



INVITATION FOR BID

PWC2324002

ZINC ORTHOPHOSPHATE ANNUAL CONTRACT

Date of Issue: July 10, 2023

IFB Deadline: July 25, 2023

2:00 p.m.

Direct all inquiries concerning this IFB to:

Tanya Hazlett

Procurement Advisor

tanya.hazlett@faypwc.com

910-223-4023

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**ADVERTISEMENT FOR BID
FAYETTEVILLE PUBLIC WORKS COMMISSION
ZINC ORTHOPHOSPHATE ANNUAL CONTRACT**

**Cumberland County
North Carolina**

Pursuant to N.C.G.S 143-129, sealed Bids are solicited and will be received at Fayetteville Public Works Commission, Administration Building, Conference Room 230, 955 Old Wilmington Road, Fayetteville, NC 28301, until **2:00 p.m., EST Tuesday, July 25, 2023**, at which time they will be publicly opened and read for the ZINC ORTHOPHOSPHATE ANNUAL CONTRACT.

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 Tanya Hazlett, at tanya.hazlett@faypwc.com no later than **5:00 p.m., EST Friday, July 14, 2023**, in order to be considered for a response.

Bids must be enclosed in a sealed envelope addressed to Tanya Hazlett, Procurement Advisor, Fayetteville Public Works Commission, 955 Old Wilmington Road, Fayetteville, North Carolina 28301. The outside of the envelope must be marked **SEALED BID: ZINC ORTHOPHOSPHATE ANNUAL CONTRACT** 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.

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
ZINC ORTHOPHOSPHATE ANNUAL CONTRACT

OBJECTIVE OF THE REQUEST

It is the intent of this Bid invitation to obtain pricing for supplying the chemicals listed within the detailed specifications section of this invitation for Bid (IFB). You are requested to submit your Bid on the enclosed Bid Pricing Form. The Bid outcome will result in a one-year contract.

IFB SCHEDULE

Action	Responsibility	Date/Time
Submit Written Questions	Vendors	Friday, July 14, 2023, 5:00 p.m.
Provide Response to Questions	PWC	Monday, July 17, 2023, 5:00 p.m.
Submit IFB	Vendors	Tuesday, July 25, 2023, 2:00 p.m.
Award Contract	PWC	TBD
Contract Start Date	PWC & Vendor	September 1, 2023

QUESTIONS

Written questions shall be e-mailed to tanya.hazlett@faypwc.com by the date and time specified in the IFB schedule. Firms will enter "IFB PWC2324002 – 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 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 Tuesday, July 25, 2023**. The Bids will be publicly opened and read aloud at **Fayetteville Public Works Commission, Administration Building, Conference Room 230, 955 Old Wilmington Road, Fayetteville, NC 28301**. Late Bids will not be considered and will be returned to the Bidder unopened.
- 2) 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.

- 3) Bidders shall submit Bids only on the Bid Pricing Forms provided herein, or exact copies thereof (See Exhibit B – Pricing Form). Failure to provide full and complete Bid Pricing Forms may result in a Bid being deemed non-responsive.
- 4) All Bids must be signed by an authorized official of the Bidder. Bids may be rejected for any omission, alteration of form, additions not called for, conditional Bid, or any irregularities of any kind.
- 5) Do not submit alternate Bids unless specifically called for on the Bid Pricing Forms.
- 6) Bids will not be considered if not accompanied by MSDS.

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 chemical(s) to the specified water/water treatment reclamation facility in their bid proposal. The invoice submitted for payment shall not reflect any other costs (fuel surcharge, toll, etc.).

EVALUATION AND AWARD

- 1) For purposes of evaluation of the Bids, all Bidders are instructed to submit Bids in the unit of measurement requested. 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.
- 2) Upon request, bidder shall be required to furnish a promptly certified chemical analysis or a sample of the product to be delivered to a laboratory of the purchaser's designation for certified chemical analysis. The findings of said laboratory shall be final and binding on all persons. No samples are to be submitted until requested with the exception being the analysis enclosed with the bid submittal.
- 3) Chemicals supplied under these specifications shall not contain soluble minerals or organic substances in quantities capable of producing deleterious or injurious effect upon public health or water quality. Where applicable, the National Sanitation Foundation Standard Number 60 will be used as the guideline for acceptability. Analysis as required must be submitted for evaluation of bids prior to award of contract.
- 4) 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.
- 5) PWC personnel will place orders via email, on an as needed basis throughout the life of the contract. Vendor shall confirm receipt of each order by e-mail stating the product ordered, quantity ordered, and the expected delivery date.

- 6) Contract will be awarded for a period of ten (10) months to begin on or about September 1, 2023. Contract may be extended for additional one-year period upon the agreement of both parties.
- 7) It is the intent of PWC that all pricing remains firm for the initial ten (10) month contract period and vendors shall take this into account when submitting their bids. In the event a contract is extended for an additional period, the vendor may request a price increase. Justification for any increase must be based on the prevailing market index or detailed data showing the basis for, and the amount of the proposed increase. PWC reserves the right to accept or reject any request for an increase. Such action by PWC shall occur not later than 30 days after receipt by PWC of a properly documented request.
- 8) Each bidder must demonstrate to PWC that it will continue to receive an uninterrupted supply of product as required during the contract period. A letter of commitment stating that sufficient material is available from the producer listed on the Bid Pricing Form must be enclosed with the bid showing the committed volume of product to cover the annual quantity required.
- 9) PWC reserves the right to immediately terminate the contract should the vendor fail to maintain bid pricing, comply with delivery requirements and protocol, and necessary safety requirements, or provide a product meeting the specifications. Unapproved increases shall also be grounds for termination.

DELIVERY AND PAYMENT

- 1) Delivery to be made F.O.B. Public Works Commission (Water/Water Reclamation Facility as designated at the time order is placed.). Delivery is to be conducted in the manner specified in Attachment B: Bulk Chemical Delivery Security Protocol included herein.
- 2) Deliveries shall be made between the hours of 7:00 a.m. and 3:30 p.m., Monday through Friday, within the time frame specified on the bid proposal sheet for each chemical.
- 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.

SPILL PREVENTION

In the event of a spill resulting from the Supplier's actions, the Supplier's employee shall perform initial spill response including but not limited to using materials in PWC owned spill kits to prevent chemicals from injuring PWC employees and to prevent chemicals from reaching storm drains. It is the responsibility of the Supplier regardless of subcontracting delivery of the chemical to any PWC locations, in ensuring spill response to the location. The Supplier shall pay any fines levied against the PWC for spills resulting from the Supplier's actions and shall pay any costs incurred for clean-up and emergency response.

ATTACHMENT A: DETAILED SPECIFICATIONS

- A. General:** The P.O. Hoffer Water Filtration Plant is a 32 MGD surface water treatment plant and the Glenville Lake Water Filtration Plant is an 18 MGD surface water treatment plant. The current average of water production for P.O Hoffer is 21.7 MGD and Glenville Lake is 8.5 MGD. This facility has been using a blended zinc orthophosphate (3:1) in the water distribution system for at least the last twenty years. The successful bidder must maintain corrosion rates equal to or better than our present program. Cold roll mild steel coupons measuring mls/year (mpy) corrosion will be used. Corrosion analysis must be performed every (90) ninety days by an independent laboratory acceptable to the Fayetteville Public Works Commission Water Treatment Department and test results shall be remitted to PWC along with any recommended dosage adjustments. All cost incurred for testing will be included in the bid price. The coupons will be installed in eight (8) “by-pass” racks in the distribution system as designated by the Fayetteville Public Works Commission Water Treatment Department for monitoring corrosion rates. Coupons are to be changed out within (2) two weeks of notification of awarding bid. Analysis shall be performed on the removed coupons by an independent lab and the results submitted to Fayetteville Public Works Commission Water Treatment Department. Local service is required during the contract period in support of chemical usage. This shall include quarterly testing in the distribution system to ensure desired residual is maintained at eight (8) sites. (Locations may change during the contract period). Testing shall include iron, manganese, total phosphate, chlorine, pH and zinc. Control limits in the distribution system will be **1.35-1.80 mg/l as Phosphate, <0.01 mg/l Manganese, <10.0 mg/l Iron and 0.27-0.36 mg/l Zinc.**
- B. Support:** Supplier will provide recommendations with graphs and a report every quarter and a yearly review based upon the analysis and customer complaints associated with the corrosion control program. The supplier shall identify name, address, and phone number of two (2) individuals responsible for technical assistance and service. These individuals will be available at any time, day, or night, during the contract period to provide assistance to PWC.
- C. Product Benefits:** Product must form a protective zinc orthophosphate film on mild steel, copper, lead and other metals to control corrosion.
- D. Product Description:** Product must be a clear, colorless liquid with no foreign odor or materials.
- E. Typical Values:** Product must have the following values:
- Specific gravity @ 25°C: 1.50-1.65
 - Phosphate Content (as PO₄): 30-60%
 - Zinc Content (as Zn): 15-40%
 - Zinc to Phosphate Ratio: 3:1
 - Lbs. per gallon: 12.51-13.76
- F. Packaging:** PWC will place orders of the product for 45,000 lbs. per shipment. Tanker must have ability to hold 45,000 lbs. per shipment. Plant air is not available, and the tanker must have the capability to pump product through the truck’s air compressor.

- a. Bidder is asked to guarantee 550,000 lbs. will be allocated to PWC to ensure sufficient supply.
- G. Labeling Requirements:** The product must be labeled and have DOT CORROSIVE label as required by law.
- H. Material Safety Data Sheet:** Bidders must submit an SDS for product offered with bid. The successful bidder must provide an SDS for product with each delivery.
- I. Key Properties:** The product must be relatively non-volatile and stable at elevated temperatures.
- J. Governmental Approvals:** The product must be NSF 60 approved and meet AWWA Standard B506-06.
- K. Certificate of Analysis:** Vendor shall provide a Certificate of Analysis (COA) with each shipment detailing the purity, specific gravity, and compliance with NSF/ANSI 60 requirements.
- L. Driver Verification:** Vendor shall transmit an electronic copy of the Driver's ID and serial number(s) of tamper evident seals prior to delivery.
- M. Purity Requirements:** Since this material is fed into potable water supply following all other treatment, it is mandatory that no trash, debris, or foreign matter be present in the caustic as delivered. The presence of any such contaminants shall be cause for rejection and the supplier shall promptly remove such contaminated material and replace with acceptable caustic soda at his own expense.
- N. Clean-up of Spills:** Vendor shall be responsible for the immediate clean-up of any spilled material that occurs during or because of off-loading operations. Vendor is expected to clean-up and remove spilled material from the PWC facility's premises. At no time will clean-up of spilled materials include wash down to the storm or sanitary sewer.
- O. Field Sampling:** Every shipment shall be sampled for specific gravity and clarity by field expedient methods prior to unloading.
- P. Offloading Procedures:** Drivers shall not make connections or initiate off-loading procedures until authorized to do so by an employee of the Public Works Commission. Drivers will be required to wear protective clothing and equipment in accordance with OSHA rules during unloading of the product.

ATTACHMENT B: BID PRICING FORM FOR ZINC ORTHOPHOSPHATE

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

<i>CHEMICAL</i>	<i>UNIT OF MEASURE</i>	<i>ESTIMATED QUANTITY</i>	<i>UNIT COST</i>	<i>EXTENDED COST</i>
<i>Zinc Orthophosphate</i>	<i>LBS</i>	<i>550,000</i> <i>(45,000 LBS per shipment)</i>	<i>\$</i>	<i>\$</i>
	<i>MANUFACTURER</i>	<i>BRAND</i>	<i>UNIT COST VARY BY STRENGTH?</i>	

*If yes, include the formula for calculating the cost.

Notes: In addition to the detailed specifications, the following requirements pertain:

1. Certified copy of chemical analysis shall accompany bid.
2. Delivery shall be made F.O.B. Public Works Commission plants as directed at time order is placed.
3. Prices shall include loading, unloading, pumping, pallet and all charges related to delivery.
4. Delivery shall be made within 48 hours of request between the hours of 7:00 a.m. and 3:30 p.m., Monday through Friday.
5. Bids will not be considered if not accompanied by MSDS.
6. Unit prices calculated other than as requested on the bid proposal sheet will not be considered.
7. By signing this proposal Bidder confirms that he is submitting this bid in compliance with the Instructions to Bidders, Detailed Specifications, Delivery Protocol and Proposal Form contained in this Invitation to Bid.

ATTACHMENT C: BULK CHEMICAL DELIVERY SECURITY PROTOCOL

- 1) Trucks must be sealed with security tags after being loaded at terminal.
- 2) Before leaving terminal the water treatment facility/water reclamation facility (WTF/WRF) must be notified of the trailer number & seal numbers via e-mail or fax.
- 3) When placing the order, WTF/WRF staff will provide a “pass-code” to the vendor. This “pass-code” will be used by the driver and facility personnel as part of the authorization to off-load.
- 4) WTF/WRF staff must be made aware of the truck driver’s identity before the truck leaves the terminal. A photo and name of the driver making the delivery must be emailed to the WTF/WRF prior to the truck leaving the terminal. Scanned and emailed photos are preferred due to the photo quality issues when faxed.
- 5) The driver shall provide the “pass-code” to plant staff upon arrival at the WTF/WRF and prior to off-loading any chemicals. No truck will be permitted to off-load without this code.
- 6) WTF/WRF staff will check all delivery information. It must match exactly.
- 7) Any discrepancies will result in a Supervisor being notified, delay in chemical being off-loaded and/or chemical being refused.
- 8) It is the responsibility of the WTF/WRF staff to make sure the Bill of Lading, manifest or shipping ticket is correct before chemical is off-loaded.
 - a) Any discrepancies in the documents referenced in Step 8, will result in the shipment being refused.
 - b) Any discrepancies regarding driver identification will result in the load being refused.
 - c) Any discrepancies regarding the seal numbers will result in the load being refused.
 - d) The Fayetteville Police Department will be notified in the event of significant discrepancies.

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.

SAMPLE

ATTACHMENT F: SMALL LOCAL SUPPLIER DISCLOSURE FORM

Contractor: _____
Address & Phone: _____
Project: _____
Name: _____
Pay Application # _____

Please complete the below form by providing the necessary information for the estimated payment to be made to each subcontractor, vendor, or supplier for the work associated with the identified pay application. This form must be fully completed and attached to each pay application.

Firm Name, Address, and Contact Information	Estimated Payment Amount	Type of Work/Commodity (Include NAICS Code)

Signature

Printed Name

Title

Date