



## **REQUEST FOR STATEMENT OF QUALIFICATIONS**

**PWC2223053**

### **ASSET MANAGEMENT PROGRAM**

**Date of Issue: 05/17/2023**

**RFQ Deadline: 06/14/2023**

**5:00 p.m.**

**Direct all inquiries concerning this RFQ to:**

**Victoria McAllister**

**Senior Procurement Advisor**

**[victoria.mcallister@faypwc.com](mailto:victoria.mcallister@faypwc.com)**

**910-223-4333**

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**REQUEST FOR STATEMENT OF QUALIFICATIONS FOR PROFESSIONAL SERVICES  
ASSET MANAGEMENT PROGRAM  
FAYETTEVILLE PUBLIC WORKS COMMISSION**

In accordance with N.C.G.S. 143-64.31, Fayetteville Public Works Commission (PWC) is seeking the services of a qualified engineering firm to provide professional consulting services related to the Asset Management Program project.

**PROJECT SCOPE**

Professional consulting services to evaluate the current Asset Management Program for PWC's Water Resources Division. Review, evaluate, and update the tactical asset management plans for the collection and distribution systems. Implement a road map for PWC Water Resources Divisions to develop future tactical asset management plans, and identify resource needs (e.g., equipment, staffing, technology, funding).

**PURPOSE**

The purpose of this Request for Qualifications (RFQ) is to select the firm(s) determined to be best able to provide the required professional consulting services based on the criteria specified herein and to generally set forth the terms and conditions whereby PWC will contract with the selected firm. The RFQ packet submitted, and possible subsequent interviews shall serve as the basis for selection. The information provided in the RFQ package from PWC is intended to give information to the prospective firms concerning the required services and the basis for awarding the agreement for engineering services. It is not necessarily intended to completely define the selection criteria or contractual relationship to be entered into by PWC and the successful firm(s).

The contracted services may include, but are not limited to the following:

- Evaluate the current Asset Management Program and identify areas of improvement, related to the collection, analysis, and management of data, people, technology, condition assessment, and asset management planning (i.e., conduct a gap analysis of PWC's current asset management program). An expected outcome of this task is to assist PWC Water Resources Division staff in understanding their current Asset Management Program, outline goals for the program, and identify steps to meet those goals.
- Evaluate and update processes to improve the asset management program, including future budgetary considerations needed to implement those processes, as well as metrics to determine the effectiveness of the program.
- Evaluate and draft an overall, strategic asset management plan for PWC's Water Resources Division, to include water distribution, sewer collection, sewer lift stations, water booster stations, personnel, real property (land), Water Reclamation (wastewater treatment) facilities, and Water Treatment facilities.
- Assist Water Resources Division staff to evaluate and develop an overall strategic initiative for PWC, to help employees understand the current asset management plan and their roles.
- Evaluate and update the existing tactical asset management plans for both the collection and distribution systems, to include (but not limited to): management strategies, operational strategies, life cycle cost analysis, data collection, data analysis, data management, condition assessment, operation and maintenance inspections, operations and maintenance processes, levels of service, risk management, capital improvement

planning, remaining service life analysis, asset inventory, risk of failure, replacement cost analysis, standard operating procedures, etc.

- Evaluate the data collection, analysis, and management processes, identify any issues with the current technology, and develop a business case for any necessary technology needed to successfully implement the strategic and/or tactical asset management program. Provide recommendations to address any identified deficiencies. Consolidate asset management-related data.
- Evaluate and develop a process (i.e., roadmap) to ensure PWC Water Resources Division staff has competence in doing asset management, by developing business practices, processes, and procedures to prepare additional tactical asset management plans for the remaining asset classes (i.e., water treatment, lift stations, etc.). The goal of this task is to have a roadmap for business processes, and to educate and train PWC Water Resources Division staff to manage the strategic Asset Management Program and develop (in-house) additional tactical asset management plans in the future. Implementation of this roadmap.
- Assist PWC Water Resources Division in change management, to ensure the successful implementation of the strategic asset management program and the tactical asset management plans, as well as future asset management plans.
- Evaluate and update Key Performance Indicators with Level of Service (LOS) for Internal and External Functions.

## **BACKGROUND**

PWC is a public utility that provides water, sanitary sewer, and electric services to the City of Fayetteville and surrounding areas. PWC provides water service to approximately 204,000 customers – both inside and outside city residential, commercial, and industrial customer classes – as well as City and PWC facilities. PWC's service area includes the 1998 purchase of the Town of Hope Mills water and sewer system.

PWC also provides wholesale water service on a contract basis to Spring Lake, Stedman, and Hoke County. In 2010, PWC, along with Harnett County Public Utilities Department, began supplying portable water to Fort Bragg through a 40-year contract with the Department of Defense.

As a regional utility provider, PWC also maintains and operates several sanitary sewer systems in the area. Services are provided to approximately 1,000 customers in the Town of Stedman, the Kelly Hills Sanitary Sewer District, and NORCRESS (Towns of Wade, Godwin, and Falcon) all in Cumberland County.

PWC currently has an informal Asset Management Program for its collection and distribution system. PWC utilizes various software programs, operation and maintenance plans, sewer and water master plans, Capital Improvement Project (CIP) documents, and rehabilitation and replacement efforts as part of the overall asset management program.

Asset data is primarily housed within the Geographic Information System (GIS). PWC currently uses ESRI GIS software with Schneider Electric's ArcFM. Maintenance data (work orders) are currently being housed in Oracle's Work and Asset Management (WAM) application and planning to transition to Oracle's Work Asset Cloud Service (WACS) in the fall of 2023. GIS assigns a unique ID number to each asset created. Asset information is synchronized and transferred from the GIS database to the WAM database nightly.

PWC utilizes InnoVizyze InfoAsset Planner software for both water and sewer that prioritize rehabilitation and replacement efforts based on condition and criticality.

Additional asset data for the distribution system includes Vitals (valve exercise program), modeling software (to include a uni-directional flushing module), fire flow testing, pipe coupons from field activities, and pressure data loggers. PWC currently utilizes the InnoVizyze InfoWater modeling software, with the InfoUDF module.

Asset data for the collection system includes modeling software, the use of flow monitors (permanent and temporary), rainfall data loggers, sanitary sewer SmartCover System, Sanitary Sewer Evaluation Studies (SSES), smoke testing, manhole inspections, right-of-way inspections, and closed-circuit television (CCTV) inspections. PWC currently utilizes the InnoVizyze InfoSWMM modeling software. Manhole inspection data is stored in a Microsoft Access database.

Since 2017, PWC has made strides to formalize their Asset Management Program. Tactical asset management plans for the distribution and collection systems have been developed. Additionally, several proposed business practices, procedures, and other asset management functions (i.e., change management plan) have been developed, but not yet implemented. The development of the tactical asset management plans included gap assessments of PWC data and asset management practices.

## RFQ SCHEDULE

Action	Responsibility	Date/Time
Submit Written Questions	Firm	Wednesday, May 24, 2023, by 5:00 P.M. ET
Provide Response to Questions	PWC	Tuesday, May 30, 2023, by 5:00 P.M. ET
Submit RFQ	Firm	Wednesday, June 14, 2023, by 5:00 P.M.ET
Award Contract	PWC	TBD

## QUESTIONS

Written questions shall be e-mailed to [victoria.mcallister@faypwc.com](mailto:victoria.mcallister@faypwc.com) by the date and time specified in the RFQ schedule. Firms will enter "RFQ #PWC2223053 – Questions" as the subject of the email.

Questions received prior to the submission deadline date, the Procurement Advisor's response, and any additional information deemed necessary by PWC will be posted in the form of an addendum to PWC website and shall become an Addendum to this RFQ. No information, instruction, or advice provided orally or informally by any PWC personnel, whether made in response to a question or otherwise concerning this RFQ, shall be considered authoritative or binding. Firms shall rely only on written material contained in an Addendum to this RFQ.

Inquiries should be submitted no later than the date and time noted in the RFQ schedule. Questions answered verbally will be followed up by written addenda as deemed necessary; oral interpretations shall have no effect.

## QUALIFICATION STATEMENT REQUIREMENTS

The qualifications statement shall 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(s) name, year established, address, telephone number, fax number and contact person.
- Identify if the firm(s) is classified as a Disadvantaged Business Enterprise (DBE), Historically Underutilized Business (HUB), or Small Local Supplier (SLS).
- Provide copies of Certificates of Insurance (COI) showing General Liability, Automotive, Worker's Compensation, and Professional Liability Coverage (Certificate of Insurance will not count towards page limit). If two (2) or more firms are collaborating to form a Joint Venture Team, then each individual firm shall meet the required insurance coverage.
- State any conflicts of interest your firm or any key individuals of the firm may have with the Project or PWC.

**Section 2 – Personnel (20% of score)**

- Specify professional qualifications of key management and staff personnel to be assigned to the Project. If two (2) or more firms are collaborating to form a Joint Venture, then each firm shall provide the qualifications of key staff.
- 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 (15% of score)**

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

**Section 4 – Project and Project Management Experience (25% of score)**

- Document expertise in municipal utility asset management planning and implementation of asset management plans, both at the strategic and tactical levels.
- Describe past projects in asset management planning for municipal utility infrastructure, like the one being proposed.
- Document expertise and experience in those specific tasks and/or technologies required to successfully complete the scope of work associated with this project.
- Provide a brief description of similar projects completed in the last five (5) years.
- Provide specific client contacts that can directly speak to the consultant's ability to successfully complete this project. The client contacts should be able to speak to the

consultant's ability to implement change management, work with utility staff, develop an asset management program, and evaluate the utility's processes. Contacts should meet the following requirements:

- A minimum of five (5) references shall be provided, with the consultant having worked with the client within the past five (5) years.
- A minimum of three (3) references shall be from clients where the work was completed two (2) to five (5) years ago.
- No more than two (2) references shall be where the work was completed in the last two (2) years.

**Note:** PWC intends to contact the references to verify the information provided and evaluate the consultant's ability to effectively meet the required tasks.

### **Section 5 – Project Approach and Understanding (30% of score)**

- Include a description of the approach planned to meet the requirements outlined in the Scope of Work.
- Identify those tasks necessary to accomplish the work outlined in the Scope of Work, including which staff personnel will be responsible for completing those specific tasks. Proposed requirements for PWC staff should also be included.
- Provide a proposed schedule. The schedule should indicate how the work will be organized and executed. The consultant may include tasks not specifically indicated in the proposed Scope of Work, should they deem those tasks necessary to support the goals and objectives of PWC.
- Provide details related to how the project will be managed, to include status meetings, reports, communications, change management, and coordinating activities with PWC staff. Describe protocols put into place in order to ensure the project stays within scope, on schedule, and with the established budget.
- Describe why your firm is uniquely qualified for this work and should be selected for this project.
- Describe why your firm or Joint Venture Team should be selected.

**Ten percent (10%)** of the submittal score will come from the firm's general qualifications including the completeness of the submittal, the firm's operating history, insurance and licensing, and compliance with the RFQ requirements.

**NOTE: The qualifications submittal shall be limited to a maximum number of thirty (30) pages. This page limit includes the tabs and/or other dividers. Also, note that double-sided pages will be counted as two (2) pages. Failure to comply with the page limits will result in automatic disqualification of the submittal. The front and back cover and copies of the COI do not count towards the total page limit.**

**No additional information regarding this Project will be provided prior to the award. The interested firm 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**

Interested firms shall submit an electronic PDF copy via e-mail to Victoria McAllister at [Victoria.McAllister@faypwc.com](mailto:Victoria.McAllister@faypwc.com) of their Statement of Qualifications no later than **Wednesday, June 14, 2023, 5:00 p.m.**

## **AWARDING OF PROJECTS**

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 described above. 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, Fayetteville Public Works Commission reserves the right to continue scope and fee negotiations with the other firms, in order of their proposal rankings.

PWC 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 North Carolina General Statutes §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 North Carolina General Statute 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 North Carolina General Statute 147-86.58. Consultant further certifies that in accordance with North Carolina General Statute 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.

## **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

iv) 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 Vendors 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 Vendor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Vendor 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 Vendor's compliance with this clause.

4) Vendors acting in good faith may rely on written representations by their subconsultants 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 Vendor shall confirm that a subconsultant 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.cfm](http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm); 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 The SBA HUBZone Help Desk at [hubzone@sba.gov](mailto:hubzone@sba.gov).

**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 Fayetteville Public Works Commission (“PWC”), a North Carolina public authority, and \_\_\_\_\_ (“Provider”), a \_\_\_\_\_ (each of PWC and Provider is referred to herein as a “Party” and collectively as the “Parties”) as of the date of execution last written below (the “Effective Date”). For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Services. PWC retains Provider to \_\_\_\_\_ as more particularly described in \_\_\_\_\_ as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “Services”). The Services shall be completed on or prior to the deadline(s) set forth in Exhibit A, but in any event no later than \_\_\_\_\_. 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 use the existence of this Agreement or the name of Fayetteville Public Works Commission as part of any commercial advertising or marketing of products or 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.

3. Delivery of Services and Ownership of Work Product. Time is of the essence with regard to the delivery of the 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. The Provider shall be compensated for the Services in the amount of \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_.00) as set forth in Exhibit A. Provider's rates shall not be increased during the term of the Agreement or the performance of the Services without the prior written consent of PWC. PWC shall be obligated to pay only for Provider's actual time devoted to providing the Services and authorized, documented expenses incurred, not to exceed the Cap.

5. Payment Limitation. Notwithstanding any other provision in this Agreement, the total fees and expenses for the Services shall not exceed \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_.00) (the "Cap"). 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 authorized, documented expenses incurred, not to exceed 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 and authorized in the State of North Carolina to perform the Services. Each Party represents and warrants to the other Party that it 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, this Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms and the person signing this Agreement on behalf of Provider has been properly authorized and empowered to enter into this Agreement.

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 in 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. 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 in 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 a 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.

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 J. Noland, Interim CEO/General Manager  
PO Box 1089  
Fayetteville, NC 28302

To Provider:

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“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 or any spill or release of the waste materials during the performance of the Services.

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 caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Fayetteville Public Works Commission \_\_\_\_\_

By: \_\_\_\_\_  
Marion J. Noland, Interim CEO/General Manager

By: \_\_\_\_\_  
Name:  
Title:

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

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

This instrument has been pre-audited 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

Approved as to form:

SAMPLE