



REQUEST FOR STATEMENT OF QUALIFICATIONS

PWC2223035

**ENGINEERING DESIGN AND CONSTRUCTION
ADMINISTRATION SERVICES TO UPGRADE VETERANS'
HEALTH ADMINISTRATION INFRASTRUCTURE IN THE
RCWBC SUITES**

**Date of Issue: February 8, 2023
Qualification Deadline: February 23, 2023
5:00 p.m.**

Direct all inquiries concerning this RFQ to:

**Shelby Lesane
Procurement Advisor
shelby.lesane@faypwc.com
910-223-4429**

Contents

PURPOSE AND BACKGROUND 3

OBJECTIVE OF THE REQUEST 3

GENERAL INFORMATION 4

RFQ SCHEDULE 4

QUESTIONS 4

QUALIFICATION STATEMENT REQUIREMENTS 4

SUBMISSION INSTRUCTIONS 5

AWARDING OF PROJECTS 5

E-VERIFY 6

IRAN DIVESTMENT ACT 6

MINMUM INSURANCE REQUIREMENTS 6

UTILIZATION OF SMALL BUSINESS CONCERNS 7

PWC SERVICE AGREEMENT SAMPLE (subject to further amendment by PWC) 9

**REQUEST FOR STATEMENT OF QUALIFICATIONS FOR ENGINEERING SERVICES
ENGINEERING DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES
TO UPGRADE VETERANS' HEALTH ADMINISTRATION INFRASTRUCTURE
IN THE RCWBC SUITES
FAYETTEVILLE PUBLIC WORKS COMMISSION**

In accordance with North Carolina General Statutes (NCGS) 143-64.31, the Fayetteville Public Works Commission (PWC) is seeking the services of a qualified Design-Builder (DB) to provide design and construction services for the following project (Project):

PURPOSE AND BACKGROUND

In 2000, PWC built the 57,787 square foot R.C. Williams Business Center to primarily house its customer service operations and to provide additional Class-A offices to support downtown revitalization objectives. By 2009, all PWC customer service operations were relocated to their main complex and their vacated space made available for lease. PWC still owns, leases, and manages this building. The Veterans Health Administration (VHA) has been one of their primary tenants since 2005.

The VHA has Federal mandates to upgrade their Electronic Health Record Management infrastructure as detailed in their VA OEHRM Site Infrastructure Requirements-Version 2.0 (subject to change). PWC, as lessor, must provide the necessary design and construction work necessary to bring four suites, Suites 201, 304, 305, and 306, up to the most current mandated VA OEHRM Site Infrastructure Requirements. The design and construction work will be reviewed at all stages by the VHA.

OBJECTIVE OF THE REQUEST

The Project scope includes but is not limited to the following: providing all necessary engineering assessment, design, and construction administration and management services to upgrade telecommunication facilities supporting four suites occupied by the Veterans Health Administration (VHA) in the PWC owned R.C. Williams Business Center, 201 Hay Street, Fayetteville, North Carolina 28301, to meet the most current VHA Electronic Health Record Management infrastructure standards and upgrade requirements. Work may involve upgrades to HVAC, communication infrastructure, electrical infrastructure, physical security, and any other related modifications or upgrades necessary with this proposed project.

The proposing firm must be properly licensed to practice Engineering in North Carolina. The proposing firm must have the specialized knowledge and expertise working with VHA EHRM infrastructure upgrades.

The design of the upgrades is anticipated to be completed by June 30, 2023. Construction for these EHRM upgrades is anticipated to begin after July 1, 2023 and be completed before June 30, 2024.

Interested firms possessing the necessary qualifications and expertise to perform the scope of work outlined in the Project narrative are encouraged to submit a Statement of Qualifications for this Project according to the requirements set forth herein.

GENERAL INFORMATION

PWC shall not be held responsible for any oral instructions. Any changes to this Request for Qualifications (RFQ) will be in the form of a written addendum, which will be furnished to all registered RFQ holders.

PWC reserves the right to reject any or all SOQ's, to waive any informality or irregularity in any SOQ received, and to be the sole judge of the merits of the respective SOQ received.

RFQ SCHEDULE

Action	Responsibility	Date/Time
Submit Written Questions	Vendors	Thursday, February 16, 2023, 5:00 p.m.
Provide Response to Questions	PWC	Friday, February 17, 2023, 5:00 p.m.
Submit RFQ	Vendors	Thursday, February 23, 2023, 5:00 p.m.
Award Contract	PWC	TBD

QUESTIONS

Questions regarding this Request for Qualifications shall be submitted in writing to the attention of Shelby Lesane, Procurement Advisor by e-mail to shelby.lesane@faypwc.com, no later than **5:00 p.m., February 16, 2023.**

QUALIFICATION STATEMENT REQUIREMENTS

The qualifications statement must consist of the following information, tabbed as identified and in the order indicated below:

Section 1 – Letter of Transmittal (maximum of two (2) pages)

- Firm name, year established, address, telephone number, fax number and contact person.
- Provide copies of Certificates of Insurance showing General Liability, Automotive, Worker's Compensation and Professional Liability Coverage (Certificate of Insurance will not count towards page limit)
- State any conflicts of interest your firm, or any key individuals of the firm may have with the project or PWC.

Section 2 – Personnel

- Specify professional qualifications of key management and staff personnel to be assigned to the project.
- Identify specialty, level of expertise, education and any direct work experience on projects similar in scope to the one being proposed.

Note: Substitution of other personnel after the selection is made must be approved by PWC.

Section 3 – Consultants/Sub-consultants/Other Participants

- Provide a list of consultants who would be retained to provide services on the project. For informational purposes only please include the business classification of any proposed Consultants/Sub-consultants.
- Provide a synopsis for each to include size of staff, names of key personnel and services to be provided as well as past experience as well as experience with VHA EHRM upgrades.
- Specify the percentage of work anticipated to be attributed to these consultants. Note: If respondent will self-perform all work the respondent must specify such in their submission.

Section 4 – Past Experience

- Document expertise in those specific engineering tasks and/or technologies required to successfully complete the scope of work associated with the project.
- Provide a brief description of similar projects completed in the last 5 years.
- Provide names and contact numbers for references for similar projects that required specific knowledge and demonstrated expertise with the VHA EHRM specifications.

Section 5 – Project Approach and Understanding

- Include a listing and description of each phase of the project and identify key staff who will be assigned to each phase of the project.
- Provide a proposed schedule for completing the work.
- Describe why your firm should be selected.

NOTE: The qualifications statement shall be limited to the maximum number of fifteen (15) pages. This page limit includes the tabs and/or other dividers. Also note that double-sided pages will be counted as two pages. Failure to comply with the page limits will result in automatic disqualification of the submittal. The interested consultant(s) shall focus their response to this RFQ on their qualifications to complete the work, and why they should be selected for the specific project.

SUBMISSION INSTRUCTIONS

A total of 6 copies of the Statement of Qualifications are due in the PWC Office no later than 5:00 p.m. February 23, 2023.

Qualification packages should be mailed or delivered to:

Fayetteville Public Works Commission
 Attention: Shelby Lesane, Procurement
 Advisor 955 Old Wilmington Road
 Fayetteville, North Carolina 28301

AWARDING OF PROJECTS

The Fayetteville Public Works Commission will consider and evaluate Statements of Qualifications in accordance with N.C.G.S. 143-64.31. Statements of Qualifications will be

reviewed by a committee composed of PWC personnel. Qualification packages will be ranked based on this review, which will consider the criteria as described above. The Fayetteville Public Works Commission will attempt to negotiate a Service Agreement with the highest ranked firm. Should the parties be unable to reach an agreement, the Fayetteville Public Works Commission reserves the right to continue scope and fee negotiations with the other firms, in order of their proposal rankings.

The Fayetteville Public Works Commission reserves the right to reject any or all submittals.

E-VERIFY

Consultant 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. Consultant 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).

Consultant hereby pledges, attests and warrants through execution of this Agreement that Consultant complies with the requirements of Article 2, Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any sub-consultants currently employed by or subsequently hired by Consultant shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Agreement.

IRAN DIVESTMENT ACT

As mandated by NCGS. 147-86.59(a), Consultant hereby certifies that it is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to NCGS 147-86.58. Consultant further certifies that in accordance with NCGS 147-86.59(b) that it shall not utilize any sub-consultant found on the State Treasurer's Final Divestment List. Consultant certifies that the signatory to this Contract is authorized by the Consultant to make the foregoing statement.

MINMUM INSURANCE REQUIREMENTS

1. Commercial General Liability Insurance with a combined single limit of liability of not less than one million dollars (\$1,000,000) for each occurrence of bodily injury and/or property damage and an annual aggregate of liability of not less than two million dollars (\$2,000,000) for bodily injury and/or property damage, and an annual aggregate of liability of not less than two million dollars (\$2,000,000) for Completed Operations and Products Liability.
2. 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;
3. Worker's compensation insurance as required by North Carolina State law; and
4. Automobile Liability insurance with limits not less than one hundred thousand dollars (\$100,000) each person and three hundred thousand dollars (\$300,000) each accident for

bodily injury and property damage.

UTILIZATION OF SMALL BUSINESS CONCERNS

- 1) Definitions. As used in this contract –
 - a. HUBZone small business concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
 - b. Service-disabled veteran-owned small business concern –
 - i. Means a small business concern –
 - (1) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
 - (2) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
 - ii. Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16). Small business concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. Small, disadvantaged business concern, consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that
 - iii. Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by –
 - (1) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and
 - (2) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
 - iii. The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.
 - c. Veteran-owned small business concern means a small business concern –
 - i. Not less than 51 percent of which is owned by one or more

veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

- ii. The management and daily business operations of which are controlled by one or more veterans.

d. Women-owned small business concern means a small business concern –

- i. That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- ii. Whose management and daily business operations are controlled by one or more women.

- 2) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small, disadvantaged business concerns, and women-owned small business concerns.
- 3) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.
- 4) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small, disadvantaged business concern, or a women-owned small business concern.
- 5) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management database or by contacting the SBA. Options for contacting the SBA include –

- a) HUBZone small business database search application Web page at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.com; or <http://www.sba.gov/hubzone>;
- b) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC 20416; or
- c) The SBA HUBZone Help Desk at hubzone@sba.gov .

PWC SERVICE AGREEMENT SAMPLE (subject to further amendment by PWC)

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 (1) 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 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. 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: _____

(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