



INVITATION FOR BID

PWC2223059

PRIMARY CABLE: 1/0 AL & 750 MCM AL

Date of Issue: June 7, 2023
Date of Opening: June 21, 2023
2:00 p.m.

Direct all inquiries concerning this IFB to:

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

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**ADVERTISEMENT FOR BID
FAYETTEVILLE PUBLIC WORKS COMMISSION
PRIMARY CABLE: 1/0 AL & 750 MCM AL**

**Cumberland County
North Carolina**

Pursuant to N.C.G.S 143-129, sealed Bids are solicited and will be received at the Fayetteville Public Works Commission, Administration Building, Conference Room 107, 955 Old Wilmington Road, Fayetteville, NC 28301, until **2:00 p.m., EST Wednesday, June 21, 2023**, at which time they will be publicly opened and read for the **PRIMARY CABLE: 1/0 AL & 750 MCM AL**.

Enclosed please find the Instructions to Bidders, Detailed Specifications, and Bid Pricing Forms. Bids shall be submitted on the forms provided herein, or exact copies thereof, and the Bidder shall return one copy of the entire Bid packet along with the completed Bid Pricing Form and any other information specified in the Bid documents.

Questions regarding this Bid must be submitted in writing to the attention of Shelby Lesane, at shelby.lesane@faypwc.com no later than **5:00 p.m., EST Wednesday, June 14, 2023**, in order to be considered for a response.

Bids must be enclosed in a sealed envelope addressed to **Shelby Lesane**, Procurement Advisor II, Fayetteville Public Works Commission, 955 Old Wilmington Road, Fayetteville, North Carolina 28301. The outside of the envelope must be marked **SEALED BID: PRIMARY**

CABLE: 1/0 AL & 750 MCM AL and shall indicate the name, address of the Bidder. Bids shall be submitted on the printed forms, or exact copies thereof, contained in the Bid.

The Fayetteville Public Works Commission reserves the right to reject any or all Bids for any reason determined by PWC to be in its best interest, or to award the Bid to the lowest responsible Bidder or Bidders, taking into consideration quality, performance, and the time specified in the Bids for the performance of the contract.

FAYETTEVILLE PUBLIC WORKS COMMISSION
Candice S. Kirtz
Director of Supply Chain

INSTRUCTIONS TO BIDDERS
FAYETTEVILLE PUBLIC WORKS COMMISSION
PRIMARY CABLE: 1/0 AL & 750 MCM AL

OBJECTIVE OF THE REQUEST

It is the intent of this Bid invitation to obtain pricing for **PRIMARY CABLE: 1/0 AL & 750 MCM AL** within the detailed specifications section of this invitation for Bid (IFB). You are requested to submit your Bid on the enclosed Bid Pricing Form.

IFB SCHEDULE

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

Action	Responsibility	Date/Time
Submit Written Questions	Bidders	Wednesday June 14, 2023, 5:00 p.m.
Provide Response to Questions	PWC	Friday June 16, 2023, 5:00 p.m.
Submit IFB	Bidders	Wednesday June 21, 2023, 2:00 p.m.
Award Contract	PWC	TBD
Contract Start Date	PWC & Bidder	August 2023

QUESTIONS

Written questions shall be e-mailed to shelby.lesane@faypwc.com by the date and time specified in the IFB schedule. Firms will enter “IFB PWC2223059 – 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 the PWC website and shall become an Addendum to this IFB. No information, instruction, or advice provided orally or informally by any PWC personnel, whether made in response to a question or otherwise concerning this IFB, shall be considered authoritative or binding. Firms shall rely only on written material contained in an Addendum to this IFB.

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

SUBMISSION INSTRUCTIONS

- 1) Bids should be complete and carefully worded and should convey all the information requested in the IFB. Bids should be prepared simply and economically, providing a straightforward, concise description of Bidder’s capabilities to satisfy the requirements of the IFB. Emphasis should be on completeness and clarity of content. If the bid includes any comment over and above the specific information requested in the IFB, Bidder should include this information as a separate appendix to its Bid. Bids that include clarifications or modifications to any of the IFB’s contractual requirements, or a Bidder’s standard terms and conditions, may be deemed non-responsive and not considered for award at PWC’s discretion. Unsolicited bid samples or descriptive literature will not be examined or tested, will not be used to determine responsiveness, and will not be deemed to vary any of the provisions

of the IFB. Failure to comply with these requirements shall constitute sufficient cause to reject a Bid without further consideration. PWC reserves the right to request additional information from Bidder's to aid in the evaluation process. This information may include, but shall not be limited to, sketches, descriptive literature, complete specifications covering the goods and ancillary services offered, financial statements, reference lists showing companies currently utilizing the proposed equipment, and the like. PWC reserves the right to accept or reject any bid and to annul the bidding process and reject all bids at any time prior to award of a Contract, without thereby incurring any liability to the affected bidder or bidders or any obligation to inform the affected bidder or bidders the reasons for PWC's action.

- 2) Bids may be withdrawn by the Bidder only in writing and if receipt of such withdrawal is acknowledged by PWC prior to the time for the opening of Bids identified in the Advertisement for Bidders (or such later date included in an Addendum). Written withdrawal requests shall be submitted on the Bidder's letterhead and signed by an official of the Bidder duly authorized to make such request. Any withdrawal request made after Bid opening shall be allowed only if the price Bid was based upon a mistake that constituted a substantial error, provided the Bid was submitted in good faith, and then only pursuant to the terms of N.C.G.S. § 143-129.1.
- 3) Bids shall be submitted in a sealed opaque envelope providing the Bid title, date, and time of opening on the front of the envelope no later than **2:00 p.m., EST Wednesday, June 21, 2023** The Bids will be publicly opened and read aloud **at the Fayetteville Public Works Commission, Administration Building, Conference Room 107, 955 Old Wilmington Road, Fayetteville, NC 28301**. Late Bids will not be considered and will be returned to the Bidder unopened.
- 4) Bids will be examined promptly after opening and an award will be made at the earliest possible date. Bids must be held firm for PWC for a period of sixty (60) days after the Bid opening date. A purchase order will be issued to the awarded Bidder.
- 5) Bidders shall submit Bids only on the Bid Pricing Forms provided herein, or exact copies thereof (See Exhibit B – Bid Pricing Form). Failure to provide full and complete Bid Pricing Forms may result in a Bid being deemed non-responsive.
- 6) Do not submit alternate Bids unless specifically called for on the Bid Pricing Forms.

QUANTITIES AND PRICING

- 1) Quantities listed are estimates **ONLY** based on historical usage. PWC does not guarantee a minimum or maximum quantity to be purchased.
- 2) All bidders are advised to include all costs incurred by the bidder in delivering the **PRIMARY CABLE: 1/0 AL & 750 MCM AL** to the PWC **Warehouse** in their bid submittal. The invoice submitted for payment shall not reflect any other costs (fuel surcharge, toll, etc.).

EVALUATION AND AWARD

- 1) An award of a Contract is subject to the approval by the Board of Commissioners of PWC and the Fayetteville, North Carolina City Council. PWC reserves the right to inspect, at a reasonable time, the equipment, item, plant, or other facilities of a prospective Bidder prior to

Contract award, and during the Contract term, as PWC deems necessary to determine that such equipment, item, plant, or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.

- 2) PWC reserves the right to request additional information from bidders to aid in the evaluation process. This information may include but is not limited to, financial statements, a reference list of contracts of similar size, etc.
- 3) PWC reserves the right to make a single award for all items or may award separate contracts to multiple Bidders for various items to the lowest responsive, responsible Bidder or Bidders, taking into consideration product quality, delivery time to PWC, and conformity with the specifications in these Bid documents. PWC may also consider, among other things, the Bidder's past performance conduct on other contracts, and other information as PWC deems necessary to assist in the evaluation of any Bid.
- 4) PWC personnel will place orders via email, on an as needed basis throughout the life of the contract. Bidder shall confirm receipt of each order by e-mail stating the product ordered, quantity ordered, and the expected delivery date.
- 5) The term of the Contract shall extend from the date of execution and delivery of the Contract by all parties through the date of delivery of the Cable on or before June 30, 2024. Delivery of Goods shall take place on or before June 30, 2024.

DELIVERY AND PAYMENT

- 1) Delivery to be made F.O.B. Public Works Commission Warehouse, 1097 Public Works Drive, Fayetteville NC 28301
- 2) Deliveries shall be made between the hours of 9:00 a.m. and 3:00 p.m., Monday through Friday, within the time frame specified on the Bid Pricing Form.
- 3) Payment for equipment, material, supplies, etc. purchased pursuant to this bid shall be made by Public Works Commission approximately thirty days after the same has been delivered, inspected, approved and the invoice received in the PWC Accounts Payable Office, P.O. Box 1089, Fayetteville, North Carolina 28302.

Public Works Commission
Fayetteville, NC
Electric Systems Division
Material Specification

1-065-510

Revision Date: July 15, 2021
Revised By: Glenn Andersen

CABLE, 1/0 AL, EPR, 25KV, 1/C, CN

Description:

Underground primary distribution cable for installation in duct or direct burial rated 90°C, wet or dry, consisting of the following components:

Conductor: Solid, #1/0 AWG, EC-1350 aluminum alloy, ASTM B609

Conductor Shield: Minimum 12 mil, semi-conducting, extruded, compatible, strippable

Insulation: 260 mil, extruded, thermosetting ethylene propylene rubber (EPR)

Insulation Shield: Minimum 30 mil, free-stripping, semi-conducting

Neutral: Bare copper concentric, full neutral (16 x #14 or equivalent)

Outer jacket: 45 mil, linear low-density polyethylene (HMWPE/LLDPE)

Nominal outside diameter: 1.20 inches

Conductor shield, insulation and insulation shield to be applied in a continuous triple extrusion process; bare copper concentric neutral helically applied and uniformly spaced per ICEA S-94-649. Cable shall be identified with manufacturer's name, size and type of conductor, thickness & type of insulation, sequential footage, rated voltage and year of manufacture. Jacket shall be extruded with 3 red stripes. Each reel shall indicate beginning and ending footage on side.

Performance Standards:

Conductor: ASTM B-231

Cable shall meet or exceed requirements of ICEA Standard S-94-649 and AEIC CS8-07.

Delivery Standards:

Cable ends shall be sealed at both ends. Cable will be wound and shipped on 5,000 foot (+/-4%) wooden reels, covered/wrapped during shipment, with a maximum flange diameter of 72 inches and drum diameter as specified by NEMA WC26. The arbor hole shall be reinforced with a steel plate as shown in the photograph on Page 2 of this specification. Cable shall be shipped in an upright **vertical** position on the flanges. It is preferred that cable should be delivered on open bed trailers suitable for unloading from either side.

PWC Warehouse personnel (910-223-4355) will be notified of delivery 24 hours in advance. Deliveries shall be accompanied by certified test reports, partial discharge plots, and engineering information per above ICEA Standards.

Types Accepted:

<i>Manufacturer</i>	<i>Product</i>
OKONITE	161-23-4069
PRYSMIAN	---
KERITE	---

Note - Catalog numbers are shown for reference use only. Supplier is responsible for conforming to the above specifications.

Specification reviewed by: _____

Public Works Commission
Fayetteville, NC
Electric Systems Division
Material Specification

1-065-510

Revision Date: July 15, 2021
Revised By: Glenn Andersen

CABLE, 1/0 AL, EPR, 25KV, 1/C, CN

Page 2 of 2



Public Works Commission
Fayetteville, NC
Electric Systems Division
Material Specification

1-065-522

Revision Date: July 15, 2021
Revised By: Glenn Andersen

CABLE, 750 MCM AL, EPR, 25KV, 1/C, CN

Description:

Underground primary distribution cable for installation in duct or direct burial rated 90°C, wet or dry, consisting of the following components:

Conductor: 750 kcmil, EC-1350 aluminum alloy, ASTM B-231, 61 strand, Class B, strand-filled

Conductor Shield: Minimum 20 mil, semi-conducting, extruded, compatible, strippable

Insulation: 260 mil, extruded, thermosetting ethylene propylene rubber (EPR)

Insulation Shield: Minimum 40 mil, free-stripping, semi-conducting

Neutral: Bare copper concentric, one-third neutral (15 x #10 or equivalent)

Outer jacket: 70 mil, linear low-density polyethylene (HMWPE/LLDPE)

Nominal outside diameter: 2.08 inches

Conductor shield, insulation and insulation shield to be applied in a continuous triple extrusion process; bare copper concentric neutral helically applied and uniformly spaced per ICEA S-94-649. Cable shall be identified with manufacturer's name, size and type of conductor, thickness & type of insulation, sequential footage, rated voltage and year of manufacture. Jacket shall be extruded with 3 red stripes. Each reel shall indicate beginning and ending footage on side.

Performance Standards:

Conductor: ASTM B-231

Cable shall meet or exceed requirements of ICEA Standard S-94-649 and AEIC CS8-07.

Delivery Standards:

Cable ends will be sealed at both ends. Cable will be wound and shipped on 1,500' (+/- 4%) wooden reels, covered/wrapped during shipment, with a maximum flange diameter of 72 inches and drum diameter as specified by NEMA WC26. The arbor hole shall be reinforced with a steel plate as shown in the photograph on Page 2 of this specification. Cable shall be shipped in an upright **vertical** position on the flanges. It is preferred that cable should be delivered on open bed trailers suitable for unloading from either side.

PWC Warehouse personnel (910-223-4355) will be notified of delivery 24 hours in advance.

Deliveries shall be accompanied by certified test reports, partial discharge plots, and engineering information per above ICEA Standards.

Types Accepted:

Manufacturer	Product
OKONITE	162-23-4096
PRYSMIAN	---
KERITE	---

Note - Catalog numbers are shown for reference use only. Supplier is responsible for conforming to the above specifications.

Specification reviewed by: _____

Public Works Commission
Fayetteville, NC
Electric Systems Division
Material Specification

1-065-522

Revision Date: July 15, 2021
Revised By: Glenn Andersen

CABLE, 750 MCM AL, EPR, 25KV, 1/C, CN

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ATTACHMENT B: PRICING FORM

FURNISH AND DELIVER:

Listed below are the Primary Cable: 1/0 AL & 750 MCM AL currently in PWC's inventory. Bidder shall provide pricing for each Primary Cable: 1/0 AL & 750 MCM AL identified in the below list. Bidder shall also provide shipping/delivery costs if such costs are not included in the unit cost. Pricing in this Pricing form represents the base pricing.

DESCRIPTION	UOM	FOOTAGE PER REEL	TOTAL REELS	AVG UNIT COST	TTL CONTRACT FOOTAGE	TTL CONTRACT COST
PWC # 1065510 – CABLE,1/0, EPR,25KV, 1/C, CN	FT	5000	50	\$	250000	\$
PWC # 1065522 – CABLE, 750 MCM AL EPR 25KV, 1/C, CN	FT	1500	66	\$	99000	\$

BIDDER INFORMATION

Name of Company

Address

Phone Number

Email Address

Federal ID No.

**Is the business SDBE,
MWBE, DBE, or HUB
Printed Name**

Title

Signature

Date

ATTACHMENT C: CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

The Primary Participant, _____ (major third party contractor), certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(If the primary participant is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)

THE PRIMARY PARTICIPANT _____ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET. SEQ. ARE APPLICABLE THERETO.

Signature

Title

Printed Name

Date



GENERAL TERMS & CONDITIONS

1. **PERFORMANCE:**

- a) It is anticipated that the tasks and duties undertaken by Vendor under the contract which results from the SFB in this matter ("Contract") shall include ancillary services, and/or the manufacturing, furnishing, or development of goods and other tangible features or components, as deliverables.
- b) Except as provided herein, and unless otherwise mutually agreed in writing prior to award, any deliverables not subject to an agreed Vendor license and provided by Vendor in performance of this Contract shall be and remain property of PWC. During performance, Vendor may provide proprietary components as part of the deliverables that are identified in this Contract. Vendor grants PWC a personal, permanent, non-transferable license to use such proprietary components of the deliverables and other functionalities, as provided under this Contract. Any technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to PWC shall be and remain the property of Vendor or such other party, respectively. Vendor agrees to perform under the Contract in at least the same or similar manner provided to comparable users and customers. PWC shall notify Vendor of any defects or deficiencies in performance or failure of deliverables to conform to the standards and specifications provided in this Contract. Vendor agrees to timely remedy defective performance or any nonconforming deliverables on its own or upon such notice provided by PWC.
- c) Vendor has a limited, non-exclusive license to access and use PWC data provided to Vendor, but solely for performing its obligations under and during this Agreement and in confidence as further provided for herein or by law.
- d) Vendor or its suppliers, as specified and agreed in the Contract, shall provide support assistance to PWC related to all ancillary services performed or other deliverables procured hereunder during PWC's normal business hours. Vendor warrants that its support, customer service, and assistance will be performed at a minimum in accordance with generally accepted and applicable industry standards.
- e) PWC may document and take into account in awarding or renewing future procurement contracts the general reputation, performance and performance capabilities of Vendor under this Contract.

2. **DELIVERY AND ACCEPTANCE:**

- a) Delivery of the purchased Goods shall be F.O.B. Destination - PWC Warehouse Facility, 1097 Public Works Drive, Fayetteville, NC 28301, or such other location as may be designated by PWC in the SFB (the "Delivery Point"), with all transportation costs and fees included in the bid price. Time is of the essence as to the timely delivery of the Goods. Vendor bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Point.
- b) Performance shall be considered complete when the Goods and ancillary services are approved as acceptable by PWC. PWC has the right to inspect the Goods on or after the delivery date. PWC, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or

defective. If PWC rejects any portion of the Goods, PWC has the right, effective upon written notice to Vendor, to: (a) terminate this Agreement in its entirety and require Vendor to remove the Goods in a commercially reasonable time period or pay the full cost and expense to have the rejected Goods returned to Vendor; or (b) reject the Goods and require replacement of the rejected Goods at Vendor's sole expense. If PWC requires replacement of the Goods, Vendor shall, at its sole expense and in the lesser of ninety (90) days or the number of days between any applicable Purchase Order of PWC and the Delivery Date, replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Goods and the delivery of replacement Goods. Any inspection or other action by PWC under this section shall not reduce or otherwise affect Vendor's obligations under the Contract, including Vendor's warranties, and PWC shall have the right to conduct further inspections after Vendor has carried out its remedial actions. In addition to the foregoing, PWC shall have all other rights and remedies available under North Carolina law and the applicable provisions of the North Carolina Uniform Commercial Code.

3. DEFAULT AND TERMINATION:

- a) In the event of default by Vendor, PWC may, as provided by North Carolina law, procure Goods and ancillary services necessary to complete performance hereunder from other sources and hold Vendor responsible for any excess cost occasioned thereby. In addition, and in the event of default by Vendor under the Contract, Vendor's violation of any applicable laws or regulations, Vendor's disregard of the authority of PWC or any public body having jurisdiction over PWC, or upon Vendor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against Vendor, PWC may immediately cease doing business with Vendor, terminate the Contract for cause, and take action to recover relevant damages, and if permitted by applicable law, debar Vendor from doing future business with PWC.
- b) If, through any cause, Vendor shall fail to fulfill in a timely and proper manner the obligations under the Contract, including, without limitation, in these General Terms and Conditions, PWC shall have the right to terminate the Contract by giving thirty days written notice to Vendor and specifying the effective date thereof. In that event, any or all finished or unfinished deliverables that are prepared by Vendor under the Contract shall, at the option of PWC, become the property of PWC (and under any applicable Vendor license to the extent necessary for PWC to use such property), and Vendor shall be entitled to receive just and equitable compensation for any acceptable deliverable completed (or partially completed at PWC's option) as to which such option is exercised. Notwithstanding, Vendor shall not be relieved of liability to PWC for damages sustained by PWC by virtue of any breach of the Contract, and PWC may withhold any payment due Vendor for the purpose of setoff until such time as the exact amount of damages due PWC from such breach can be determined. PWC, if insecure as to receiving proper performance or provision of Goods deliverables, or if documented Vendor ancillary services performance issues exist, under this Contract, may require at any time a performance bond or other alternative performance guarantees from a Vendor without expense to PWC as provided by applicable law.
- c) If this Contract contemplates deliveries or performance over a period of time, PWC may terminate this Contract for convenience at any time by providing thirty (30) days' notice in writing from PWC to Vendor. In that event, any or all finished or unfinished deliverables prepared by Vendor under this Contract shall, at the option of PWC, become its property, and under any applicable Vendor license to the extent necessary for PWC to use such property. If the Contract is terminated by PWC for convenience, PWC shall pay for those items or ancillary services for which such option is exercised, less any payment or compensation previously made.

4. INTERPRETATION, CONFLICT OF TERMS:

- a) Definitions in the SFB are specifically incorporated herein..
- b) If federal funds are involved in the transactions under this Contract, Vendor shall comply with all applicable state and federal requirements and laws, except where State requirements are more restrictive. See the additional federal requirements included in the "Federal Funds Provisions" section below.

- c) Contracts made in contravention of the applicable provisions of General Statutes, Chapter 143, are void.
 - d) In cases of conflict between specific provisions in this Contract and any other referenced documents, the Order of Precedence shall be (high to low) (1) any special terms and conditions specific to this Contract, including any negotiated terms; (2) requirements, specifications and administrative terms; (3) these GENERAL TERMS AND CONDITIONS; (4) Definitions and other provisions in INSTRUCTIONS TO VENDORS in this solicitation, which is specifically incorporated in this Contract; (5) PRICING, and (6) Vendor's Bid, to the extent specifically and mutually incorporated into this Contract.
5. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the Goods, material, quality, workmanship, or performance of the ancillary services offered, prior to acceptance, it shall be the responsibility of Vendor to notify PWC at once, in writing, indicating the specific regulation which requires such alterations. PWC reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.
6. **TAXES:** Any applicable taxes shall be invoiced as a separate item. Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.
7. **SITUS AND GOVERNING LAWS:**
- a) This Contract is made under and shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules, and within which State all matters, whether sounding in contract, tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined.
 - b) The exclusive venue for all mediations and litigation and any other legal proceedings regarding the Agreement shall be the State and Federal Courts serving Cumberland County, North Carolina, and Vendor consents to personal jurisdiction in such courts. Vendor irrevocably waives, to the fullest extent permitted by law, and 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.
 - c) Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with the Contract, including those of federal, state, and local agencies having jurisdiction and/or authority.
8. **NON-DISCRIMINATION COMPLIANCE:** PWC has an equal opportunity purchasing policy. PWC seeks to ensure that all segments of the business community have access to supplying the Goods and **ancillary services** needed by PWC. PWC encourages utilization of small and minority business enterprises in its procurements. PWC provides opportunities for all businesses and does not discriminate regardless of race, color, religion, age, national origin or disability.
9. **PAYMENT TERMS:** Vendor shall invoice PWC within thirty (30) days after acceptance of the of the Goods. PWC shall pay the undisputed portion of a correct invoice within forty-five (45) calendar days after PWC's receipt of the invoice. All payments from PWC to Vendor shall be transferred electronically to Vendor's designated financial institution, and Vendor shall, prior to delivery of its invoice to PWC, supply the name of Vendor'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. Vendor has the right to impose a late payment charge of one percent (1%) per month for amounts unpaid by PWC by the date due.

- 10. CONDITION AND PACKAGING:** Unless otherwise expressly provided by special terms and conditions or specifications in the Contract or by express, specific federal law or rule, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose, is newly manufactured, and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment. Vendor shall properly pack, mark, and ship the Goods as instructed by PWC and otherwise in accordance with applicable law and industry standards and shall provide PWC with all shipment documentation showing the quantity of pieces in shipment, the number of cartons or containers in shipment, Vendor's name, the airway bill or bill of lading number, and the state of origin.
- 11. INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY:** Vendor shall hold and save PWC, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of the rights of any third party in any ancillary services or copyrighted material, patented or patent-pending invention, article, device or appliance delivered in connection with the Contract.
- 12. WARRANTIES:** Vendor warrants to PWC that for a period of twenty-four (24) months from the Delivery Date, all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements set forth in the Contract or as specified by PWC and agreed to by Vendor; (c) be fit for their intended purpose and operate as intended; (d) be free and clear of all liens, security interests, or other encumbrances; and (e) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by PWC. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of PWC's discovery of the noncompliance of the Goods with the foregoing warranties. If PWC gives Vendor notice of noncompliance with this Section 9, Vendor shall, at its own cost and expense, within thirty (30) days replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming Goods to Vendor and the delivery of repaired or replacement Goods to PWC.
- 13. ADVERTISING:** Vendor agrees not to use the existence of the Contract or the name of Fayetteville Public Works Commission as part of any commercial advertising or marketing of products or ancillary services unless otherwise provided in the SFB.
- 14. ASSIGNMENT OR DELEGATION OF DUTIES:**
- a) As a convenience to Vendor, PWC may include any person or entity designated by Vendor in writing as a joint payee on Vendor's payment check. In no event shall such approval and action obligate PWC to anyone other than Vendor.
 - b) If Vendor requests any assignment, or delegation of duties, Vendor shall remain responsible for fulfillment of all Contract obligations. Upon written request, PWC may, in its unfettered discretion, approve an assignment or delegation to another responsible entity acceptable to PWC, such as the surviving entity of a merger, acquisition or a corporate reorganization if made as part of the transfer of all or substantially all of Vendor's assets. Any purported assignment or delegation made in violation of this provision shall be void and a material breach of the Contract.
- 15. INSURANCE:** During the term of this Agreement and for a period of three (3) years after the date of this Agreement, Vendor shall, at its own expense, maintain and carry insurance in full force and effect that includes, but is not limited to, commercial general liability (including product liability) with limits no less than \$1,000,000 for each occurrence and \$3,000,000 in the aggregate and umbrella liability in a sum no less than \$5,000,000, 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. Prior to delivering any Goods, Vendor shall deliver to PWC certificates of insurance confirming each such coverage, and Vendor 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 insurance policy. Vendor 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 Vendor 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 Vendor, or to seek reimbursement for said payments from Vendor. Any such sums paid by PWC shall be due and payable immediately by Vendor upon notice from PWC. The insurance provisions of this Agreement shall not be construed as a limitation on Vendor's responsibilities and liabilities pursuant to the terms and conditions of this Agreement.

16. GENERAL INDEMNITY:

- a) Vendor shall indemnify, defend and hold and save PWC, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, ancillary services, materials, or supplies in connection with the performance of the Contract, and also from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by Vendor in the performance of the Contract that are attributable to the negligence or intentionally tortious acts of Vendor, provided that Vendor is notified in writing within 30 days from the date that PWC has knowledge of such claims.
- b) Vendor, at its own expense shall defend any action brought against PWC, under this section. Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that PWC shall have the option to participate in such action at its own expense.
- c) Vendor represents and warrants that it shall make no claim of any kind or nature against PWC's agents who are involved in the delivery or processing of Vendor deliverables or ancillary services as part of this Contract with PWC.
- d) As part of this provision for General indemnity, if federal funds are involved in this procurement, Vendor warrants that it will comply with all relevant and applicable federal requirements and laws, and will indemnify, defend and hold and save PWC harmless from any claims or losses resulting to PWC from Vendor's noncompliance with such federal requirements or law in the performance of this Contract. The representations and warranties in the preceding two sentences shall survive the termination or expiration of the Contract.
- e) PWC does not participate in indemnification due to Constitutional restrictions, or arbitration, which effectively and unacceptably waives jury trial.

17. SUBCONTRACTING: Performance under the Contract by Vendor shall not be subcontracted without prior written approval of PWC, except to those subcontractors specifically identified by Vendor in its bid. PWC reserves the right, in its discretion, to reject any proposed subcontractor. Unless otherwise agreed in writing, acceptance of a Vendor's proposal shall include approval to use the subcontractor(s) that have been specified therein.

18. CONFIDENTIALITY: Vendor acknowledges and agrees that all Vendor information submitted to PWC in connection with a bid shall be subject to public disclosure unless such information is specifically identified and labeled as a trade secret or confidential information by Vendor, and Vendor provides a written basis for requesting such exemption from disclosure, which shall be acceptable to PWC in its discretion. Blanket assertions of confidentiality will not be honored. Vendors hereby agree to indemnify and defend PWC for honoring any designation of Vendor information designated as a trade secret or confidential. The failure to identify and label any Vendor information that is released by PWC shall constitute a complete waiver of any and all claims for damages caused by any release of such information.

19. **CARE OF PWC DATA AND PROPERTY:** Any PWC property, information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to Vendor under the Contract shall be kept as confidential, used only for the purpose(s) required to perform the Contract and not divulged or made available to any individual or organization without the prior written approval of PWC.

PWC's data and property in the hands of Vendor shall be protected from unauthorized disclosure, loss, damage, destruction by a natural event or another eventuality. Vendor agrees to reimburse PWC for loss or damage of PWC property while in Vendor's custody. Such PWC data shall be returned to PWC in a form acceptable to PWC upon the termination or expiration of this Agreement.

Vendor shall notify PWC of any security breaches within 24 hours. For further information, notice is given to Vendor that the NC Department of Information Technology (DIT) has requirements relating to the security of PWC network, and rules relating to the use of PWC network, IT software and equipment, that Vendor must comply with such requirements, as well as PWC standards.

20. **ENTIRE AGREEMENT:** The Contract (including any documents mutually incorporated specifically therein) resulting from a relevant solicitation represents the entire agreement between the parties and supersedes all prior oral or written statements or agreements. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the Contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.
21. **AMENDMENTS:** This Contract may be amended only by a written amendment duly executed by PWC and Vendor.
22. **NO WAIVER:** Notwithstanding any other language or provision in the Contract or in any Vendor-supplied material, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to PWC under applicable law. The waiver by PWC of any right or remedy on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.
23. **FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including, without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, other catastrophic epidemic or pandemic, natural event or Act of God.
24. **SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in the Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or other state or federal constitutional provision or principle that otherwise would be available to PWC under applicable law.
25. **COMPLIANCE:** Vendor 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. Vendor 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). Vendor hereby pledges, attests, and warrants through execution of this Agreement that Vendor 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 Vendor 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. Vendor hereby further acknowledges that the execution and delivery of this Agreement constitutes Vendor's certification to PWC and to the North Carolina State Treasurer that, as of the Effective Date, Vendor 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. Vendor represents and warrants to PWC that Vendor, 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. Vendor also shall at all times during the term of this Agreement comply with Executive Order 11246, including but not limited to the Equal Opportunity Clause requirements set forth in 41 C.F.R. § 60-1.4. Vendor shall abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a) prohibiting discrimination against qualified individuals on the basis of protected veteran status or disability and requiring affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

SALE OF GOODS AGREEMENT

This Sale of Goods Agreement (“Agreement”) is made by and between the City of Fayetteville (the “City”), by and through the Fayetteville Public Works Commission (“PWC”), a North Carolina public authority, and _____ [insert seller’s full legal name] (“Seller”), a _____ [identify the legal entity and State in which formation was accomplished] (each of PWC and Seller is a “Party” and both are collectively the “Parties”) as of the date of execution last written below (the “Effective Date”). In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, The Parties agree as follows:

1. Sale of Goods. Seller shall sell to PWC and PWC shall purchase from Seller the following [Identify the goods specifically] (the “Goods”). PWC may issue a purchase order for the Goods that specifies any additional applicable terms and conditions set forth for the purchase (a “Purchase Order”), but such Purchase Order is subject to the terms of this Agreement. In the event of a conflict between the provisions of this Agreement and the provisions of any Contract Documents, attachment, exhibit or Purchase Order made pursuant to this Agreement, the terms of this Agreement shall govern.

2. Contract Documents. “Contract Documents” means, collectively, the following documents that were either made available to Seller by PWC during the bid solicitation process (including Drawings) or executed by the Parties, or both, which are all incorporated by reference herein:

- a. This Agreement
- b. Notice to Prospective Bidders
- c. Definitions
- d. Instructions to Bidders
- e. General Conditions
- f. Materialman’s Proposal
- g. Bid Bond
- h. Technical Specifications
- i. Purchase Order(s)
- j. Addenda

3. Delivery of Goods. Seller shall deliver the Goods [EITHER: “on or before _____” OR “as specified in the Contract Documents or an applicable Purchase Order issued by PWC” OR “as otherwise agreed in writing by the Parties”] (the “Delivery Date”). Timely delivery of the Goods is of the essence. If Seller fails to deliver the Goods on or before the Delivery Date, PWC may, without any liability to Seller, terminate this Agreement immediately by providing written notice to Seller. Unless otherwise specified in an applicable Purchase Order or the Contract Documents, excluding this Agreement, all Goods shall be delivered to PWC’s Warehouse at 955 Old Wilmington Road, Fayetteville, North Carolina 28301 (the “Delivery Point”) during PWC’s normal business hours. Delivery shall be made FOB Delivery Point.

4. Title and Risk of Loss. Title of the Goods passes to PWC upon delivery of the Goods to the Delivery Point. Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Point.

5. Packaging. Seller shall properly pack, mark, and ship the Goods as instructed by PWC and otherwise in accordance with applicable law and industry standards and shall provide PWC with all shipment documentation showing the quantity of pieces in shipment, the number of cartons or containers in shipment, Seller's name, the airway bill or bill of lading number, and the state of origin.

6. Inspection and Rejection of Nonconforming Goods. PWC has the right to inspect the Goods on or after the Delivery Date. PWC, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If PWC rejects any portion of the Goods, PWC has the right, effective upon written notice to Seller, to: (a) terminate this Agreement in its entirety and require Seller to remove the Goods in a commercially reasonable time period or pay the full cost and expense to have the rejected Goods returned to Seller; or (b) reject the Goods and require replacement of the rejected Goods at Seller's sole expense. If PWC requires replacement of the Goods, Seller shall, at its sole expense and in the lesser of ninety (90) days or the number of days between any applicable Purchase Order of PWC and the Delivery Date, replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. Any inspection or other action by PWC under this section shall not reduce or otherwise affect Seller's obligations under this Agreement, including Seller's warranties, and PWC shall have the right to conduct further inspections after Seller has carried out its remedial actions.

7. Price. PWC shall purchase the Goods from Seller in the total amount of \$_____ ("Price"). The Price includes all packaging, transportation costs to the Delivery Location, insurance, fees, and applicable taxes, including, but not limited to, all sales, use, or excise taxes. No increase in the Price is effective, whether due to increased material, labor, transportation costs or otherwise, without the prior written consent of PWC.

8. Billing and Payment. Seller shall invoice PWC within thirty (30) days after the completion of the delivery of the Goods. PWC shall pay the undisputed portion of the invoice within forty-five (45) calendar days after PWC's receipt of the invoice. All payments from PWC to Seller shall be transferred electronically to Seller's designated financial institution, and Seller shall, prior to delivery of its invoice to PWC, supply the name of Seller'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. Seller 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 comply with all of the following requirements so that PWC may recover the full amount of sales and use tax under North Carolina law permitted under the law:

- a. Furnish PWC documentary evidence showing the material used, sales tax paid, and County paid (County of sale). The documentary evidence shall include Provider's certified statement showing total purchases of materials from each separate vendor and total sales taxes charged to PWC and paid by Provider. The documentary evidence shall also include Provider's certified statement as to the amount paid by PWC for sales tax on the Goods. A certified form is required even if no sales tax was paid for the pay request period. Materials used from Provider's warehouse stock shall be shown in a

- certified statement at warehouse stock prices and amount of County of Use Tax charged to PWC and paid by Provider;
- b. Provider shall furnish to PWC invoices or copies of invoices for all materials purchased for said work within pay request period, and such invoices shall state the amount of North Carolina Sales Tax, if any, paid for the Goods. Provider shall also furnish to PWC invoices identifying the amount paid for the sales and use tax on Services that are subject to such taxation under North Carolina law; and
 - c. Provider shall not include any tax paid on supplies, tools, and equipment that Provider uses to perform its obligations under this Agreement.

9. Warranties. Seller warrants to PWC that for a period of twenty-four (24) months from the Delivery Date, all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements set forth in the Contract Documents or as specified by PWC and agreed to by Seller; (c) be fit for their intended purpose and operate as intended; (d) be free and clear of all liens, security interests, or other encumbrances; and (e) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by PWC. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of PWC's discovery of the noncompliance of the Goods with the foregoing warranties. If PWC gives Seller notice of noncompliance with this Section 9, Seller shall, at its own cost and expense, within thirty (30) days replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to PWC.

10. Termination. Notwithstanding any other or additional remedies that may be provided under this Agreement, PWC may terminate this Agreement with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods, if: (a) Seller repudiates, or threatens to repudiate, any of its obligations under this Agreement; (b) Seller is in breach of, or threatens to breach, any representation, warranty, or covenant of Seller under this Agreement and either the breach cannot be cured or, if the breach can be cured, it is not cured by Seller within a commercially reasonable period of time under the circumstances, in no case exceeding seven (7) days following Seller's receipt of Notice of such breach; (c) Seller fails to, or threatens to fail to, timely deliver Goods conforming to the requirements of, and otherwise in accordance with, the terms and conditions of this Agreement; or (d) Seller becomes insolvent, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors. PWC shall be obligated to pay Seller only for work performed and reasonable expenses incurred until delivery of the notice of termination.

11. Insurance. During the term of this Agreement and for a period of three (3) years after the date of this Agreement, Seller shall, at its own expense, maintain and carry insurance in full force and effect that includes, but is not limited to, commercial general liability (including product liability) with limits no less than \$1,000,000 for each occurrence and \$3,000,000 in the aggregate and umbrella liability in a sum no less than \$5,000,000, 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. Prior to delivering any Goods, Seller shall deliver to PWC

certificates of insurance confirming each such coverage, and Seller 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 insurance policy. Seller 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 Seller 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 Seller, or to seek reimbursement for said payments from Seller. Any such sums paid by PWC shall be due and payable immediately by Seller upon notice from PWC. The insurance provisions of this Agreement shall not be construed as a limitation on Seller's responsibilities and liabilities pursuant to the terms and conditions of this Agreement.

12. Indemnification. Seller 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 Seller or any of its employees, agents, representatives, and subcontractors. Seller'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.

13. Notices. Any notice which either Party is required or desires to give the other 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: Elaina L. Ball, CEO/General Manager
PO Box 1089
Fayetteville, NC 28302

To Seller:
[INSERT MAILING ADDRESS]

14. Compliance. Seller 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. Seller 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). Seller hereby pledges, attests, and warrants through execution of this Agreement that Seller 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 Seller 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. Seller hereby further acknowledges that the execution and delivery of this Agreement constitutes Seller's certification to PWC and to the North Carolina State Treasurer that, as of the Effective Date, Seller 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. Seller represents and warrants to Commission that Seller, 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. Seller also shall at all times during the term of this Agreement comply with Executive Order 11246, including but not limited to the Equal Opportunity Clause requirements set forth in 41 C.F.R. § 60-1.4. Seller shall abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a) prohibiting discrimination against qualified individuals on the basis of protected veteran status or disability and requiring affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

15. Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law or in equity.

16. Miscellaneous Provisions. Seller is and shall remain an independent contractor. Nothing contained in this Agreement shall be deemed or construed to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the Parties. No breach or non-performance of any term of this Agreement shall be deemed to be waived by either Party unless said breach or non-performance is waived in writing and signed by the Parties. No waiver of any breach or non-performance under this Agreement shall be deemed to constitute a waiver of any subsequent breach or non-performance, and for any such breach or non-performance each Party shall be entitled to such remedies as provided by law. No consent or waiver by a Party shall be effective unless it is in writing and then only to the extent specifically stated. The invalidity, illegality, or un-enforceability of any portion or provision of this Agreement shall in no way affect the validity, legality, and/or enforceability of

any other portion or provision of this Agreement. Any invalid, illegal, or unenforceable provision of this Agreement shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced the same as if the Agreement had not contained any portion or provision which was invalid, illegal, or unenforceable; provided, however, severability shall not prevent this entire Agreement from being void in the event any portion or provision of this Agreement that is of the essence of this Agreement shall be void. This is the entire agreement of the Parties on the subject matter hereof, and all prior negotiations, representations, proposals, letters, agreements, understandings, or other communications between the Parties, whether written or oral, are hereby merged into the Agreement and superseded by this Agreement. This Agreement shall not be modified unless such modifications are evidenced in writing, signed by both Parties. Nothing herein shall be construed to give any right or benefits hereunder to anyone other than the Parties. This Agreement shall be governed by the laws of the State of North Carolina without the application of the laws of any other state. The exclusive venue for all mediations and litigation and any other legal proceedings regarding this Agreement shall be the State and Federal Courts serving Cumberland County, North Carolina, and Seller consents to personal jurisdiction in such courts. Seller 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.

17. Conflicts. Except with PWC's knowledge and prior written consent, the Seller shall not engage in any activity or accept any employment, interest or contribution that would reasonably appear to compromise the Seller's professional judgment with respect to the Goods. The Seller 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 as of the Effective Date.

Fayetteville Public Works Commission

[INSERT SELLER'S FULL LEGAL NAME]

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

By: _____
(Printed Name) (Title)

Date: _____

Date: _____

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

By: _____
Rhonda Haskins, Chief Financial Officer

Approved as to form:

Legal Dept.