/operator with a map, field identification, acreage and plant available nitrogen that was applied within 2 months after application.

- 1.22 FPWC shall be responsible for providing lime to permitted fields at the time of application, as long as the permitted field is utilized for land application.
- 1.23 Annual soil samples shall be collected and submitted for analysis by the Contractor on all fields that received biosolids that calendar year. All required soil samples shall be sent to an approved soils laboratory (not NCDA soils lab) approved by FPWC which can report results and recommendations within a two week turn around period. Multiple soil samples may be required on land application sites larger than 25 acres and/or on sites with multiple soil types. All laboratory analyses shall be paid by the Contractor. Soil samples shall be prepared by combining random soil plugs from an entire field. Soil plugs shall be taken to a depth of 4" for grassland or no-till fields. Six to seven inch plugs for conventional till fields. All soil plugs shall be collected with a stainless steel tube type sampling probe and well mixed in a stainless steel or plastic bucket.
- 1.24 Before an application event can begin, a current (within 12 months) soils analysis is required to determine soil conditions. If one is not available, the Contractor is responsible for collecting and submitting the soil sample to a certified laboratory approved by FPWC. The certified laboratory must have the ability to return results with soil recommendations within two weeks so FPWC can apply the proper lime for compliance with permit conditions. The FPWC shall receive a copy of the soil results and recommendations. All laboratory analyses shall be paid by the Contractor.
- 1.25 Movement of equipment/marking of buffer zones will be done so as interruption of application events are kept to a minimum.
- 1.26 Contractor is to have a contingency plan in place if for some reason the primary spreader operator is unable to be onsite so application events will not be unreasonably delayed.

2. Emergency Response/Spills

- 2.1 An emergency spill and clean up plan shall be developed by the contractor and submitted to FPWC prior to beginning work. This plan shall be updated by the Contractor annually or as needed.
- 2.2 A copy of the Spill Plan shall be maintained in each transport and application vehicle used by Contractor. Any biosolid spills involved with the loading, transportation and/or application shall be deemed the responsibility of the Contractor and shall be cleaned up immediately to the satisfaction of FPWC and/or the State of North Carolina DENR. Any spill shall be immediately reported to the Water Reclamation Facilities Manager and the Land Application Supervisor. Contractor is responsible for submitting a written report within three days to FPWC explaining details of spill and corrective actions.

3. Monitoring/Recordkeeping

- 3.1 Contractor shall be responsible for providing all monitoring reports as required by FPWC's land application permit and the Code of Federal Regulations Part 503. Land application events in the year 2023 from previous contract shall be incorporated by contractor, at the contractor's expense, in the annual reports due February 19, 2024 and March 1, 2024. FPWC shall be responsible for providing pathogen and vector attraction reduction monitoring, surface and groundwater monitoring, lime application quantities and annual TCLPs. This information shall be incorporated by the Contractor into the Annual Land Application Report.
- 3.2 All information shall be kept on file with Contractor and FPWC. FPWC requires that Contractor have a database management system for the storage of data for residuals management activities performed for FPWC. The Contractor shall make and maintain complete records, including all dates of application, site of application, volumes applied, and any other information as deemed necessary by FPWC. Copies of these records are to be submitted to FPWC on a weekly basis by the middle of the following week.
- 3.3 Contractor shall keep daily logs indicating tanker loading, transportation, and application volumes. These logs shall be totaled daily and a copy submitted to the FPWC Land Application Supervisor by the middle of the following week. Volumes removed from the water reclamation facilities shall utilize the facility flow meter when determining biosolid volumes.
- 3.4 Monthly reports shall be provided to FPWC indicating volume of biosolids applied, nutrient and metals analysis, and land application site information. This information shall include all information as required by land application permit and 40 CFR Part 503 regulations. These records shall be submitted to the FPWC by the 20th day of the following month.
- 3.5 Contractor shall be responsible for compiling data into the annual report for submittal to the regulatory agencies. At least three (3) copies of the annual report shall be provided to FPWC.
- 3.6 Except for those tests performed by FPWC, all required monitoring costs associated with land application shall be included in the schedule of fees. FPWC shall be responsible for generating biosolids in compliance with Federal and State regulations, and documenting the quality of the biosolids relating to the pathogen reduction and vector attraction reduction.
- 3.7 The volume of liquid biosolids removed shall be used to determine payment and shall be based on a flow meter system. With each tanker that is filled, a numbered trip ticket shall be filled out to include the following information:

Date
Time of Day (Loaded/Unloaded)
Site Location
Field Number
Driver Signature
Trailer Number

This trip ticket system shall be used to assist in record keeping of volumes applied on a particular site.

- 3.8 A field application summary report shall be prepared by the Contractor listing the following information:

Date
Residual Source
Site Location
Field Number
Net Acreage
Gallons Applied
Type of Application
Predominate Soil Type
Realistic Yield Expectation Rate
Weather Conditions
Soil Conditions (wet, dry, moist)
Previous 24-Hour Rainfall Amount
Water Table Depth
Other Information as Required by Permit

4. Public Education/Acceptance

- 4.1 Contractor shall assist FPWC in a Public Education Campaign. Public Education may require Contractor to assist with technical papers, presentations, etc.
- 4.2 Contractor shall assist FPWC with the handling of complaints and/or questions regarding residual management activities.
- 4.3 Contractor shall assist FPWC with any other public notification that may be required by the regulatory agencies.

5. Additional Services

- 5.1 Contractor may perform a number of additional services related to water and wastewater residuals management to include digester/storage tank cleanout, dredging of Hoffer WTF lagoon, handling of cake biosolids for purpose of composting, etc.. Contractor agrees to develop a scope of services for disposal or beneficial reuse of the residuals as appropriate. Prior to the start of any additional services, FPWC and Contractor will come to a mutual understanding on pricing. FPWC has the right to refuse any price or condition not collectively authorized by both parties and may then elect to have other companies submit bids for these additional services.

6. Detailed Specifications

- 6.1 The FPWC will provide the necessary equipment to pump liquid biosolids from the Cross Creek and Rockfish Creek WRF storage tanks into tanker trucks. The loading rate is approximately 400-600 gallons per minute. The Contractor shall be responsible for filling trucks at the loading area from an overhead pipe and transporting biosolids to permitted sites. All permitted sites are within a 40 mile radius of either facility. Base per gallon prices for travel distance shall be submitted for the following mile ranges: 0-20, 20.1-25, 25.1-30, 30.1-35 and 35.1-40. Adjustment in price per gallon for fields outside of the base 20 mile radius will be based on the following calculations:

0 - 20	Base Price
20.1 - 25	Base Price + 6%
25.1 - 30	Base Price + 12%
30.1 - 35	Base Price + 18%
35.1 - 40	Base Price + 24%

7. Application Method and Rates

- 7.1 Contractor shall have equipment for surface application and subsurface injection. Equipment for subsurface injection shall have a five-row injector tool bar. All subsurface injection of biosolids shall incorporate minimum disturbance injectors. These injectors will use colters preceding the injector grassland shanks, minimum disturbance shanks, and press wheels following the shanks. Contractor must utilize equipment that minimizes soil compaction.
- 7.2 Application rates shall be determined by the existing permit however the Contractor should consider using the realistic yield expectation (RYE) in the new 15A NCAC 02T.1100 Rules. Predominate soil types have been identified and will be available to the Contractor so appropriate application rates, (RYE), can be determined for the planned crop.

8. Application Sites

- 8.1 No biosolids shall be applied to any land not duly and properly permitted by the DENR. It shall be the Contractor's sole responsibility to ensure that his operators know the boundaries of the application sites. FPWC will provide maps approved by DENR delineating these areas. The Contractor shall outline the application sites with markers prior to application. Buffer areas shall not be used as a biosolid staging area.
- 8.2 All traffic areas, including the staging area, subject to vehicle compaction shall be restored (ripped) to its original condition with a minimum of a three (3) shank ripper. Ripping equipment must be able to rip soil below hard pan (minimum depth 14 inches).

- 8.3 FPWC will be solely responsible for incorporation of all surface applied biosolids at the FPWC farm. Other incorporation may be performed by either FPWC or the Contractor. FPWC shall determine, with sufficient notice (1 week), when the Contractor will be responsible for incorporation. Incorporation of surface applied biosolids on row crop land with no cover crop must be performed within 24 hours. In cases where Contractor is responsible for incorporation, the acreage for incorporation will be determined by the "Net Acreage" of the field which is found in the permit under approved land application sites. In no case will the farmers be responsible for incorporation.
- 8.4 All biosolid removal shall be coordinated with daily plant operations, and, wherever a conflict develops, plant operations shall take precedence.
- 8.5 Contractor shall remove all buffer flags after application event.

SERVICE AGREEMENT SAMPLE

For the internal use of Fayetteville Public Works Commission only

Requester/Responsible Employee: _____
Project Title: _____
Contract Number: _____ (to be 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 the 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”) as of the date of execution last written below (the “Effective Date”). 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 attached hereto and 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 as confidential and proprietary, unless such information is available from public sources, and Provider shall not publish or disclose confidential or 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]** Time is of the essence with regard to the delivery of Provider's Services. 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; if necessary, the Provider can be notified orally that the Payment Limitation can be adjusted if reasonably warranted and sufficient funds remain available in the budget when the "not to exceed" amount is reached]** (the "Cap"). **[IF 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 and provide to PWC a completed and signed IRS Form W-9. 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. **[IF 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" means action by the non-terminating Party that constitutes a material breach of this Agreement, including but 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 to PWC certificates of insurance confirming each such coverage, and Provider shall direct its insurers to provide annually to PWC 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 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 and Liability. Provider shall indemnify, defend, and hold harmless PWC and its Commissioners, officers, employees, agents, and representatives (collectively, "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 one or more third parties against one or more of the Indemnitees arising out of negligent or willful acts, violations of law, infringement of any patent, trademark, trade secret, copyright, or other intellectual property right of a third party, 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, defend, 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.

[ADDITION FOR ATTORNEYS] Notwithstanding the foregoing paragraph, this indemnification provision shall not include claims, actions, liabilities, damages, losses costs and expenses (collectively, "Losses") arising from any errors or omissions of Provider or any of its partners, associates, employees, agents, or other representatives to the extent that coverage of such Losses under Provider's primary malpractice (or errors and omissions) policy would be negated, impaired, or limited if such Losses were also recoverable under this indemnification provision. Additionally, subject to the terms of Provider's professional liability insurance, and to avoid any coverage issues which this indemnity might otherwise create, it is agreed that no portion of this indemnity shall be deemed to broaden or expand Provider's liability for professional negligence beyond that provided by applicable law or deprive Provider of any protection provided by applicable law or to impose liability on Provider where no negligence or malpractice is proven.

[REPLACEMENT FOR DESIGN PROFESSIONALS- engineers, land surveyors, soil scientists, geologists, architects] Provider shall indemnify and hold harmless PWC and its Commissioners, officers, employees, agents, and representatives (collectively, "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 one or more third parties against one or more of the Indemnitees if the Fault of Provider or any of its employees, agents, representatives, subcontractors, or other persons or entities for which Provider may be liable or responsible as a result of any statutory, tort, or contractual duty (collectively the "Responsible Persons") is a proximate cause of the loss, damage, or expense indemnified. "Fault" means a breach of contract by Provider, negligent, reckless, or intentional act(s) or omission(s) constituting a tort under applicable statutes or common law by one or more Responsible Persons, or violation(s) of applicable statute(s) or regulation(s) by a Responsible Person. Provider shall reimburse each Indemnitee for its actually incurred reasonable attorney's fees, litigation and arbitration expenses, and costs to defend against third party claims alleged in any court, tribunal, or alternative dispute resolution procedure required of the Indemnitee by law or by contract, if the fault of one or more Responsible Persons is a proximate cause of the attorney's fees, litigation or arbitration expenses, or court costs to be indemnified. Provider's obligation to indemnify and hold harmless and reimburse the Indemnitees shall survive the termination of this Agreement.

Except with regard to Provider's indemnification obligation, notwithstanding anything to the contrary elsewhere in this Agreement, no Party will be liable to the other Party, either in contract or in tort, for any consequential, incidental, indirect, special, or punitive damages of the other Party, whether or not the possibility of such damages has been disclosed to the other Party in advance or could have been reasonably foreseen by such other Party.

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 hereinbelow, 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 the 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 therefor 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 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 to provide services for PWC 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 Effective Date, 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 represents and warrants to Commission that Provider, and all persons and entities owning (directly or indirectly) an ownership interest in it: (i) are not, and will not become, a person or entity with whom a party is restricted from doing business with under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001, Executive Order 13224 Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; and (ii) are not knowingly engaged in, and will not knowingly engage in, any dealings or transactions or be otherwise associated with such persons or entities described in clause (i) above. The provisions of 41 CFR 60-1.4, 60-300.5(a) and 741.5(a) are hereby incorporated by reference, as applicable. Provider shall at all times during the term of this Agreement comply with Executive Order 11246. Provider shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or for inquiring about, discussing, or disclosing information about compensation. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

Except in strict compliance with Environmental Laws (defined below), neither Provider nor its employees, agents, contractors, subcontractors, licensees or invitees shall use, handle, store, or dispose of (or permit the use, handling, storing, or disposal of) any hazardous or toxic waste or substance in delivering the Services (or transport, transship or permit the transportation or transshipment of the same over or through the real property managed or operated by PWC) which is regulated, controlled, or prohibited by any federal, state, or local laws, ordinances, and/or regulations, including without limitation the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. ("RCRA"); the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et. seq.

("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. §801, et. seq; the Federal Water Pollution Control Act, 33 U.S.C. §1321, et. seq; the Toxic Substances Control Act, 15 U.S.C. ("TSCA"); and the Occupational Safety and Health Act, 29 U.S.C. §651 et seq. (as subsequently amended, "Environmental Laws"). As used herein, hazardous or toxic substances or materials shall include without limitation the following: (1) "hazardous wastes" as defined under RCRA or any other federal, state or local law or regulation, (2) "hazardous substances" as defined under CERCLA or any other federal, state or local law or regulation, (3) gasoline, petroleum, or other hydrocarbon products, by-products, derivatives, or fractions (including spent products), (4) "toxic substances" as defined under TSCA, (5) "regulated medical waste" as defined by 40 C.F.R. § 259.30, (6) any radioactive materials or substances, or (7) asbestos and asbestos containing products. Provider shall comply with the Emergency Planning and Community Right-to-Know Act of 1986, as amended. Provider shall immediately report orally to PWC and confirm in writing within three (3) hours any type of chemical spill that occurs in or on any real property managed or operated by PWC.

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 and then only to the extent specifically stated. 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. 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 other legal 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. Provider irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court serving Cumberland County or that any such suit, action or proceeding brought in any such court serving Cumberland County has been brought in an inconvenient forum. 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), 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. Except with regard to fixed fee services, 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. (With regard to fixed fee services, if Provider's withdrawal occurs prior to completion of fixed fee services, Provider will return to PWC any fees already paid.) 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 ALL OTHERS] Conflicts. 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.

Fayetteville Public Works Commission

[INSERT PROVIDER FULL LEGAL NAME]

By: _____
Marion Noland, Interim CEO/General Manager

By: _____

Date: _____

(Printed Name) (Title)
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