



**REQUEST FOR STATEMENT OF QUALIFICATIONS**

**PWC2526086**

**DESIGN-BUILD SERVICES BATTERY ENERGY  
STORAGE SYSTEM (BESS) – 5 MW SALLY HILL**

**Date of Issue: April 8, 2026  
Submission Deadline: May 22, 2026  
2:00 p.m.**

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

**Jarvis Brown  
Procurement Advisor  
[procurement@faypwc.com](mailto:procurement@faypwc.com)**

## Contents

<b>PURPOSE AND BACKGROUND</b> .....	3
<b>GENERAL INFORMATION</b> .....	3
<b>PROJECT SCOPE</b> .....	3
<b>EXPERIENCE REQUIRED</b> .....	4
<b>RFQ SCHEDULE</b> .....	5
<b>PRE-SUBMITTAL MEETING</b> .....	5
<b>QUESTIONS</b> .....	5
<b>QUALIFICATION STATEMENT REQUIREMENTS</b> .....	6
<b>UTILIZATION OF SMALL BUSINESS CONCERNS</b> .....	7
<b>SUBMISSION INSTRUCTIONS</b> .....	9
<b>AWARDING OF PROJECTS</b> .....	9
<b>E-VERIFY</b> .....	10
<b>IRAN DIVESTMENT ACT</b> .....	10
<b>ATTACHMENT A: CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS</b> .....	11
<b>ATTACHMENT B: SMALL AND DISADVANTAGED BUSINESS (SDBE), SMALL LOCAL SUPPLIER (SLS), AND LOCAL BUSINESS DISCLOSURE FORM</b> .....	12
<b>ATTACHMENT C: AT A GLANCE</b> .....	13
<b>ATTACHMENT D - SERVICE AGREEMENT SAMPLE</b> .....	14

**REQUEST FOR STATEMENT OF QUALIFICATIONS FOR PROFESSIONAL SERVICES  
BATTERY ENERGY STORAGE SYSTEM (BESS) – 5 MW SALLY HILL  
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 Design-Builder to provide design and construction services related to Battery Energy Storage System (BESS) - 5 MW Battery Energy Storage System, located at the Sally Hill Solar Farm.

**PURPOSE AND BACKGROUND**

The purpose of this project is to design and install a utility-scale 5 MW BESS. The system will consist of a five (5) megawatt (MW) BESS, wiring, inverters, and controls. PWC has selected a 2-hour battery discharge capacity duration. PWC purchases its power from Duke Energy Progress (DEP). This project will allow PWC to discharge the battery during periods of high electric demand, reducing the coincident peak with DEP. The BESS will be dispatchable, scheduled to discharge during anticipated peak demand times. PWC will own and operate the project upon completion. Third-party ownership will not be a considered option.

Interested firms possessing the necessary qualifications and expertise to perform the scope of work outlined in the Project narrative are encouraged to submit a Statement of Qualifications for this project according to the following requirements.

**GENERAL INFORMATION**

PWC shall not be held responsible for any oral instructions. Any changes to this Request for Qualifications (RFQ) will be in the form of a written addendum, which will be furnished to all registered RFQ holders.

PWC reserves the right to reject any or all SOQ’s, to waive any informality or irregularity in any SOQ received, and to be the sole judge of the merits of the respective SOQ received.

The Design Build services shall be performed with one entity identified as the Design Builder. Services shall include all necessary activities to appropriately design the work and construct the Project.

PWC will enter into a contract for the design-build services. Upon mutual agreement with the DB, PWC and the DB will negotiate the scope, price, and special conditions for the construction phase.

**PROJECT SCOPE**

This project involves the design and construction of a 5 MW BESS. Close coordination between the selected DB and PWC will be required on the selected battery system, design, and connection between the BESS, the existing solar farm, and PWC’s electrical distribution system. It is anticipated that the BESS will be located at the existing Sally Hill (Gillespie Street) Solar Facility. It will connect to PWC’s distribution system at 12.47 KV. The BESS will be integrated into PWC’s existing SCADA system, as PWC personnel will be responsible for scheduling the battery discharge and recharge.

The following services are anticipated:

- Project management and administration through project leadership and overall team coordination.
  - Review the project site to verify that the Sally Hill location is the best location for the BESS. Other sites to be reviewed include the Rockfish Solar Farm and Carves Falls Solar Farm.
  - Review and determine the best battery technology (i.e., lithium-ion, sodium-ion, etc.).
  - Perform a financial analysis for PWC to determine whether a two (2) hour discharge or a four (4) hour discharge is in the best financial interest of PWC.
  - Coordination between DB, sub-contractors, designers, sub-consultants, outside agencies, and PWC.
  - Construction administration and oversight.
  - Integrate the BESS with PWC's existing SCADA system.
  - Identify opportunities for cost savings and schedule efficiencies.
  - Project planning and scheduling.
  - Coordination with outside agencies to obtain all required permits.
  - Assist PWC with the preparation of documents, permit applications, etc. to outside agencies.
  - Survey the project site
- 
- Obtain any necessary soil surveys and/or geotechnical analysis.
  - Preparation of construction drawings and specifications.
  - Participate in constructability studies and reviews.
  - Prepare any necessary contract documents and incorporate PWC comments.
  - Prepare and provide as-built drawings, including operation and maintenance manuals.
  - Assist PWC with the preparation of documents required to register the project with the North Carolina Utilities Commission (NCUC).

PWC will be responsible for the following items:

- Registration and Notice of Intent to construct a BESS with the NCUC.
- Submittals for zoning and site plan approval.
- Submitting all required permits, and associated fees, to outside permitting agencies.

## **EXPERIENCE REQUIRED**

The selected DB firm will possess expertise in the design and installation of utility-scale battery energy storage systems, electrical utility distribution engineering, site design, and financial analysis. The DB firm must demonstrate expertise and experience in utility coordination with outside agencies and contractors, and design and installation of energy storage systems of similar size and scope. The DB firm shall demonstrate experience with the design-build method of contracting battery energy storage systems.

The design-build services shall be performed as a single overall contract with one (1) entity identified as the design-builder. Services shall include all necessary activities to appropriately design and construct the project. The Contract will be divided into two phases – Phase 1 being the agreement for professional engineering services to design the project. Upon acceptance of the design by PWC, it is anticipated that PWC will enter into a contract with the design-builder for

the installation and construction of the Project (Phase 2).

It is anticipated that the design-builder will include a licensed contractor or contractor(s) and a professional engineering firm. All firms shall be licensed in the State of North Carolina. The contractor(s) shall have the following license classifications:

- Building – unlimited
- Electrical – unlimited

The selected DB team will be an integral member of the overall project team; consisting of the DB, PWC, and other consultants as required. It will be the responsibility of the DB team to integrate the design and construction phases utilizing skills, experience, and knowledge of battery storage systems. The DB team will utilize their experience and knowledge to provide design, value engineering, and constructability reviews; prepare schedules; prepare detailed project cost estimates; and contribute to the development of the Project throughout the design/pre-construction process.

The selected DB team will act as PWC’s fiduciary and shall maintain a relationship of trust and confidence between itself and PWC. This Project will be an “open book”; whereby PWC may attend any and all meetings of the DB team relating to the Project, have access to all cost information related to the project, and have access to any and all records of the DB team related to the Project.

## RFQ SCHEDULE

Action	Responsibility	Date/Time
Mandatory Pre-Submittal Meeting	PWC/Vendors	Thursday, April 30, 2026, at 2:30 pm
Question Deadline	Vendors	Friday, May 8, 2026, at 4:00 pm
Addendum Deadline	PWC	Friday, May 15, 2026, at 5:00 pm
RFQ Submission Deadline	Vendors	Friday, May 22, 2026, at 2:00 pm
Award Contract	PWC	TBD

## PRE-SUBMITTAL MEETING

A mandatory pre-submittal meeting will be held at **2:30 P.M., Thursday, April 30, 2026**, 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 Jarvis Brown, Procurement Advisor at [procurement@faypwc.com](mailto:procurement@faypwc.com) of their intent to attend.

## QUESTIONS

Written questions shall be e-mailed to [procurement@faypwc.com](mailto:procurement@faypwc.com) by the date and time specified in the RFQ schedule. Firms will enter “RFQ #PWC2526086 – 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.

If an Addendum is issued that requires acknowledgment, signature, or submission, it must be included with the firm's Statement of Qualifications. Firms are responsible for incorporating any required information from the Addendum into their response. However, acknowledgment and submission of the Addendum are only required if the Addendum specifies such requirements. Failure to comply with these instructions may result in disqualification of the proposal. Firms are responsible for ensuring that all issued Addendums are received and reviewed as part of their submission.

## **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 pages not including COI/s)**

- 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 Design Build 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.
- Provide copies of licenses (will not count towards the page limit).

### **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 Design Build team, 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 licensed contractors, licensed subcontractors and licensed design professionals that are proposed to be utilized 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 Design Build 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 thirty (30) 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, copies of the CO, and copies of the licenses 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.

#### **UTILIZATION OF SMALL BUSINESS CONCERNS**

1) Definitions- As used in this contract –

- a) HUBZone small business concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
- b) Service-disabled veteran-owned small business concern –
  - i) Means a small business concern –
    - (1) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned

by one or more service-disabled veterans; and  
(2) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

ii) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16). Small business concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. Small disadvantaged business concern, consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that –

iii) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by –

- (1) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and
- (2) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

iv) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

c) Veteran-owned small business concern means a small business concern –  
i) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and  
ii) The management and daily business operations of which are controlled by one or more veterans.

d) Women-owned small business concern means a small business concern –  
i) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and  
ii) Whose management and daily business operations are controlled by one or more women.

2) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime Vendors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small

business concerns, veteran-owned small business concerns, service-disabled veteran owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

3) The Vendor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Vendor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Vendor's compliance with this clause.

4) Vendors acting in good faith may rely on written representations by their subconsultants regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.

5) The Vendor shall confirm that a subconsultant representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management database or by contacting the SBA. Options for contacting the SBA include –

a) HUBZone small business database search application Web page at [http://dsbs.sba.gov/dsbs/search/dsp\\_searchhubzone.cfm](http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm); or <http://www.sba.gov/hubzone>;

b) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC 20416; or The SBA HUBZone Help Desk at [hubzone@sba.gov](mailto:hubzone@sba.gov).

## **VENDOR REGISTRATION VIA ISUPPLIER**

All vendors interested in doing business with PWC must register as a vendor through the iSupplier Portal using the link below. The iSupplier self-service portal enables vendors to have real-time access to information regarding purchase orders, invoices, and payments through a secure environment. Attach a copy of your W9 to your online registration.

<https://www.faypwc.com/isupplier-doing-business-with-pwc/>

## **SUBMISSION INSTRUCTIONS**

Email an un-redacted and redacted PDF of the **Statement of Qualifications** to the PWC Procurement Department at [procurement@faypwc.com](mailto:procurement@faypwc.com) no later than the date and time specified in the RFQ schedule.

## **AWARDING OF PROJECTS**

Fayetteville Public Works Commission will consider and evaluate Statements of Qualifications in accordance with N.C.G.S. 143-128 and 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 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**

Firms 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. Firms 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). Firms hereby pledges, attests, and warrants through execution of this Agreement that the firm 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 the firm 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), the firm 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. The firm 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. The firm certifies that the signatory to this Contract is authorized by the firm to make the foregoing statement.

**ATTACHMENT A: 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 AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET. SEQ. ARE APPLICABLE THERETO.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

**ATTACHMENT B: SMALL AND DISADVANTAGED BUSINESS (SDBE), SMALL LOCAL SUPPLIER (SLS), AND LOCAL BUSINESS DISCLOSURE FORM**

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Prime Contractor: \_\_\_\_\_  
 Address & Phone: \_\_\_\_\_  
 Project: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Pay Application # \_\_\_\_\_

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

<b>Firm Name</b>	<b>SDBE, SLS, or Local</b>	<b>Construction Trade or Supplies</b>	<b>Payment Amount</b>
<i>Ex. ABC Company</i>	<i>SDBE – NC HUB M</i>	<i>Hauling</i>	<i>\$25,000.00</i>
<i>Ex. DEF Enterprise</i>	<i>SLS – PWC</i>	<i>Paint</i>	<i>\$600.00</i>
<i>Ex. GHI Incorporated</i>	<i>Local – Fayetteville</i>	<i>Tire Repair</i>	<i>\$2,000.00</i>

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

# PWC at a Glance



## Customers



- In operation since 1905
- Provides Electric, Water & Wastewater Services to more than 250,000 people
- Total Customers: 123,017
- Number of Services: 275,382
  - Electric: 83,918
  - Water: 98,439
  - Wastewater: 93,004
  - Irrigation: 6,426
- Customers with 2+ services: 75%

## Customer Service



- Annual Customer Contacts: 443,258
- Average Monthly Calls: 33,657
- Annual Bills Generated: 1.5 Million
- Customer Incentive Programs: 14
- Annual Water Leak Notifications: 20,772 (24 million gal)

## Employees



- Number of Employees: 690
- Average Tenure of Employees: 10 years
- Average Age: 45
- Annual Turnover: 6.0%\*
- Annual Hours Worked: 1.3 Million

\*non retirement

## Facilities



- Butler-Warner Generation Plant (268 MW)
  - Electric Service Area: 147 Sq. miles
- P.O. Hoffer Water Treatment Facility (39.5 MGD)
- Glenville Lake Water Treatment Facility (18.0 MGD)
  - Drinking Water Service Area: 116 Sq. miles
- Cross Creek Water Reclamation Facility (25 MGD)
- Rockfish Creek Water Reclamation Facility (21 MGD)
  - Wastewater Service Area: 109 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: 265 MW
- Annual MWH Sold: 2 million
- System Peak: 499 MW (Feb. 20, 2015)
- Solar Generation Capacity: 2.9 MW
- Annual Solar Generation: 1,454,371 KWH
- Battery Storage: 2 MW
- Electric Distribution Substations: 32
- Distribution Lines: 1,364 miles
- Transmission Lines: 123 miles
- Streetlights/Area Lights: 38,023

## Water/Wastewater Operations



- Population Served: 225,000+
- Drinking Water Treated: 10.645 Billion Gallons/Year
- 100% Compliant for all EPA Drinking Water Standards
- Daily Water Treatment Capacity: 50 MG/Day
- Daily Wastewater Treatment Capacity: 46 MG/Day
- Water/Wastewater Infrastructure: 2,979 miles
- Hydrants: 8,780
- Sanitary Sewer Lift Stations: 79
- Manholes: 34,430

## Financial



- FY24 Annual Operating Budget: \$450 Million
- Total Assets: \$1.89 Billion
- Bond Rating: Aa2(Moody's), AA (Standard & Poor's), AA (Fitch)
- Operations & Maintenance Expense per Customer: \$570 (\$618 National Median)
- Annual Cash Contributions to the City of Fayetteville in Lieu of Taxes: \$12.06 Million
- Annual Streetlight Services: \$4.14 Million
- Annual Annexation Construction Costs: \$8.49 Million
- Total Value of Annual Contributions to the City of Fayetteville: \$30.81 Million

Visit [www.FayPWC.com](http://www.FayPWC.com) to learn more about PWC



# ATTACHMENT D

**For the internal use of Fayetteville Public Works Commission only**

Requester/Responsible Employee:

Project Title:

Contract Number:

(Assigned by Procurement)

Bid Number (if applicable)

(Assigned by Procurement)

Account String (w/Budget Code):

(for project funding)

Not to Exceed Amount:

Completion or Termination Date:

Work Scope/Purpose:

**Notes: (1) This Service Agreement 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 at the rates 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 to the contrary, 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 Graham, Chief Financial Officer

Approved as to form:

\_\_\_\_\_  
Legal Dept.

