



**REQUEST FOR PROPOSAL**

**PWC2324027**

**RE-ADVERTISEMENT FOR COMPANY-WIDE BENEFIT  
STUDY**

**Date of Issue: November 3, 2023  
Proposal Due Date: November 17, 2023  
4:00 p.m.**

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

**Carla Wint  
Procurement Advisor  
[procurement@faypwc.com](mailto:procurement@faypwc.com)**

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**RE-ADVERTISEMENT FOR PROPOSAL  
FAYETTEVILLE PUBLIC WORKS COMMISSION  
COMPANY-WIDE BENEFIT STUDY**

**Cumberland County  
North Carolina**

Proposals are solicited and will be received at Fayetteville Public Works Commission, Administration Building, Procurement Department, 955 Old Wilmington Road, Fayetteville, NC 28301, until **4:00 p.m., EST Friday, November 17, 2023**, for the **RE-ADVERTISEMENT FOR COMPANY-WIDE BENEFIT STUDY**.

Fayetteville Public Works Commission (PWC) is seeking proposals from qualified consultants to conduct a comprehensive benefits study to fulfill our company vision of “aspiring to be recognized as the best utility in the United States”. As a result of this study, all employee benefits will be analyzed for consistency based on a comparison of local and regional public and private employers who are providing comparable services.

Enclosed please find the Proposal Instructions, Scope of Work, and Pricing Form. Proposals shall be submitted on the forms provided herein, or exact copies thereof, and the consultant shall return one copy of the entire proposal packet along with the completed Pricing Form and any other information specified in the proposal documents.

Questions regarding this proposal must be submitted in writing to the attention of Carla Wint, at [procurement@faypwc.com](mailto:procurement@faypwc.com), bidder will enter “RFQ PWC2324027- Questions” as the subject e-mail no later than **5:00 p.m., EST November 13, 2023**, in order to be considered for a response.

E-mailed proposals must be addressed to Carla Wint, Procurement Advisor, at [procurement@faypwc.com](mailto:procurement@faypwc.com). The e-mail subject must read **PWC2324027: RE-ADVERTISEMENT FOR COMPANY-WIDE BENEFIT STUDY**. Mailed proposals will not be accepted.

Fayetteville Public Works Commission reserves the right to reject any or all proposals for any reason determined by PWC to be in its best interest, taking into consideration quality, performance, and the time specified in the proposals for the performance of the contract.

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

**PROPOSAL INSTRUCTIONS  
FAYETTEVILLE PUBLIC WORKS COMMISSION  
RE-ADVERTISEMENT FOR COMPANY-WIDE BENEFIT STUDY**

**BACKGROUND**

PWC operates as a public authority owned by PWC of Fayetteville and is governed by four Commissioners appointed by the Fayetteville City Council. PWC manages, operates, and supervises three utilities – electric, water, and sanitary sewer services – with a staff of approximately 650 employees, serving more than 118,000 customers daily. See Attachment D for more information about PWC’s staff, organization, and other key facts.

**OBJECTIVE OF THE REQUEST**

It is the intent of this Request for Proposal (RFP) to contract with a qualified consultant to conduct a comprehensive benefits study to fulfill our company Vision of “aspiring to be recognized as the best utility in the United States”. As a result of this study, all employee benefits will be analyzed for consistency based on a comparison of local and regional public and private employers who are providing comparable services. The successful consultant will prepare a comparative analysis that identifies PWC’s competitive position in the labor market. The analysis will provide professional opinions, recommendations, and/or revisions to PWC’s current benefit structure so that PWC can maintain its mission proficiency, and competitiveness, to attract, reward, and sustain high-producing employees and ensure equity.

**RFP SCHEDULE**

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

<b>Action</b>	<b>Responsibility</b>	<b>Date/Time</b>
Submit Written Questions	Consultants	Monday, November 13, 2023, 5:00 p.m.
Provide Response to Questions	PWC	Wednesday, November 15, 2023, 5:00 p.m.
Submit RFP	Consultants	Friday, November 17, 2023, 5:00 p.m.
Evaluations	PWC	Monday, December 4 – 8, 2023
Presentations (Short-list)	Consultants	Monday, December 11 – 15, 2023
Award RFP	PWC	Wednesday, December 20, 2023
Service Agreement Start Date	PWC & Consultant	Wednesday, December 27, 2023
Completion Date	Consultant	Monday, March 4, 2023

**QUESTIONS**

Written questions shall be e-mailed to [procurement@faypwc.com](mailto:procurement@faypwc.com) by the date and time specified in the RFP schedule. Consultants will enter “**PWC2324027 – Questions**” as the subject of the e-mail.

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 RFP. No information, instruction, or advice provided orally or informally by any PWC personnel, whether made in

response to a question or otherwise concerning this RFP, shall be considered authoritative or binding. Consultants shall rely only on written material contained in an Addendum to this RFP.

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

## **PROPOSAL REQUIREMENTS**

The proposal shall consist of the following information, tabbed as identified and in the order indicated below. The total page count cannot exceed 25 pages.

### **Section 1 – Cover Letter**

- 1) A cover letter signed by an authorized individual who commits to the terms and conditions of the company's proposal.

### **Section 2 – Executive Summary**

- 1) An executive summary not to exceed two (2) pages. Include a description and history of the company, services provided, and an explanation of how the proposed services/solution best fits PWC's needs.

### **Section 3 – Conflicts of Interest**

- 1) State any conflicts of interest your firm, or any key individuals of the firm may have with the project or PWC.

### **Section 4 – Statement of Qualifications**

- 1) Include a description of office location(s), organizational structure, number of years in business, and annual revenue.
- 2) Demonstrate capacity to fully perform all scope requirements, including experience, reliability, staffing capacity, and any subcontractors.
- 3) Describe any experience with or knowledge of North Carolina legal requirements and/or regulations pertinent to municipal utilities.
- 4) Provide names, qualifications, and percentage of time commitment for staff or other resources that will be assigned to PWC for this project. PWC reserves the right to accept or reject any proposed assigned staff or subcontractor.
- 5) Provide resumes of project team members, to include subcontractors. Include time/experience with the consultant.
- 6) Disclose any litigation you are currently involved in, or have been, within the past five (5) years in which the consultant or your partners/subcontractors were a party.
- 7) Provide details of how and why your company will best serve the needs of PWC.

### **Section 5 – References**

- 1) Provide five (5) references. The reference list must include three (3) references from current clients and two (2) references from former clients. References must be comparable in size and nature to PWC.

## **Section 6 – Scope of Work**

- 1) The proposed scope of work must include a detailed account of how the consultant will meet the requirements and scope of work outlined in the RFP.

## **Section 7 – Price**

- 1) Provide itemized pricing that includes cost details for the proposed services. The consultant shall provide firm fixed pricing for their services.

## **MINORITY, WOMEN, 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 G.

In accordance with PWC's MWDBE Program, the goal shall be to award nineteen percent (19%) of the total contract dollars to MBE firms and three percent (3%) 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.

## **TRADE SECRETS/CONFIDENTIALITY**

Following the award, all proposals are considered a public record, except for material that qualifies as "Trade Secret" information under N.C.G.S. 66-152(3). Your proposal will be reviewed by PWC staff and members of the general public who submit a public records request.

THE RESPONDER IS REQUIRED TO IDENTIFY ALL CONTENT DESIGNATED AS A TRADE SECRET AS DEFINED PURSUANT TO N.C.G.S. 66-152(3) AND WHICH MEETS THE CRITERIA FOR CONFIDENTIALITY PURSUANT TO N.C.G.S. 132.1.2(1). ALL NOTED TRADE SECRETS MUST FOLLOW THE PROCEDURES NOTED BELOW AND REQUIRE ATTACHED DOCUMENTATION SPECIFYING HOW THE CONTENT QUALIFIES AS A TRADE SECRET UNDER NORTH CAROLINA LAW. IF AN ENTIRE RESPONSE IS MARKED CONFIDENTIAL OR TRADE SECRET, IT WILL BE DISQUALIFIED FROM CONSIDERATION.

To properly designate material as "trade secret" under these circumstances, each consultant must take the following precautions.

- 1) Any trade secrets submitted by the consultant should be submitted separately in a sealed enveloped marked "Trade Secret – Confidential and Proprietary Information – Do Not Disclose Except for the Purpose of Evaluation this Proposal,
- 2) Offer documentation specifying how the content qualifies as a trade secret under North Carolina law, and
- 3) The "trade secret" should be stamped on each page of the trade secret materials contained in the envelope.

## **NON-DISCLOSURE AGREEMENT**

PWC requires that the selected consultant enter into a Non-Disclosure and Service Agreement for the services provided as a part of this RFP. Samples of the Non-Disclosure and Service Agreement are attached to this RFP as Attachment E and F. Any exceptions to the Non-Disclosure and/or Service Agreement should be included within the consultant's response to this RFP.

## **SUBMISSION INSTRUCTIONS**

- 1) Proposals should be complete and carefully worded and should convey all the information requested in the RFP. Proposals should be prepared simply and economically, providing a

straightforward, concise description of the consultant's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. If the proposal includes any comment over and above the specific information requested in the RFP, the consultant should include this information as a separate appendix to its proposal. Proposals that include clarifications or modifications to any of the RFP's contractual requirements, or a consultant's standard terms and conditions, may be deemed non-responsive and not considered for award at PWC's discretion. Unsolicited proposal 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 RFP. Failure to comply with these requirements shall constitute sufficient cause to reject a proposal without further consideration. PWC reserves the right to accept or reject any proposal and to annul the proposal process and reject all proposals at any time prior to award of a Service Agreement, without thereby incurring any liability to the affected consultant or consultants or any obligation to inform the affected consultant or consultants the reasons for PWC's action.

- 2) Proposals may be withdrawn by the consultant only in writing and if receipt of such withdrawal is acknowledged by PWC prior to the time for the proposal submittal deadline identified in the Advertisement for Consultants (or such later date included in an Addendum). Written withdrawal requests shall be submitted on the consultant's letterhead and signed by an official of the consultant duly authorized to make such request. Any withdrawal request made after the proposal submittal deadline shall be allowed only if the price proposal was based upon a mistake that constituted a substantial error, provided the proposal was submitted in good faith.
- 3) E-mailed proposals must be addressed to Carla Wint, Procurement Advisor, at [procurement@faypwc.com](mailto:procurement@faypwc.com). The e-mail subject must read **PWC2324027: RE-ADVERTISEMENT FOR COMPANY-WIDE BENEFIT STUDY**. Mailed proposals will not be accepted.
- 4) Proposals will be examined promptly after the due date and an award will be made at the earliest possible date. Proposals must be held firm for PWC for a period of sixty (60) days after the proposal due date. A purchase order will be issued to the awarded consultant following a signed service agreement and NDA.
- 5) Consultants shall submit base pricing on the Pricing Form provided herein, or exact copies thereof (See Exhibit B –Pricing Form). Failure to provide a full and complete Pricing Form may result in a proposal being deemed non-responsive.
- 6) All proposals must be signed by an authorized official of the consultant. Proposals may be rejected for any omission, alteration of form, additions not called for, conditional proposal, or any irregularities of any kind.
- 7) Do not submit alternate proposals unless specifically called for on the Pricing Forms.

## **PRICING**

- 1) All consultants are advised to include all costs incurred by the consultant in delivering the **COMPANY-WIDE BENEFIT STUDY** to PWC in their proposal submittal.
- 2) PWC accepts no liability for the cost and expenses incurred by the consultant in



response to this RFP, including preparing requests for clarification. Each consultant that prepares a proposal shall do so at its own expense and with the express understanding that they cannot make any claims whatsoever for reimbursement from PWC for the costs and expenses associated with the proposal.

## **EVALUATION**

- 1) The top evaluated proposals may be asked to make a presentation of the proposed approach/solution.
- 2) Evaluation criteria will include, but will not be limited to:
  - Experience and success with similar projects of comparable size and scope
  - Overall responsiveness, viability, and completeness of the proposal
  - Demonstrated understanding of and ability to meet or exceed PWC's expectations
  - Scope of goods/services being proposed
  - Personnel/subcontractor qualifications
  - Cost of proposed goods/services
  - Any other facts considered relevant by PWC

## **AWARD**

- 1) An award of a contract is subject to approval by the Human Resources Officer.
- 2) PWC reserves the right to request additional information from consultants 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 reject any or all proposals for any reason or to make an award in the best interest of PWC, taking into consideration quality, performance, and the time specified in the proposals for the performance of the contract. PWC may also consider, among other things, the consultant's past performance conduct on other contracts, and other information as PWC deems necessary to assist in the evaluation of any proposal.

## **ATTACHMENT A: SCOPE OF WORK**

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Consultant's participating in this RFP must provide details on the project approach, structure, and proposed schedule. The proposal should, at a minimum, address the following items.

**1) Recommendations.** The study must provide recommendations to ensure PWC has a company-wide benefits program that:

- Attracts qualified applicants for employment by PWC in all categories of work.
- Retains experienced and qualified employees in all categories of work for PWC.
- Rewards and incentivizes employees to pursue career advancement opportunities as they arise within PWC employment.
- Establish monetary and non-monetary forms of awards and recognition for employee performance.
- Accomplish these objectives within responsible economic parameters.

**2) Benefits.** Research, compare, and recommend additions or changes to existing benefits to remain competitive.

- Employer-paid pension benefits including both types (defined benefit and defined contribution), employer contribution (expressed as dollar value, percentage of pay, or other as applicable), vesting period, retirement age, and formula for benefit computation/benefit factor.
- Retirement savings programs (457/other)—employer contribution in dollar value or percentage of pay.
- Health/dental insurance, disability insurance, life insurance— employer-paid premium levels, employee premium, and plan design options.
- Paid time off benefits (vacation, sick leave, personal leave, holidays, etc.)—rate of accrual, days per year, etc., as applicable. Provide a professional recommendation on the pros and cons of consolidating accrued sick and vacation leave together for administrative purposes.
- Additional allowances for uniforms, uniform cleaning, and accessory benefits such as issued take-home vehicles.
- Longevity pay.
- Identify what other companies are providing that PWC is not and identify potential benefits.

**3) Timeline & Communication.**

- The consultant should include recommendation(s) concerning how and to what degree

current employees should be involved and engaged, including a communication strategy. To the extent necessary, the consultant should plan to include time to participate in any recommended employee sampling and involvement processes as well.

- Consultant shall prepare a timeframe for accomplishing the tasks associated with this study, including key milestone dates. The consultant is expected to meet key milestone dates or communicate openly with the Human Resources Officer regarding any anticipated or unexpected roadblocks or delays. The consultant should meet initially with Human Resources Officer to discuss the process and tasks to be performed in the study.
- Consultant should be available to meet in groups to explain the study and process to be used.
- Consultant is expected to provide frequent (e.g. weekly or bi-weekly) updates to the Human Resources Officer.
- Consultant should prepare a complete summary and final written report that can be used to explain and justify any recommendations to modify the existing jobs, impact on pay scales, or benefit offerings.
- Consultant will be expected to share and present in a formal presentation the summary information of the study to PWC management and/or PWC Commission.
- The consultant should include a suggested timeline for implementation of recommendations by PWC, including a prioritization of recommendations (or steps within recommendations as appropriate).
- The consultant will need to provide implementation support and training, as needed.

### **BEST-IN-CLASS PRACTICES**

In addition to the above requirements, the consultant will provide any other best-in-class practices that would be beneficial to PWC regarding benefits. This should also include best-in-class practices to assess talent; and how do best in class organizations assess and select the best talent for their organization including recruitment strategies and retention strategies.

**ATTACHMENT B: PRICING FORM**

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**Name of Company**

**Address**

**Phone Number**

**E-mail Address**

**Federal ID No.**

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

**Title**

**Signature**

**Date**

**TOTAL**

**\$ \_\_\_\_\_**

The consultant has received, acknowledged, and used the following addenda in completing the proposal. (Initial and Date as appropriate).

Addendum No. 1	Date _____
Addendum No. 2	Date _____
Addendum No. 3	Date _____
Addendum No. 4	Date _____
Addendum No. 5	Date _____
Addendum No. 6	Date _____
Addendum No. 7	Date _____

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

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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 AFCONSULTANTS 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 (117 years)
- Provide Electric, Water and Wastewater Services
- Total Customers: 119,788
- Number of Services: 284,395
  - Electric: 82,376
  - Water: 90,548
  - Wastewater: 90,226
- Customers with 2+ services: 75%
- Annual Customer Turnover: 20-25%

## Customer Service



- Annual Customer Contacts: 444,622
- Average Monthly Calls: 30,468
- Annual Bills Generated: 1.4 Million
- Customer Incentive Programs: 13
- Annual Water Leak Notifications: 22,476 (19.4 million gal)

## Employees



- Number of Employees: 622
  - Average Tenure of Employees: 10.33 years
  - Average Age: 44.77
  - Annual Turnover: 9.6%\*
  - Annual Hours Worked: 1.3 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)
- Rockfish Creek Water Reclamation Facility (21 MGD)
- Electric Service Area: 147 Sq. Miles
- Water Service Area: 115 Sq. Miles
- Wastewater Service Area: 108 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: 99.97%
- Electric Distribution Substations: 32
- Distribution Lines: 1,351 miles
- Transmission Lines: 123 miles
- Streetlights/Area Lights: 37,580

## Water/Wastewater Operations



- Population Served: 225,000
- Drinking Water Treated: 10.6 Billion Gallons/Year
- 100% Compliant for all EPA Drinking Water Standards
- Daily Water Treatment Capacity: 57.5 MG/Day
- Daily Wastewater Treatment Capacity: 46 MG/Day
- Water/Wastewater Infrastructure: 2,772 miles
- Hydrants: 8,423
- Sanitary Sewer Lift Stations: 78
- Manholes: 32,855

## Financial



- Annual Operating Budget: \$397.5 Million
- Total Assets: \$1.5 Billion
- Bond Rating: Aa2 (Moody's), AA (Standard & Poor) AA (Fitch)
- Annual Local Purchases: \$9.4 Million
- Operations & Maintenance Expenses per Customer: \$505 (\$557 National Median)
- Annual Cash Contributions to City of Fayetteville in Lieu of Taxes: \$12.4 Million
- Annual Streetlight Services: \$3.9 Million
- Annual Annexation Construction Costs: \$5.9 Million
- Total Annual Contributions to City of Fayetteville: \$24.1 Million

# ATTACHMENT E

Last revised September 5, 2023

## 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.

# ATTACHMENT F

## NON-DISCLOSURE

### AGREEMENT

This Nondisclosure Agreement ("Agreement") is made effective this \_\_\_ day of \_\_\_\_\_, 20\_, by and between Fayetteville Public Works Commission, a public authority organized under the laws of the State of North Carolina with its principal place of business located at 955 Old Wilmington Road, Fayetteville, North Carolina 28302 ("PWC"), and \_\_\_\_\_, a \_\_\_\_\_ with its principal place of business at \_\_\_\_\_ ("Vendor")(PWC and Vendor are each a "Party" and collectively the "Parties"). In consideration of the mutual covenants contained herein, the Parties intending to be legally bound, agree as follows:

1. "Confidential Information" means all records, communications, and other information, whether written, electronic, or oral, given by one Party ("Disclosing Party") to the other Party ("Receiving Party") that are not subject to disclosure as a public record under North Carolina law when such information is in the possession, custody, or control of PWC, which information includes but is not limited to trade secrets, personnel records, and customer billing records. All Confidential Information shall either be marked or otherwise identified as "confidential" or be such information that a reasonable person would be expected to understand is confidential under the circumstances. Confidential Information excludes information which:

- a. Was known to Receiving Party prior to its receipt from Disclosing Party free of any obligation to keep it confidential;
- b. Is or becomes publicly available, by other than unauthorized disclosure;
- c. Is independently developed by Receiving Party without knowledge of the Confidential Information;
- d. Is disclosed to any non-agent third party by Disclosing Party without restriction;
- e. Is lawfully received from a third party whose disclosure would not violate any confidentiality or other legal obligation; or
- f. Is required to be disclosed pursuant to North Carolina law.

2. Receiving Party will: (a) protect and safeguard the Confidential Information with at least the same degree of care as it uses to protect its own Confidential Information, which will be no less than a commercially reasonable degree of care; (b) use the Confidential Information of Disclosing Party only for the purpose for which Disclosing Party provided such information to Receiving Party ("Purpose") and for no other purpose or otherwise in any manner to Disclosing Party's detriment; (c) not disclose, publish, or furnish Confidential Information, in any manner, except to its employees, agents, attorneys, accountants or advisors (collectively "Representatives") who (i) need to know such Confidential Information to assist Receiving Party in relation to the Purpose, (ii) are informed by Receiving Party of the confidential nature of the Confidential Information, and (iii) are subject to confidentiality duties or obligations to Receiving Party that are no less restrictive than those in this Agreement; (d) not copy Confidential Information without the written consent of Disclosing Party, unless necessary for the Purpose, and (e) be responsible for any breach of this Agreement caused by any of its Representatives. The Receiving Party shall give the Disclosing Party notice immediately upon becoming aware that any Confidential Information has or may have been disclosed or released.

3. If Receiving Party or its Representatives is requested or required by applicable federal, state or local law, including but not limited to, subpoena, civil investigative demand or similar process (collectively, a "Legal Order"), to disclose any Confidential Information, the Receiving Party will (a)

promptly notify Disclosing Party of such request, except as prohibited by law, so that Disclosing Party may seek an appropriate protective order or other remedy; and (b) provide commercially reasonable assistance to Disclosing Party in opposing such disclosure and/or obtaining a protective order or other remedy to the extent such opposition is reasonably warranted by law. If, after providing such notice and assistance as required in this Section, Receiving Party remains subject to a Legal Order to disclose any Confidential Information, Receiving Party or its Representatives, as the case may be, will disclose no more than the portion of the Confidential Information, which, on the advice of Receiving Party's legal counsel, is specifically required to be disclosed by such Legal Order. If Vendor designates information as Confidential Information, Vendor shall defend, indemnify, and hold harmless PWC, its Commissioners, officers, employees, and agents, from every claim, demand, loss, expense, cost, damage or injury,

including reasonable attorney's fees, resulting from any third party bringing an action under Chapter 132 of the North Carolina General Statutes, to the extent such may result from the decision of PWC or its staff to withhold information in accordance with G.S. 132-1.2 and this Agreement. PWC agrees to maintain the confidentiality of Confidential Information during the pendency of any such action consistent with its statutory obligations and the commitments undertaken herein.

4. The Parties agree that, upon the written request of a Disclosing Party, Receiving Party and its Representatives will promptly return to Disclosing Party or provide written certification of the destruction of all Confidential Information of Disclosing Party, including all Confidential Information contained in internal documents, without retaining any physical or electronic copy, extract or summary of any part thereof. Notwithstanding the foregoing, a Receiving Party may retain copies of Confidential Information to the extent required by law and, in addition, solely to the extent necessary for purposes of such Party's ordinary course internal document retention and backup requirements and procedures, provided that such Confidential Information will remain subject to the terms and conditions of this Agreement for so long as it is retained.

5. The Parties agree that (a) all Confidential Information disclosed under this Agreement, and all copies thereof, will be and remain the property of Disclosing Party; (b) nothing contained in this Agreement grants or implies any grant of any right, license or authority in or to the Confidential Information; and (c) neither Party will be under any legal obligation of any kind whatsoever, or otherwise be obligated to enter into any business or contractual relationship, investment, or transaction, by virtue of this Agreement, except for the matters specifically agreed to herein. THE PARTIES HEREBY AGREE THAT ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS," AND NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS OR PERFORMANCE THEREOF.

6. The Parties agree that (a) money damages alone would not be a sufficient remedy for any breach of this Agreement, and that, in addition to all other remedies, each Party will be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such breach; (b) neither Party will oppose any injunctive relief sought by the other Party on the grounds of failure to prove actual damage; and (c) each Party waives any requirement for the securing or posting of any bond in connection with such remedy.

7. Either Party may terminate this Agreement at any time by providing written notice to the other Party. Notwithstanding the foregoing, the confidentiality provisions of this Agreement shall survive and continue to apply to Confidential Information in perpetuity after such Confidential Information was disclosed to Receiving Party.

8. This Agreement sets forth the entire agreement and understanding between the Parties on the subject matter hereof and supersedes all prior discussions and agreements between them. This



Agreement may not be modified or amended except in a writing signed by all Parties. This Agreement will be binding upon and will inure to the benefit of each Party hereto and its successors and assigns. Neither Party may assign its rights and obligations under this Agreement without the prior written consent of the other Party, except that upon prior written notice to the other Party, either Party may assign this Agreement to: (1) an entity that purchases all or substantially all of the equity or assets of the assigning Party; or (2) a successor entity into which the assigning Party merges or consolidates. The Parties agree that if at any time a Party elects not to assert any of its rights under this Agreement, this election will not be construed as a waiver of such Party's rights under such provision or any other provision of this Agreement, nor shall any exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy granted herein or by law. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement shall be governed by, and construed in accordance with, the laws of the State of North Carolina. Venue for any proceedings arising under or relating to this Agreement shall be in the courts serving Cumberland County, North Carolina, and Vendor consents to the exercise of personal jurisdiction over Vendor by such courts and waives all objections and defenses relating to *forum non*

*conveniens* and venue. All notices under this Agreement will be in writing and will be deemed to have been duly given upon receipt, if personally delivered or if sent by certified mail, return-receipt requested, postage prepaid or by a nationally recognized overnight courier service (e.g. Federal Express) to the addresses set forth on the first page of this Agreement. 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.

IN WITNESS WHEREOF, the Parties have executed this Nondisclosure Agreement effective the date first written above.

**Fayetteville Public Works Commission**

**(VENDOR NAME)**

By: \_\_\_\_\_  
Timothy Bryant, CEO/General Manager

By: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

# ATTACHMENT G

ATTACH TO BID

ATTACH TO BID

ATTACH TO BID

ATTACH TO BID

## 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](mailto:EIProgram@faypwc.com)

NCDOT DBE Directory: [www.ebs.nc.gov/VendorDirectory](http://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 <b>Required: 50</b></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.	
<b>Total GFE Points (Claimed by Bidder):</b>		<b>Total GFE Points (Assessed by PWC):</b>

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:**

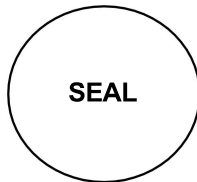
\_\_\_\_\_  
(Name of Project)

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.

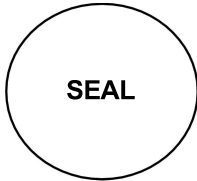
<u>Name, Address, &amp; Phone No.</u>	<u>*MWDBE Category</u>	<u>NAICS</u>	<u>Dollar Value</u>	<u>% of Contract</u>

\*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, &amp; Phone No.</u>	<u>*MWDBE Category</u>	<u>NAICS</u>	<u>Dollar Value</u>

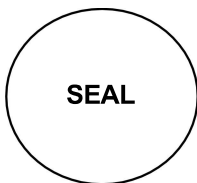
\*MWDBE categories: Black-African Americans (B), Hispanic-Americans (H), Asian- Americans (A), Native-Americans (I), Women (F), Socially/Economically Disadvantaged (D)

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.

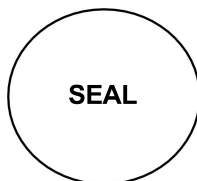
<u>Name, Address, &amp; Phone No.</u>	<u>*MWDBE Category / **Local</u>	<u>NAICS</u>	<u>Dollar Value</u>

\*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: \_\_\_\_\_

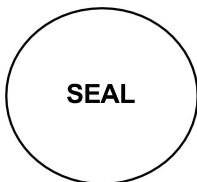
**To Add MWDBE Subcontractor/Subcontracted work:**

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