



REQUEST FOR BID

PWC2324016-REBID

**ON-CALL EMERGENCY SUPPORT FOR CLEARING
LOW-HANGING AND DOWN WIRES**

**Date of Issue: 9/21/2023
Submittal Deadline: 9/28/2023
5:00 p.m.**

Direct all inquiries concerning this RFB to:

**Victoria McAllister
Senior Procurement Advisor
victoria.mcallister@faypwc.com
910-223-4333**

Contents

ADVERTISEMENT FOR BID	3
INSTRUCTIONS TO BIDDERS	4
OBJECTIVE OF THE REQUEST	4
RFB SCHEDULE	4
QUESTIONS	4
SUBMISSION INSTRUCTIONS	4
QUANTITIES AND PRICING	5
EVALUATION AND AWARD	5
PERFORMANCE AND PAYMENT	6
ATTACHMENT A: SCOPE OF WORK	7
GENERAL	7
EXPERIENCE	7
TASK/DELIVERABLES	7
ATTACHMENT B: BID PRICING FORM	9
ATTACHMENT C: CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS	10
ATTACHMENT D: PWC AT A GLANCE	11
ATTACHMENT E: PWC SAMPLE SERVICE AGREEMENT rv 9/5/2023	12
ATTACHMENT F: SAMPLE FEDERAL UNIFORM GUIDANCE AND FEMA CONTRACT PROVISIONS	

**ADVERTISEMENT FOR BID
FAYETTEVILLE PUBLIC WORKS COMMISSION
ON-CALL EMERGENCY SUPPORT FOR CLEARING LOW-HANGING AND DOWN WIRES**

**Cumberland County
North Carolina**

Fayetteville Public Works Commission (“PWC”) is seeking the services of an experienced utility service provider for the **ON-CALL EMERGENCY SUPPORT FOR CLEARING LOW-HANGING AND DOWN WIRE**. Bids are solicited and will be received at the Fayetteville Public Works Commission, Procurement Department, 955 Old Wilmington Road, Fayetteville, NC 28301, until **5:00 p.m., EST Thursday, September 28, 2023.**

The successful bidder will be contracted to respond to request for clearing low-hanging and down wires during storm related events. This will include securing telephone lines, cable lines, and service lines. The successful bidder will not provide clearing services for high voltage lines but will be required to report these lines to the PWC System Operations or designee. Enclosed please find the Instructions to Bidders, Scope of Work, and Bid Pricing Form.

Questions regarding this bid must be submitted in writing to the attention of Victoria McAllister, at Victoria.McAllister@faypwc.com no later than **5:00 p.m., EST Monday, September 25, 2023,** in order to be considered for a response.

PWC may receive financial assistance from the Federal Emergency Management Agency (FEMA). The bidder to whom the contract is awarded shall comply with the statutory requirements of Federal Uniform Guidance (UG) and FEMA. These provisions will be specified in an addendum to the service agreement and samples are included in Attachment E and F of the bid. HUB Certified vendors are encouraged to submit a bid for this solicitation.

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. Mailed bids must be addressed to Victoria McAllister, Senior Procurement Advisor, Fayetteville Public Works Commission, 955 Old Wilmington Road, Fayetteville, North Carolina 28301. The outside of the envelope must be marked **BID: ON-CALL EMERGENCY SUPPORT FOR CLEARING LOW-HANGING AND DOWN WIRES** and shall indicate the name, and address of the bidder. Electronic bid submittals will also be accepted if emailed to Victoria.McAllister@faypwc.com. The email subject must be **BID: ON-CALL EMERGENCY SUPPORT FOR CLEARING LOW-HANGING AND DOWN WIRES**.

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
ON-CALL EMERGENCY SUPPORT FOR CLEARING LOW-HANGING AND DOWN WIRES

OBJECTIVE OF THE REQUEST

It is the intent of this bid request to obtain pricing for **ON-CALL EMERGENCY SUPPORT FOR CLEARING LOW-HANGING AND DOWN WIRES** within the scope of work section of this Request for Bid (RFB). You are requested to submit your bid on the enclosed Bid Pricing Form. The bid outcome will result in a nine (9) month contract to cover fiscal year 2023-2024.

RFB 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	Monday, September 25, 2023
Provide Response to Questions	PWC	Tuesday, September 26, 2023
Submit RFB	Bidders	Thursday, September 28, 2023
Award Contract	PWC	Tuesday, October 3, 2023
Contract Start Date	PWC & Bidder	Monday, October 9, 2023
Contract End Date	PWC & Bidder	Friday, June 28, 2024

QUESTIONS

Written questions shall be e-mailed to Victoria.McAllister@faypwc.com by the date and time specified in the RFB schedule. Firms will type “**RFB PWC2324016-REBID – Questions**” as the subject of the email.

Questions received prior to the submission deadline date, the Senior 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 RFB. No information, instruction, or advice provided orally or informally by any PWC personnel, whether made in response to a question or otherwise concerning this RFB, shall be considered authoritative or binding. Firms shall rely only on written material in an Addendum to this RFB. Inquiries should be submitted no later than the date and time noted in the RFB schedule.

SUBMISSION INSTRUCTIONS

- 1) Bids should be complete and carefully worded and should convey all the information requested in the RFB. Bids should be prepared simply and economically, providing a straightforward, concise description of the bidder’s capabilities to satisfy the requirements of the RFB. Emphasis should be on completeness and clarity of content. If the bid includes any comment over and above the specific information requested in the RFB, the bidder should include this information as a separate appendix to its bid. Bids that include clarifications or modifications to any of the RFB’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 RFB. Failure to comply with these requirements shall constitute sufficient cause to reject a bid without further consideration. 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 bid submittal deadline 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 the bid submittal deadline 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 submitted in an envelope must have the bid title, date, and time of the bid submittal deadline on the front of the envelope no later than the bid due date and time. The bid will be due at the Fayetteville Public Works Commission, Administration Building, Procurement Department, 955 Old Wilmington Road, Fayetteville, NC 28301 unless electronically submitted. Electronic bid submittals must be emailed to Victoria.McAllister@faypwc.com. The email subject must contain the bid title. Late bid will not be considered and will be returned to the bidder.
- 4) Bids will be examined promptly after the due date 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 due date. A purchase order will be issued to the awarded bidder.
- 5) Bidders shall submit bid 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) All bid 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.
- 7) Do not submit alternate bids unless specifically called for on the Bid Pricing Forms.

QUANTITIES AND PRICING

- 1) 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 response to the **ON-CALL EMERGENCY SUPPORT FOR CLEARING LOW-HANGING AND DOWN WIRES** bid.

EVALUATION AND AWARD

- 1) 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, performance 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) The contract will be awarded for a period of nine (9) months to begin on or about October 9, 2023. Pricing will remain firm for the entire nine (9) month contract period and the contract value is not to exceed \$250,000.00.

PERFORMANCE AND PAYMENT

- 1) Proposal price shall constitute the total cost to PWC for complete performance in accordance with the requirements and scope of work herein, including all applicable charges handling, administrative, and other similar fees. The bidder shall not invoice for any amounts not specifically allowed for in this RFB. Complete ATTACHMENT B: PRICING FORM and include it in the bid.
- 2) PWC personnel will request services via email, on an as-needed basis throughout the life of the contract. Bidder shall confirm receipt of each request in writing by e-mail stating the expected response time and names of the personnel clearing the wires.
- 3) Bidder will keep accurate time sheets and records of emergency support and clearing completed. A copy of these records will be attached to each invoice submitted.
- 4) Bidder will submit invoicing within ten (10) days after completion of work and mail to PWC Accounts Payable Office, P.O. Box 1089, Fayetteville, North Carolina 28302.

ATTACHMENT A: SCOPE OF WORK

GENERAL

The successful bidder will be contracted to respond to requests for clearing low-hanging and down wires during storm-related events. This will include securing telephone lines, cable lines, and service lines. Service lines are any wires 600 V or less. The successful bidder will not provide clearing services for high-voltage lines. A high-voltage line is any wires greater than 600 V. The successful bidder will be required to report these high-voltage lines to the PWC System Operations or designee.

EXPERIENCE

- 1) The service provider personnel will have appropriate communication and power line clearing experience combined with a thorough knowledge of the NCDOL Occupational Safety and Health rules & regulations to safely perform the work assigned to them.
- 2) Bidder shall be licensed in electrical utility construction ahead of the point of delivery.
- 3) Bidder to provide utility references for similar projects completed by identified crews.
- 4) The following personnel classifications will be required:
 - a) **“A”- Class Linemen**
 - b) **Groundworker**
- 5) The following equipment will be required:
 - a) **40' - 45' Aerial Service Bucket**

All motor vehicles, tools equipment, to be provided by the bidder shall be in good condition and suitable for the work to be performed. The bidder will only be paid for equipment and tools in use on the worksite.

TASK/DELIVERABLES

The successful bidder shall:

- 1) Comply with all applicable federal, state and local laws, rules, regulations, and/or ordinances.
- 2) Comply with the safety and security rules and procedures of the location where the clearing is being performed.
- 3) Roll low-hanging or down communication and service wires and secure them to the connected pole.
- 4) Assess damaged low-hanging or down communication and service wires to cut damaged wire if needed and temporarily secure it to the connected pole.

- 5) Report low-hanging or down communication and service wires to PWC System Operations or designee.

ATTACHMENT B: BID PRICING FORM

PWC required personnel and equipment:

Line	Personnel	Hourly Rate
1.	"A"- Class Linemen	\$
2.	Groundworker	\$

Line	Equipment	Hourly Rate
1.	40' Aerial Service Bucket	\$
2.	45' Aerial Service Bucket	\$

Additional lines for bidder proposed personnel and/or equipment in addition to the minimum requirements in the tables above.

Line	Personnel	Hourly Rate
1.		\$
2.		\$
3.		\$
4.		\$
5.		\$

Line	Equipment	Hourly Rate
1.		\$
2.		\$
3.		\$
4.		\$
5.		\$

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

PWC At a Glance



Customers



- In operation since 1905 (116 years)
- Provide Electric, Water and Wastewater Services
- Total Customers: 119,380
- Number of Services: 273,794
 - Electric: 82,304
 - Water: 90,430
 - Wastewater: 89,913
- Customers with 2+ services: 75%
- Annual Customer Turnover: 20-25%

Customer Service



- Annual Customer Contacts: 433,794
- Average Monthly Calls: 31,452
- Annual Bills Generated: 1.4 Million
- Customer Incentive Programs: 13
- Annual Water Leak Notifications: 21,850

Employees



- Number of Employees: 651
- Average Tenure of Employees: 10.37 years
- Average Age: 44.59
- Annual Turnover: 6.0%*
- Annual Hours Worked: 1.2 Million

*non retirement

Facilities



- Butler-Warner Generation Plant (268 MW)
- PO Hoffer Water Treatment Facility (39.5 MGD)
- Glenville Lake Water Treatment Facility (18.0 MGD)
- Cross Creek Water Reclamation Facility (25 MGD)
- Electric Service Area: 147 Sq. Miles
- Water Service Area: 163 Sq. Miles
- Wastewater Service Area: 142 Sq. Miles

Electric Operations



- Purchase Wholesale Power from Duke Energy
- Only NC municipal system to own/operate a generation plant (Dispatched for use by Duke Energy)
- Generation Capacity: 268 MW
- Annual MWH Sold: 1.9 Million
- System Peak: 499 MW (Feb. 9, 2015)
- Reliability Rate: 99.9906%
- Electric Distribution Substations: 32
- Distribution Lines: 1,351 miles
- Transmission Lines: 142 miles
- Streetlights/Area Lights: 37,441

Water/Wastewater Operations



- Population Served: 225,000
- Drinking Water Treated: 11.2 Billion Gallons/Year
- 100% Complaint for all EPA Drinking Water Standards
- Daily Water Treatment Capacity: 57.5 Million Gallons
- Daily Wastewater Treatment Capacity: 46 Million Gallons
- Water/Wastewater Infrastructure: 2,700 miles
- Hydrants: 8,300
- Sanitary Sewer Lift Stations: 82

Financial



- Annual Operating Budget: \$405.2 Million
- Total Assets: \$1.44 Billion
- Bond Rating: Aa2 (Moody's), AA (Standard and Poor), AA (Fitch)
- Annual Local Purchases: \$25 Million
- Operations & Maintenance Expenses per Customer: \$432 (\$556 National Median)
- Annual Contributions to City of Fayetteville in Lieu of Taxes: \$11.4 Million
- Annual Streetlight Services: \$3.9 Million
- Annual Economic Development: \$1.2 Million (thru 2021)

For the internal use of Fayetteville Public Works Commission only

Requester/Responsible Employee:

Project Title:

Contract Number:

(Assigned by Procurement)

Purchase Order Number:

Bid Number (if applicable)

Account String (w/Budget Code):

(for project funding)

Not to Exceed Amount:

Completion or Termination Date:

Work Scope/Purpose:

Notes: (1) This Amendment may be utilized for all services (including legal, accounting, and consulting services). However, (a) for services subject to G.S. 143-64.31 (including but not limited to engineering and surveying services), PWC must first comply with the applicable RFQ requirement, unless exempted by law; and (b) for Information Technology, as defined in G.S. 143B-1320, PWC must first comply with applicable RFP requirements set forth in G.S. 143-129.8.

(2) A purchase order must be generated by Procurement and approved by the CFO to encumber funds.

SERVICE AGREEMENT

This Service Agreement ("Agreement") is made by and between Fayetteville Public Works Commission ("PWC"), a North Carolina public authority, and _____ ("Provider"), a _____ (each of PWC and Provider is referred to herein as a "Party" and collectively as the "Parties"), as of the date of execution last written below (the "Effective Date"). For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Services. PWC retains Provider to _____ as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Services"). The Services shall be completed on or prior to the deadline(s) set forth in Exhibit A, but in any event no later than _____. In the event of a conflict between the provisions of this Agreement and the provisions of any attachment or exhibit to this Agreement, the terms of this Agreement shall govern. Provider shall not use the existence of this Agreement or the name of Fayetteville Public Works Commission as part of any commercial advertising or marketing of products or services without the prior written consent of PWC.

2. Service Standards. Provider shall perform and deliver the Services in accordance with (a) the professional skill and care ordinarily exercised by other providers delivering services on the same or similar projects; (b) Provider's professional licensing obligations; and (c) all applicable laws. Provider shall notify PWC promptly of the discovery of errors, omissions, discrepancies, or inconsistencies in the Services rendered. If any of the Services that Provider renders or work product, which includes but is not limited to reports, analyses, designs, specifications, plans, drawings, and other documents, that Provider delivers to PWC contain errors or omissions, Provider shall promptly correct or supplement such Services at no additional cost to PWC. PWC's acceptance of, use of, or payment for such Services shall in no way alter or reduce the Service standards set forth herein or PWC's rights hereunder. Provider shall not assign or subcontract or transfer the Services or any rights under or interest in this Agreement without the prior written consent of PWC. Provider shall treat all information from PWC and work product resulting from the Services as confidential and proprietary, unless such information is available from public sources, and Provider shall not publish or disclose

confidential or proprietary information without the prior written consent of PWC for any purposes other than the performance of the Services.

3. Delivery of Services and Ownership of Work Product. Time is of the essence with regard to the delivery of the Services. In the event of suspension or termination of the Services, Provider shall promptly deliver to PWC all work product completed or in progress as of the date of termination along with reproducible documents, drawings, plans, specifications, and electronic records of the completed portion of the Services upon PWC's payment of the undisputed portion(s) of Provider's invoices in accordance with Section 8, Billing and Payment. Provider grants PWC an irrevocable license to use the work product resulting from the Services of Provider. The work product delivered by Provider to PWC in connection with the performance of the Services shall not infringe any intellectual property rights of any third party. Except as otherwise specified in this Agreement, Provider shall not use for its own purposes or allow a third party to use the work product resulting from the Services without the prior written consent of PWC.

4. Compensation. For the Services, Provider shall be compensated in the amount of _____ and 00/100 Dollars (\$_____.00) as set forth in Exhibit A. Provider's rates shall not be increased during the term of the Agreement or the performance of the Services without the prior written consent of PWC.

5. Payment Limitation. Notwithstanding any other provision in this Agreement, the total fees and expenses for the Services shall not exceed _____ and 00/100 Dollars (\$_____.00) (the "Cap"). Provider shall promptly notify PWC in writing when Provider has reached ninety percent (90%) of the Cap. **The Cap is not a fixed fee to which Provider is entitled.** PWC shall be obligated to pay only for Provider's actual time devoted to providing the Services and authorized, documented expenses incurred, not to exceed the Cap.

6. PWC's Duties. PWC shall: (a) timely provide such information in its possession, custody, or control as is reasonably necessary for Provider to perform the Services; (b) communicate promptly to Provider all decisions of PWC and clarifications that are reasonably needed by Provider; and (c) make payments to Provider in accordance with Section 8, Billing and Payment.

7. Representations and Warranties. Provider represents and warrants to PWC that Provider is duly licensed and authorized in the State of North Carolina to perform the Services. Each Party represents and warrants to the other Party that it is duly organized, validly existing and in good standing and has all requisite powers, rights, and authority to execute, enter into, and perform this Agreement in accordance with the terms and conditions of this Agreement, this Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms and the person signing this Agreement on behalf of Provider has been properly authorized and empowered to enter into this Agreement.

8. Billing and Payment; Sales and Use Taxes. Provider shall invoice PWC monthly for Services performed and expenses incurred during the preceding calendar month. All invoices shall provide reasonable detail of the services performed and expenses for which reimbursement may be sought, along with supporting documentation for such expenses. PWC shall pay the undisputed portion of each invoice within forty-five (45) calendar days after PWC's receipt of the invoice. PWC shall reimburse expenses at the lower of actual or reasonable cost, except in regard to expenses that are specifically pre-approved in writing by PWC or are set forth and included in a fixed price service arrangement. All payments from PWC to Provider

shall be transferred electronically to Provider's designated financial institution, and Provider shall, prior to delivery of its first monthly invoice to PWC, supply the name of Provider's financial institution, routing number, and account number on the form available from PWC and provide to PWC a completed and signed IRS Form W-9. Provider has the right to impose a late payment charge of one percent (1%) per month for amounts unpaid by PWC by the date due. Provider shall maintain on a generally recognized accounting basis and retain for at least three (3) years the records supporting Provider's invoices to PWC. In the event of a dispute regarding a monthly invoice or any portion thereof: (a) Provider shall deliver to PWC all records supporting Provider's invoice(s) in dispute within ten (10) calendar days after PWC notifies Provider of the dispute, and Provider shall cooperate with PWC to verify the accuracy of all invoices; (b) Provider shall continue to proceed diligently with the performance of the Services pending resolution of the dispute; and (c) PWC shall pay Provider in accordance with this Agreement for all Services rendered by Provider which are not the subject of the dispute.

If the Services involve repair, maintenance, or installation subject to any sales and use tax under North Carolina law, then Provider shall comply with all of the following requirements so that PWC may recover the amount of the tax 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 Services delivered by Provider to PWC. A certified form is required even if no sales tax was paid for 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 materials. 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 the Service.

9. Termination. Except in regard to Services to be provided for a fixed price, PWC has the right to terminate the provision of Services, with or without cause, by delivering written notice of termination to Provider, and PWC shall be obligated to pay Provider only for work performed and reasonable expenses incurred until delivery of the notice of termination. Either Party may terminate an Agreement to provide Services for a fixed price for cause by delivering written notice of the cause and termination to the other Party, provided that the Party receiving the notice of termination shall have seven (7) calendar days to cure the cause cited in the termination notice. "Cause" means action by the non-terminating Party that constitutes a material breach of this Agreement including, but not limited to, a failure to adhere to a schedule, failure to timely pay, and material failure to produce work product that is consistent with the applicable service standards.

10. Insurance. Provider shall maintain during the provision of Services and for at least three (3) years thereafter (collectively, the "coverage period") the following insurance coverages, which insurance shall be placed with insurance companies authorized to do

business in the State of North Carolina and rated A minus VII or better by the current edition of Best's Key Rating Guide or otherwise approved in writing by PWC:

- (a) professional liability errors and omissions or malpractice insurance including contractual liability coverage with limits of not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) aggregate;
- (b) commercial general liability insurance with a combined single limit of liability of not less than \$1,000,000 for each occurrence of bodily injury and/or property damage and an annual aggregate of liability of not less than \$2,000,000 for bodily injury and/or property damage, and an annual aggregate of liability of not less than \$2,000,000 for Completed Operations and Products Liability;
- (c) worker's compensation insurance as required by State law; and
- (d) automobile liability insurance with limits not less than \$100,000 each person and \$300,000 each accident for bodily injury and property damage.

Prior to initiating the Services, Provider shall deliver to PWC certificates of insurance confirming each such coverage, and Provider shall direct its insurers to provide annually to PWC certificates confirming each such coverage during the coverage period. PWC shall be named as an additional insured in the comprehensive automobile and commercial liability insurance policies. Commercial general liability coverage shall be written on an "occurrence" basis. Upon PWC's request, Provider shall give prompt written notice to PWC of any and all claims made against the professional liability errors and omissions or malpractice insurance policy during the coverage period. Provider shall not reduce or allow the required insurance coverages to lapse without PWC's prior written approval. All policies for insurance must be endorsed to contain a provision giving PWC a thirty (30) calendar day prior written notice by certified mail of any cancellation of that policy or material reduction in coverage. Should a notice of cancellation be issued for non-payment of premiums or any part thereof, or should Provider fail to provide and maintain certificates as set forth herein, PWC shall have the right, but not the obligation, to pay such premium to the insurance company or to obtain such coverage and to deduct such payment from any sums that may be due or become due to Provider, or to seek reimbursement for said payments from Provider. Any such sums paid by PWC shall be due and payable immediately by Provider upon notice from PWC. The insurance provisions of this Agreement shall not be construed as a limitation on Provider's responsibilities and liabilities pursuant to the terms and conditions of this Agreement. Provider's obligation to maintain insurance for three (3) years after completion of the Services shall survive the termination of this Agreement.

11. Indemnification and Liability. Provider shall indemnify, defend, and hold harmless PWC and its Commissioners, officers, employees, agents, and representatives (collectively, "Indemnitees") from and against all claims, actions, liabilities, damages, losses, costs, and expenses (including, without limitation, injury to or death of any persons and damage to property, economic and consequential damages and attorneys' fees) asserted by one or more third parties against one or more of the Indemnitees arising out of negligent or willful acts, violations of law, infringement of any patent, trademark, trade secret, copyright, or other intellectual property right of a third party, or omissions or breach of the obligations set forth in this Agreement by Provider or any of its employees, agents, representatives, and subcontractors. Provider's obligation to indemnify, defend, and hold harmless the Indemnitees shall survive the termination of this Agreement and shall include the duty to pay for the

reasonable attorney's fees and costs associated with defending the Indemnitee(s) by the legal counsel of each Indemnitee's choice.

12. Notices. Any notice which either Party is required or desires to give the other hereunder shall be deemed sufficiently given if, in writing, it is delivered personally, or sent by certified U.S. mail, return-receipt requested, postage prepaid, to the addresses listed hereinbelow, or such other address as either Party shall give to the other Party by written notice in accordance herewith. Any notice given herein by personal delivery shall be deemed delivered when received. Any properly addressed notice given herein by certified mail shall be deemed delivered on the third Business Day after the same is deposited in an official United States Post Office, postage prepaid, or if sooner upon the date when the return receipt therefor is signed, or refusal to accept the mailing by the addressee is noted thereon by the postal authorities.

To PWC:
Fayetteville Public Works Commission
Attn: Timothy Bryant, CEO/General Manager
PO Box 1089
Fayetteville, NC 28302

To Provider:

"Business Day" means each calendar day that is not a Saturday, Sunday, holiday observed by the federal government for its employees, or holiday observed by the State of North Carolina for its employees.

13. Compliance. Provider hereby acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. Provider further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). Provider hereby pledges, attests, and warrants through execution of this Agreement that Provider complies with the requirements of Article 2, Chapter 64 of the North Carolina General Statutes and further pledges, attests, and warrants that all subcontractors currently employed by or subsequently hired by Provider to provide services for PWC shall comply with all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Agreement. Provider hereby further acknowledges that the execution and delivery of this Agreement constitutes Provider's certification to PWC and to the North Carolina State Treasurer that, as of the Effective Date, Provider is not listed on (a) the Final Divestment List created and maintained by the North Carolina Department of State Treasurer pursuant to the Iran Divestment Act of 2015, Chapter 147, Article 6E of the General Statutes of North Carolina (the "Iran Divestment Act"); or (b) the list of companies that the North Carolina State Treasurer determines to be engaged in a boycott of Israel in accordance with Article 6G of Chapter 147 of the General Statutes of North Carolina. Provider represents and warrants to Commission that Provider, and all persons and entities owning (directly or indirectly) an ownership interest in it: (i) are not, and will not become, a

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

Except in strict compliance with Environmental Laws (defined below), neither Provider nor its employees, agents, contractors, subcontractors, licensees or invitees shall use, handle, store, or dispose of (or permit the use, handling, storing, or disposal of) any hazardous or toxic waste or substance in delivering the Services (or transport, transship or permit the transportation or transshipment of the same over or through the real property managed or operated by PWC) which is regulated, controlled, or prohibited by any federal, state, or local laws, ordinances, and/or regulations, including without limitation the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. ("RCRA"); the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et. seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 801, et. seq; the Federal Water Pollution Control Act, 33 U.S.C. § 1321, et. seq; the Toxic Substances Control Act, 15 U.S.C. ("TSCA"); and the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq. (as subsequently amended, "Environmental Laws"). As used herein, hazardous or toxic substances or materials shall include without limitation the following: (1) "hazardous wastes" as defined under RCRA or any other federal, state or local law or regulation, (2) "hazardous substances" as defined under CERCLA or any other federal, state or local law or regulation, (3) gasoline, petroleum, or other hydrocarbon products, by-products, derivatives, or fractions (including spent products), (4) "toxic substances" as defined under TSCA, (5) "regulated medical waste" as defined by 40 C.F.R. § 259.30, (6) any radioactive materials or substances, or (7) asbestos and asbestos containing products. Provider shall comply with the Emergency Planning and Community Right-to-Know Act of 1986, as amended. Provider shall immediately report orally to PWC and confirm in writing within three (3) hours any type of chemical spill that occurs in or on any real property managed or operated by PWC or any spill or release of the waste materials during the performance of the Services.

14. Miscellaneous Provisions. Provider is and shall remain an independent contractor and shall undertake performance of the Services pursuant to the terms of this Agreement as an independent contractor. Nothing contained in this Agreement shall be deemed or construed to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the Parties. No breach or non-performance of any term of this Agreement shall be deemed to be waived by either Party unless said breach

or non-performance is waived in writing and signed by the Parties and then only to the extent specifically stated. No waiver of any breach or non-performance under this Agreement shall be deemed to constitute a waiver of any subsequent breach or non-performance, and for any such breach or non-performance each Party shall be entitled to such remedies as provided by law. The invalidity, illegality, or un-enforceability of any portion or provision of this Agreement shall in no way affect the validity, legality, and/or enforceability of any other portion or provision of this Agreement. Any invalid, illegal, or unenforceable provision of this Agreement shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced the same as if the Agreement had not contained any portion or provision which was invalid, illegal, or unenforceable; provided, however, severability shall not prevent this entire Agreement from being void in the event any portion or provision of this Agreement that is of the essence of this Agreement shall be void. This is the entire agreement of the Parties on the subject matter hereof, and all prior negotiations, representations, proposals, letters, agreements, understandings, or other communications between the Parties, whether written or oral, are hereby merged into the Agreement and superseded by this Agreement. This Agreement shall not be modified unless such modifications are evidenced in writing, signed by both Parties. Nothing herein shall be construed to give any right or benefits hereunder to anyone other than the Parties. This Agreement shall be governed by the laws of the State of North Carolina without the application of the laws of any other state. The exclusive venue for all mediations and litigation and any other legal proceedings regarding this Agreement shall be the State and Federal Courts serving Cumberland County, North Carolina, and Provider consents to personal jurisdiction in such courts. Provider irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court serving Cumberland County or that any such suit, action or proceeding brought in any such court serving Cumberland County has been brought in an inconvenient forum. This Agreement may be executed in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement. For purposes of this Agreement, a facsimile copy or scanned copy or photocopy of a party's signature shall be sufficient to bind such party. This Agreement shall be subject to execution by electronic means in accordance with Article 40 of Chapter 66 of the North Carolina General Statutes. The titles of the paragraphs throughout this Agreement are for convenience only and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this instrument.

15. Morality Clause. If, in the sole opinion of PWC, at any time Provider or any of its owner(s), employee(s), or agent(s) (each party, owner, employee, and agent is an "Actor") engages in any one or more actions that bring disrepute, contempt, scandal, or public ridicule to the Actor or subject the Actor to prosecution or offend the community or public morals or decency or denigrate individuals or groups in the community served by PWC or are scandalous or inconsistent with community standards or good citizenship or may adversely affect PWC's finances, public standing, image, or reputation or are embarrassing or offensive to PWC or may reflect unfavorably on PWC or are derogatory or offensive to one or more employee(s) or customer(s) of PWC, PWC may immediately upon written notice to Provider terminate this Agreement, in addition to any other rights and remedies that PWC may have hereunder or at law or in equity.

16. Conflicts. Except with PWC's knowledge and prior written consent, Provider shall not engage in any activity or accept any employment, interest or contribution that would reasonably appear to compromise Provider's professional judgment with respect to the

Services. Provider shall disclose to PWC any business or personal relationship with any Commissioner, officer, director, manager, or supervisor of PWC.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Fayetteville Public Works Commission

By: _____
Timothy Bryant, CEO/General Manager

By: _____
Name:
Title:

Date: _____

Date: _____

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

By: _____
Rhonda Haskins, Chief Financial Officer

Approved as to form:

Legal Dept.

SAMPLE

ATTACHMENT E: SAMPLE FEDERAL UNIFORM GUIDANCE AND FEMA CONTRACT PROVISIONS

To the extent applicable these provisions will be attached in an addendum to the service agreement.

1. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.** Compliance with the Contract Work Hours and Safety Standards Act.
 - a. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
 - c. Withholding for unpaid wages and liquidated damages. PWC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
 - d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier

subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

2. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT.

Clean Air Act

- a. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- b. The contractor agrees to report each violation to PWC and understands and agrees that PWC will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

- a. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- b. The contractor agrees to report each violation to PWC and understands and agrees that PWC will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

3. DEBARMENT AND SUSPENSION.

- a. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- b. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- c. This certification is a material representation of fact relied upon by PWC. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to PWC, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- d. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer

is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

4. BYRD ANTI-LOBBYING AMENDMENT.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

- a. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification. If applicable, contractors must sign and submit to the non-federal entity the following certification.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans,

and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap.38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

5. PROCUREMENT OF RECOVERED MATERIALS.

- a. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - Competitively within a timeframe providing for compliance with the contract performance schedule;
 - Meeting contract performance requirements; or
 - At a reasonable price.
- b. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, [https://www.epa.gov/smm/comprehensive - procurement-guideline-cpg-program](https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program).
- c. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

6. ACCESS TO RECORDS. The following access to records requirements applies to this contract:

- a. The Contractor agrees to provide PWC, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the

- purposes of making audits, examinations, excerpts, and transcriptions.
- b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - c. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
 - d. In compliance with the Disaster Recovery Act of 2018, PWC and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.
7. **DHS SEAL, LOGO, AND FLAGS.** “The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.”
 8. **COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS.** “This is an acknowledgment that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.”
 9. **NO OBLIGATION BY FEDERAL GOVERNMENT.** “The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”
 10. **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.** “The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.”