



REQUEST FOR STATEMENT OF QUALIFICATIONS

PWC2324020

**NC DOT U-6073 (Fisher Road) Widening Project: From
SR 1104 (Strickland Bridge Road) to NC 162 (Bingham
Drive)**

Date of Issue: September 21, 2023

RFQ Deadline: October 26, 2023

2:00 p.m.

Direct all inquiries concerning this RFQ to:

Tanya Hazlett

Procurement Advisor

tanya.hazlett@faypwc.com

910-223-4023

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**REQUEST FOR STATEMENT OF QUALIFICATIONS FOR PROFESSIONAL SERVICES
NC DOT U-6073 (FISHER ROAD) WIDENING PROJECT:
FROM SR 1104 (STRICKLAND BRIDGE ROAD) TO NC 162 (BINGHAM DRIVE)
FAYETTEVILLE PUBLIC WORKS COMMISSION**

In accordance with N.C.G.S. 143-64.31, Fayetteville Public Works Commission (“PWC”) is seeking the services of a qualified engineering firm to provide professional services related to the following project scope:

PROJECT SCOPE

Provide water and sanitary sewer utility coordination for the NCDOT U-6073 Fisher Road widening project, from Strickland Bridge Road to Bingham Drive.

PURPOSE AND BACKGROUND

PWC has begun coordinating with NCDOT in preparation for the State Transportation Improvement Project (STIP) U-6073 Fisher Road widening project. Preliminary information from NCDOT proposes a four (4) lane divided highway, with raised medians and extending the existing rights-of-way. The project corridor is developed with significant existing utilities within NCDOT right-of-way. The project corridor extends along Fisher Road from Strickland Bridge Road (SR 1104) to Bingham Drive (NC 162). Please refer to the map attachment C showing PWC’s existing utilities within the project area.

OBJECTIVE OF THE REQUEST

Preliminary Engineering Services. The successful firm will provide preliminary engineering services including, but not limited to review of preliminary NCDOT plans and identification of utility conflicts, evaluating existing distribution and collection systems for potential betterment, rehabilitation or replacement of lines not in conflict with proposed NCDOT infrastructure, evaluation of alternative trenchless construction and rehabilitation techniques, attendance to NCDOT progress meetings, property research and mapping of existing easements to identify areas of prior rights, negotiations with NCDOT for reimbursement for relocated lines in areas of prior rights, supplemental surveys, geotechnical work, and subsurface utility engineering (SUE) that may be necessary to complete a basis of design.

Design Services. The successful firm will also provide design services to include, but not limited to utility conflict resolution and design in accordance with PWC and NCDOT standards, supplemental surveys, geotechnical work, and SUE that may be necessary to complete the design, structural engineering services, including building assessments, evaluation and design of trench/excavation stabilization methods, coordination of design with NCDOT Traffic Control and Sequencing Plans, preparation of design plan/profile sheets in NCDOT standard drafting format and utilizing NCDOT base survey, preparation of special provisions to supplement NCDOT Standard Specifications where PWC's standards are more stringent or not accounted for, coordination with NCDOT Right-of-Way Department during acquisition of Public Utility Easements, submission of water and sewer permits, supplemental erosion control or other environmental permits not covered under NCDOT’s permits, and private encroachments with railroad, gas, electric, and other entities, assistance during bidding, including responding to questions received by NCDOT during bid and preparation of any necessary addendums.

General Construction Administration. The successful firm will provide general construction administration services including attendance at progress meetings, review of shop drawings, review of change orders, and supplemental agreements, construction observation, review of conflicts and changes during construction, and preparation of revisions to construction documents, and preparation of as-built drawings and final certifications.

EXPERIENCE REQUIRED

- Utility coordination and conflict resolution services with NCDOT TIP projects
- Water and sewer design and construction in congested corridors
- Alternative trenchless construction and rehabilitation techniques
- Design of large-diameter water transmission mains
- Construction services in coordination with NCDOT TIP projects
- Given the size, scope, and schedule of the NCDOT project, it is expected that decisions will be made based on limited and changing information. Submittals shall show the Firm’s ability to be flexible, adaptable, and capable of managing change.

RFQ SCHEDULE

Action	Responsibility	Date/Time
Mandatory Pre-Submittal Meeting	PWC/Vendors	Tuesday, October 10, 2023 at 10:00 AM
Submit Written Questions	Vendors	Wednesday, October 18, 2023 at 5:00 PM
Provide Response to Questions	PWC	Thursday, October 19, 2023 at 5:00 PM
Submit RFQ	Vendors	Thursday, October 26, 2023 at 2:00 PM
Award Contract	PWC	TBD

PRE-SUBMITTAL MEETING

A mandatory pre-submittal meeting will be held on **Tuesday, October 10, 2023 at 10:00 AM**, in Conference Room 107, PWC Administration Building, 955 Old Wilmington Road, Fayetteville, NC 28302. PWC staff will discuss the scope of work, and general contract issues and respond to questions from the attendees. If you plan to respond to this RFQ as a joint venture of two or more firms, a representative from each firm should be in attendance. Interested firms must email Tanya Hazlett, Procurement Advisor at tanya.hazlett@faypwc.com of their intent to attend.

QUESTIONS

Written questions shall be e-mailed to tanya.hazlett@faypwc.com by the date and time specified in the RFQ schedule. Firms will enter “RFQ #PWC2324020 – 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 RFQ. No information, instruction, or advice provided orally or informally by any PWC personnel, whether made in response to a question or otherwise concerning this RFQ, shall be considered authoritative or binding. Firms shall rely only on written material contained in an Addendum to this RFQ.

Inquiries should be submitted no later than the date and time noted in the RFQ schedule.

Questions answered verbally will be followed up by written addenda as deemed necessary; oral interpretations shall have no effect.

QUALIFICATION STATEMENT REQUIREMENTS

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

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

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

Section 2 – Personnel (20% of score)

- Specify professional qualifications of key management and staff personnel to be assigned to the Project. If two (2) or more firms are collaborating to form a Joint Venture, then each firm shall provide the qualifications of key staff.
- Identify specialty, level of expertise, education, and any direct work experience on projects similar in scope to the one being proposed.

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

Section 3 – Consultants/Sub-consultants/Other Participants (15% of score)

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

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

- Document expertise in those specific engineering tasks and/or technologies required to successfully complete the scope of work associated with the Project.
- Provide a brief description of the firm's project management experience and style, including a description of quality control methods.
- Provide a brief description of similar projects completed in the last five (5) years.

- Provide names and contact numbers for references for similar projects.

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

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

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

NOTE: The qualifications submittal shall be limited to a maximum number of twenty (20) pages. This page limit includes the tabs and/or other dividers. Also, note that double-sided pages will be counted as two (2) pages. Failure to comply with the page limits will result in automatic disqualification of the submittal. The front and back cover and copies of the COI do not count towards the total page limit.

No additional information regarding this Project will be provided prior to the award. The interested firm shall focus their response to this RFQ on their qualifications to complete the work, and why they should be selected for the specific project.

MINORITY, WOMEN, AND DISADVANTAGED BUSINESS ENTERPRISE (MWDBE) PROGRAM / SMALL LOCAL SUPPLIER (SLS) PROGRAM

PWC is committed to promoting the utilization of Minority, Women, and Disadvantaged Businesses in PWC's geographical statistical area (GSA) by providing equal opportunity for participating in all aspects of PWC's contracting and procurement programs. The GSA consists of NCDOT division areas 3-8, and 10. PWC is also committed to promoting the utilization of small, local businesses in the Fayetteville Metropolitan Statistical Area (MSA) by increasing opportunities for those businesses to participate in PWC procurements. The MSA consists of Cumberland County, Hoke County, and Harnett County.

PWC requires Firms to report efforts to utilize Minority, Women, and Disadvantaged Business Enterprises (MWDBEs) and Historically Underutilized Businesses (HUBs) for specific projects and requires all Firms to report all such efforts for MWDBEs, HUBs, and Small Local Suppliers regardless of the requirements of a specific project. Bidders shall document any good-faith efforts and utilization in the MWDBE forms provided within Attachment A.

In accordance with PWC's MWDBE Program, the goal shall be to award six percent (6%) of the total contract dollars to MBE firms and five percent (5%) to WBE firms. A complete copy of PWC's MWDBE Program is available for inspection at PWC Procurement Department.

The following is a list of the efforts that should be made by the prime service provider to encourage MWDBE participation. In order to receive credit for having made "good faith efforts", the prime service provider should document all actions taken to include the following:

1. Attending pre-bid meetings scheduled by the department;
2. Identifying selected specific items of the project which could be executed by a MWDBE;

3. Soliciting MWDBE service provider participation in a reasonable time before the proposals are due through advertisements in circulation media, trade publications, and minority-focused media;
4. Contacting local firms, firms owned by minorities or women, and associations or business development centers which disseminate information to local businesses and businesses owned by minorities or women in a timely manner to allow sufficient time for MWDBEs to respond;
5. Following up on initial solicitations of interest by contacting the MWDBE to determine whether the MWDBE was interested in performing specific items of the project;
6. Attempting to enter into joint venture or partnership arrangements with MWDBEs and provide interested MWDBEs with information about the requirements for the project;
7. Providing assistance to MWDBEs in the review of proposals and work to be done by sub-service providers;
8. Using available directories of certified MWDBEs and other available resources;
9. Ensuring that the proposer negotiated in good faith with the MWDBE and did not unjustifiably reject as unsatisfactory quotes prepared by any Minority, Women, or Disadvantaged Business Enterprise;
10. Making every effort to obtain Minority, Women, or Disadvantaged Business Enterprise participation that could reasonably be expected to produce a level of participation sufficient to meet the goals of PWC; and
11. Providing interested minority, women, and disadvantaged businesses with information relative to project requirements

SUBMISSION INSTRUCTIONS

A total of six (6) copies of the Statement of Qualifications are due in the PWC Procurement Department no later than Thursday, October 26, 2023, at 2:00 PM. Firms are also requested to email a PDF copy to tanya.hazlett@faypwc.com. In the email subject note the PWC number and RFQ title.

Qualification packages should be mailed or delivered to:

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

AWARDING OF PROJECTS

Fayetteville Public Works Commission will consider and evaluate Statements of Qualifications in accordance with N.C.G.S. 143-64.31. Statements of Qualifications will be reviewed by a committee composed of PWC personnel. Qualification packages will be ranked based on this review, which will consider the criteria described above. Fayetteville Public Works Commission will attempt to negotiate a Service Agreement (Attachment B) with the highest-ranked firm. Should the parties be unable to reach an agreement, Fayetteville Public Works Commission reserves the right to continue scope and fee negotiations with the other firms, in order of their proposal rankings.

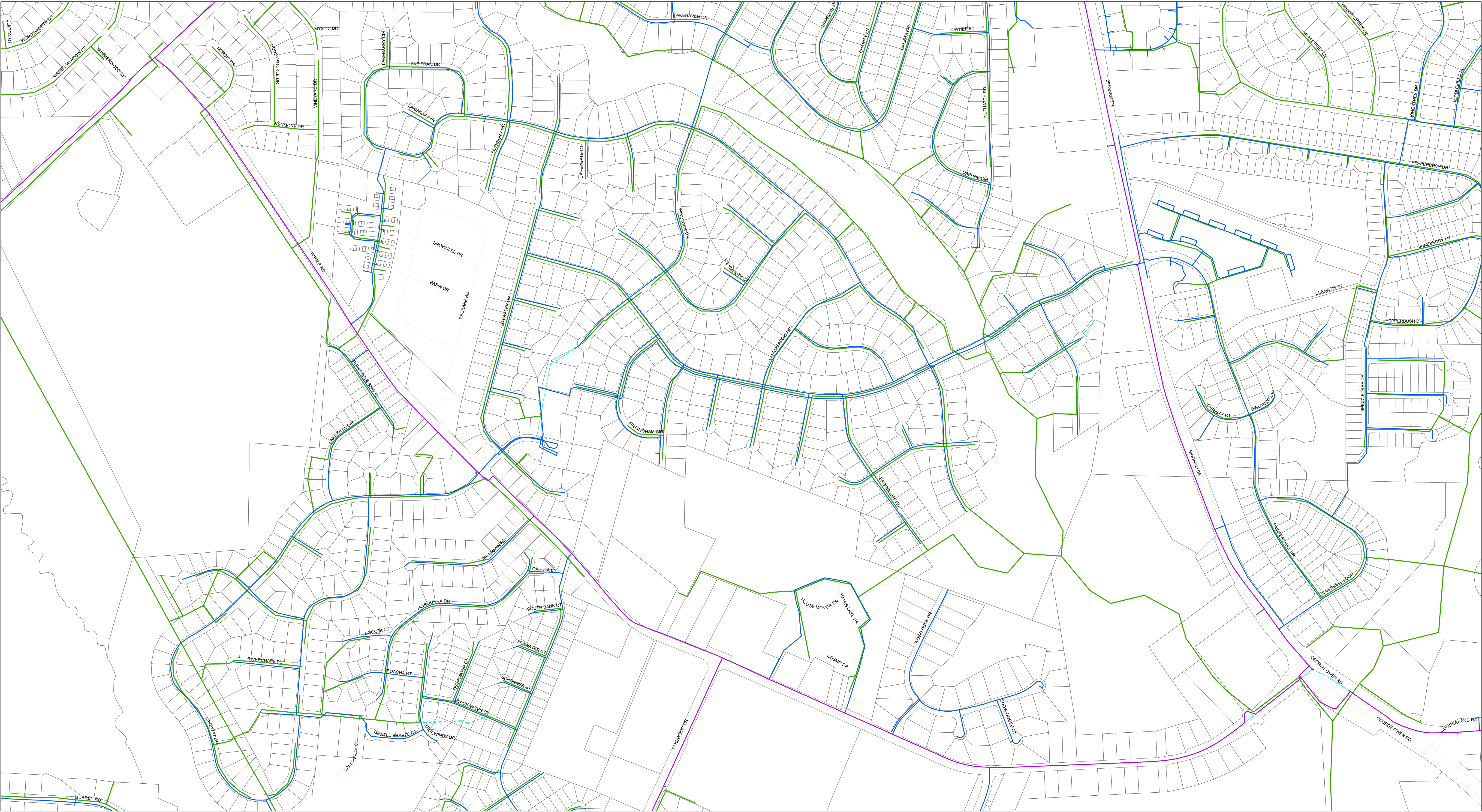
PWC reserves the right to reject any or all submittals.

E-VERIFY

Consultant hereby acknowledges that “E-Verify” is the Federal E-Verify program operated by the US Department of Homeland Security and other Federal agencies which is used to verify the work authorization of newly hired employees pursuant to Federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. Consultant further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with North Carolina General Statutes §64-26(a). Consultant hereby pledges, attests, and warrants through execution of this Agreement that Consultant complies with the requirements of Article 2, Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any sub-consultants currently employed by or subsequently hired by Consultant shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Agreement.

IRAN DIVESTMENT ACT

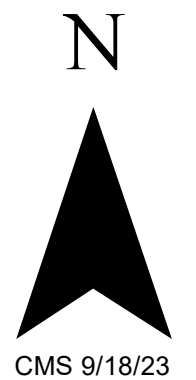
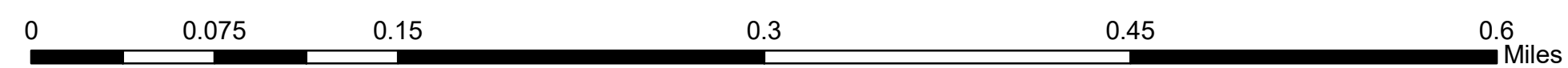
As mandated by North Carolina General Statute 147-86.59(a), Consultant hereby certifies that it is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to North Carolina General Statute 147-86.58. Consultant further certifies that in accordance with North Carolina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



- Water Distribution Main <14"
- Water Transmission Main >=14"
- - - Water Main Abandoned
- Waste Water Main
- - - Waste Water Main Abandoned

Fisher Road

Strickland Bridge Road to Bingham Drive



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: _____

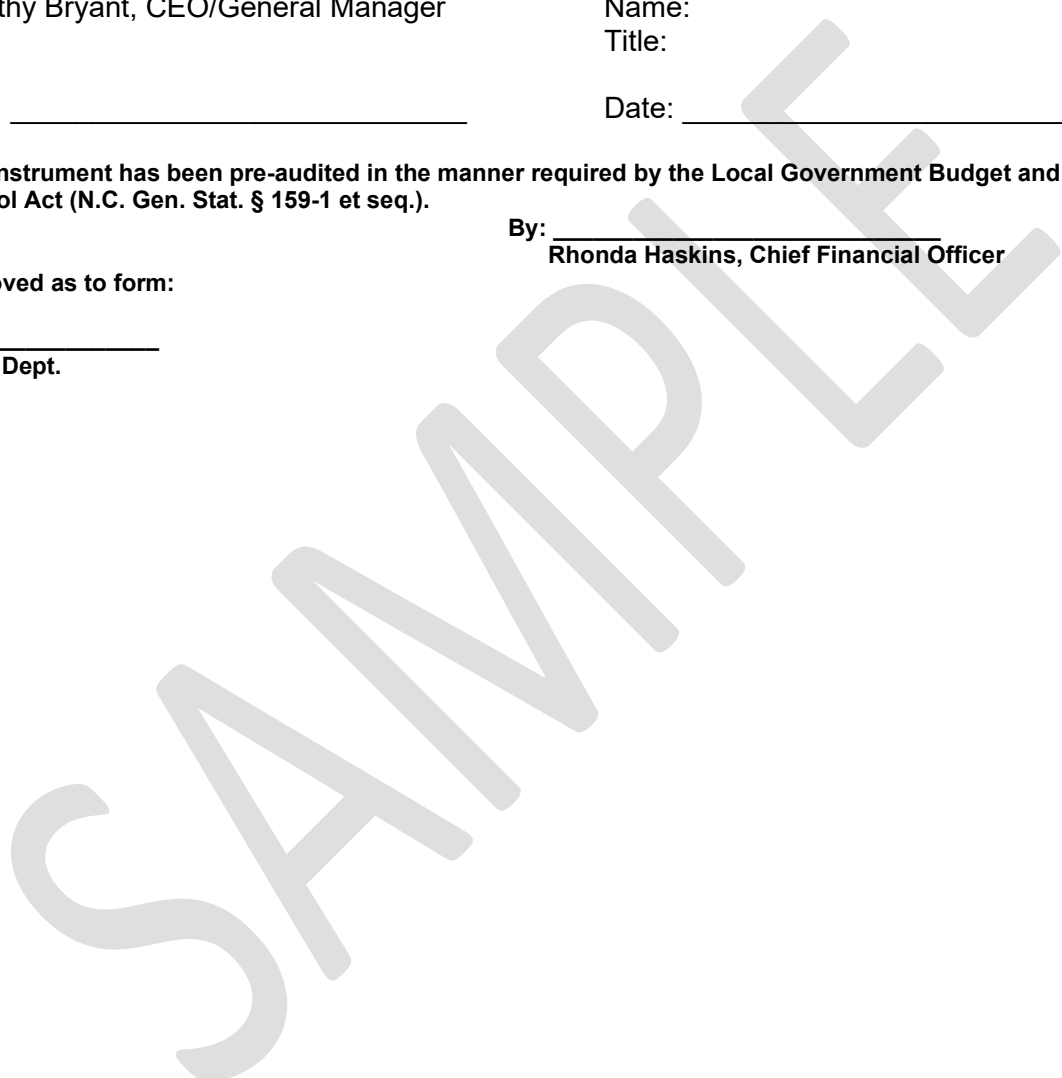
Date: _____

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.



**FAYETTEVILLE PUBLIC WORKS COMMISSION'S
MWDBE COMPLIANCE PROVISIONS**

APPLICATION:

The requirements of Fayetteville Public Works Commission (PWC) Minority, Women, and Disadvantaged Business Enterprise (MWDBE) Program for participation specific contracts are hereby made part of the Contract Documents. Copies of the Program may be obtained from:

Fayetteville Public Works Commission
Economic Inclusion Programs
P.O. Box 1089
Fayetteville, North Carolina 28302
Phone (910) 223-4016 Fax (910) 483-1429
E-mail: EIProgram@faypwc.com

NCDOT DBE Directory: www.ebs.nc.gov/VendorDirectory

HUB Directory: <https://ncadmin.nc.gov/businesses/hub>

MWDBE Compliance Requirements:

1. The Bidder shall provide, with their Bid Form, at the time bids are due, the documents set forth below, properly executed. Returning executed copies indicates and establishes that the Bidder understands and agrees to any incorporated MWDBE contract provisions.
2. All Bidders must provide with their Bid Form, at the time bids are due, a properly completed and executed copy of **either:**
 - Affidavit A – Listing of Good-Faith Efforts **OR**
 - *Affidavit B – Intent to Self-Perform with Own Workforce.

*Affidavit B should **only** be used if the Contractor will perform **ALL Elements** of the Work on this project with their own forces **AND** will complete **ALL Elements** of this project **WITHOUT** the use of subcontractors, material suppliers, or providers of professional services.
3. Upon being identified as the apparent lowest responsive, responsible Bidder, a Bidder shall, within twenty-four (24) hours of PWC's notification provide a properly completed and executed copy of **either:**
 - Affidavit C – Percentage of MWDBE Participation **OR**
 - Affidavit D – Good-Faith Efforts.
4. All Bidders must provide with their Bid Form, at the time bids are due, a properly completed and executed copy of Affidavit E- Identification of MWDBE/Local Participation Form

All written statements, certifications, or intentions made by the Bidder shall become a part of the agreement between the Contractor and Fayetteville Public Works Commission for performance of this contract.

SUBCONTRACTOR PAYMENT REQUIREMENTS:

North Carolina General Statutes 143-134.1 (N.C.G.S.) states that the percentage of retainage on payments made by the prime contractor to the subcontractor shall not exceed the percentage of retainage on payments made by the Fayetteville Public Works Commission to the prime contractor. Failure to comply with this provision shall be considered a breach of the contract, and the contract may be terminated in accordance with the termination provisions of the contract.

The Contractor shall provide an itemized statement of payments to each MWDBE subcontractor before final payment is processed.

The Contractor shall provide an itemized statement of payments to each NON-MWDBE subcontractor before final payment is processed.

Contractor

Signature

Printed Name

Title

Date

Affidavit A: Listing of the Good Faith Efforts

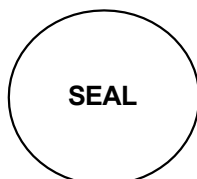
Affidavit of _____
(Name of Bidder)

I have made a good faith effort to comply under the following areas checked:

<i>Total Available GFE Points: 155</i>		<i>Minimum Number GFE Points Required: 50</i>
Points		
10	Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government-maintained lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed.	
10	Making the construction plans, specifications and requirements available for review by prospective minority businesses or providing these documents to them at least 10 days before the bid or proposals are due.	
15	Breaking down or combining elements of work into economically feasible units to facilitate minority participation.	
10	Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.	
10	Attending any pre-bid meetings scheduled by the public owner.	
20	Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.	
15	Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.	
25	Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.	
20	Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.	
20	Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.	
Total GFE Points (Claimed by Bidder):		Total GFE Points (Assessed by PWC):

In accordance with NCGS 143-128.2(d) the undersigned will enter into a formal agreement with the firms listed in the Identification of Small Disadvantaged Business Participation schedule conditional upon execution of a contract with the Owner. Failure to abide by any applicable statutory provision may constitute a breach of the contract. The undersigned hereby certifies that he or she has read the terms of the MWDBE business commitment and is authorized to bind the Bidder to the commitment herein set forth.

Date: _____ Name of Authorized Officer: _____



State of North Carolina, County of _____

Subscribed and sworn to before me this _____ day of 20____

Notary Public _____

My commission expires _____

Affidavit B: Intent to Perform Contract with Own Workforce

Affidavit of _____
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for contract:

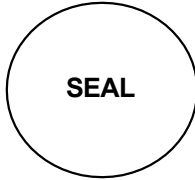
(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform **all elements of the work** on this project with his/her own current workforces; and will complete all elements of this project **without** the use of subcontractors, material suppliers, or providers of professional services.

The Bidder agrees to provide any additional information or documentation requested by the Owner in support of the above statement.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date: _____ Name of Authorized Officer: _____



State of North Carolina, County of _____

Subscribed and sworn to before me this _____ day of 20____

Notary Public _____

My commission expires _____

Affidavit C: Percentage of MWDBE Participation

Affidavit of _____
(Name of Bidder)

I hereby certify that on contract: _____
(Name of Project)

\$ _____
(Dollar Amount of Total Bid)

I will expend a minimum of _____% of the total dollar amount of the contract with Minority, Women, and Disadvantaged Business Enterprises (MWDBE). MWDBEs will be employed as subcontractors, vendors, or providers of professional services. Such work will be subcontracted to the following firms listed below.

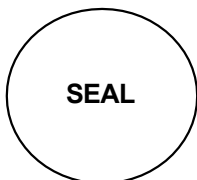
<u>Name, Address, & Phone No.</u>	<u>*MWDBE Category</u>	<u>NAICS</u>	<u>% of Contract</u>

*MWDBE categories: Black-African Americans (B), Hispanic-Americans (H), Asian- Americans (A), Native-Americans (I), Women (F), Socially/Economically Disadvantaged (D)

Pursuant to NCGS 143-128.2(d), the undersigned will enter into a formal agreement with MWDBEs for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the Bidder to the commitment herein set forth.

Date: _____ Name of Authorized Officer: _____



State of North Carolina, County of _____

Subscribed and sworn to before me this _____ day of 20__

Notary Public _____

My commission expires _____

Affidavit D: Good Faith Efforts

If Owner determines using reasonable discretion that Affidavit C is insufficient, Bidder agrees to provide the following information regarding any good-faith efforts.

<u>Name, Address, & Phone No.</u>	<u>*MWDBE Category</u>	<u>NAICS</u>	<u>% Value</u>

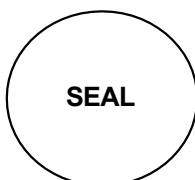
*MWDBE categories: Black-African Americans (B), Hispanic-Americans (H), Asian- Americans (A), Native-Americans (I), Women (F), Socially/Economically Disadvantaged (D)

Bidder may be requested to provide documentation of the Bidder's good-faith efforts. Examples of documentation may include the following:

- a. Copies of solicitations for quotes to MWDBEs. Each solicitation may include a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
- b. Copies of quotes or responses received from each firm responding to the solicitation.
- c. A telephone log of follow-up calls to each firm sent a solicitation.
- d. For subcontracts where a MWDBE is not considered the lowest responsible sub- bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- e. Documentation of any contacts or correspondence to MWDBE, community or contractor organizations in an attempt to meet the goal.
- f. Copy of pre-bid roster.
- g. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for MWDBEs.
- h. Letter detailing reasons for rejection of a MWDBE due to lack of qualification.
- i. Letter documenting proposed assistance offered to MWDBEs in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive Bidder.

Date: _____ Name of Authorized Officer: _____



State of North Carolina, County of _____

Subscribed and sworn to before me this _____ day of 20____

Notary Public _____

My commission expires _____

Affidavit E: Identification of MWDBE/Local Participation

_____ (Name of Bidder)

I hereby certify that on contract: _____ (Name of Project)

We will use the following Minority, Women, and Disadvantaged Business Enterprises (MWDBE), and Local (Cumberland, Hoke, Harnett County) as construction subcontractors, vendors, suppliers, or providers of professional services.

<u>Name, Address, & Phone No.</u>	<u>*MWDBE Category / **Local</u>	<u>NAICS</u>	<u>% Value</u>

*MWDBE categories: Black-African Americans (B), Hispanic-Americans (H), Asian- Americans (A), Native-Americans (I), Women (F), Socially/Economically Disadvantaged (D)

**Local: Fayetteville Metropolitan Statistical Area (MSA) comprising of Cumberland County, Hoke County, and Harnett County. PWC is requesting this information for reporting purposes only, and use of local entities will not be considered for compliance with the requirements of the MWDBE Program.

The total value of MWDBE/local business contracting will be % _____

Date: _____ Name of Authorized Officer: _____



State of North Carolina, County of _____
 Subscribed and sworn to before me this _____ day of 20____
 Notary Public _____
 My commission expires _____

**FAYETTEVILLE PUBLIC WORKS COMMISSION
MWDBE ADD / CHANGE FORM**

If a MWDBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the prime contractor to employ the good faith efforts set forth in the MWDBE Program if soliciting a replacement or additional subcontractor.

For MWDBE Change Request, please provide all information below:

Prime Contractor: _____

Subcontracted Work: _____

Previous Subcontractor: _____

Reason this for change request:

New Subcontractor: _____ MWDBE Category: _____

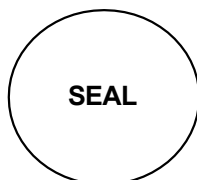
To Add MWDBE Subcontractor/Subcontracted work:

If this is a new trade being subcontracted or a subcontractor that was not documented in the original Project Bid Information submittal, then good faith efforts to solicit a MWDBE must be documented, as the original MWDBE instructions indicate. Please provide all good faith efforts below showing all the MWDBE firms contacted to perform this work along with any additional good faith efforts or evidence that there are not reasonably available firms in the work area. PWC's MWDBE Program requires that good faith efforts are to be carried out to the fullest extent practicable. If solicitations were not carried out due to being impracticable, please attach this explanation to this form.

Name, Address, & Contact Information	MBE or WBE and Certifying agency	How was this firm contacted (email, letter, or Phone) and what was the result of the solicitation? *

*Must submit copies of emails or letters. If phone calls were made this sheet can serve as documentation of calls

Date: _____ Name of Authorized Officer: _____



State of North Carolina, County of _____

Subscribed and sworn to before me this _____ day of 20__

Notary Public _____

My commission expires _____

SMALL LOCAL SUPPLIER / MWDBE SUBCONTRACTOR DISCLOSURE FORM

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

Please complete the below form by providing the necessary information for the payments 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	Payment Amount	Type of Work/Commodity (Include NAICS Code)

Signature

Printed Name

Title

Date