

For the internal use of Fayetteville Public Works Commission only

Requester/Responsible Employee:

Project Title:

Contract Number:

(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 _____ [insert service provider full legal name] ("Provider"), a _____ [identify the type of legal entity and State in which formation was accomplished] (each of PWC and Provider is a "Party" and both are collectively the "Parties"). The Parties agree as follows:

1. Services. PWC retains Provider to perform the following service(s): [INSERT ONE SENTENCE OR MORE DESCRIBING THE SCOPE OF WORK TO BE PERFORMED (including any contemplated contract administration) AND ANY DELIVERABLES TO BE RECEIVED BY PWC or attach a scope of services "as Exhibit A hereto incorporated herein by reference"] (the "Services"). 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 make any written or verbal statement to any news media or for any marketing purposes concerning the 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 to be proprietary, unless such information is available from public sources, and Provider shall not publish or disclose proprietary information without the prior written consent of PWC for any purposes other than the performance of the

Services. [IT MAY BE NECESSARY TO EXECUTE PWC'S STANDARD NDA AND REFERENCE IT IN THIS SECTION].

3. Delivery of Services and Ownership of Work Product. [INSERT ANY SCHEDULE OF DELIVERY, TIMEFRAME OR DEADLINE AND INSERT ANY NECESSARY FORMAT AND METHOD OF DELIVERY] 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. [INSERT HOW THE SERVICES ARE TO BE PAID: FIXED FEE, HOURLY RATE, PIECE RATE; IF RELEVANT, WHO IS TO PROVIDE THE SERVICE BY NAME OR JOB TITLE AND EACH PERSON'S OR JOB'S RATE] Provider's rates shall not be increased during 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 to be performed and delivered shall not exceed [INSERT MAXIMUM FEE - **THIS IS MANDATORY for pre-auditing;**] (the "Cap"). [RETAIN THE WORDING IN BRACKETS IF PAYMENT IS NOT FIXED FEE: 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 documented expenses incurred, up to 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 in the State of North Carolina to perform the Services. Each Party (the "First Party") represents and warrants to the other Party that the First Party 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, and this Agreement constitutes a legal, valid, and binding obligation of such First Party enforceable against it in accordance with its terms.

8. Billing and Payment. 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 with 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. 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. [RETAIN THE WORDING IN BRACKETS IF PAYMENT IS NOT FIXED FEE: 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.

9. Termination. Except with 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 shall include, but is not limited to, 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 certificates of insurance confirming each such coverage, and Provider shall direct its insurers to provide to PWC annually 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 shall 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. Provider shall indemnify, defend, and hold harmless PWC and its Commissioners, officers, employees, agents and representatives ("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 third parties against one or more of the Indemnitees arising out of negligent or willful acts, violations of law, errors 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 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 herein below, 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 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 therefore 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: David W. Trego, CEO/General Manager
PO Box 1089
Fayetteville, NC 28302

To Provider:

[INSERT MAILING ADDRESS]

“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 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 date of the effective date of this Agreement, 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 also shall at all times during the term of this Agreement comply with Executive Order 11246, including but not limited to the Equal Opportunity Clause requirements set forth in 41 C.F.R. § 60-1.4. Provider shall abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a) prohibiting discrimination against qualified individuals on the basis of protected veteran status or disability and requiring affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

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. No waiver of any breach or non-performance under this Agreement shall be deemed to constitute a waiver of any subsequent breach or non-performance, and for any such breach or non-performance each party shall be entitled to such remedies as provided by law. No consent or waiver by a Party shall be effective unless it is in writing and then only to the extent specifically stated. The invalidity, illegality, or un-enforceability of any portion or provision of this Agreement shall in no way affect the validity, legality and/or enforceability of any other portion or provision of this Agreement. Any invalid, illegal or unenforceable provision of this Agreement shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced the same as if the Agreement had not contained any portion or provision which was invalid, illegal or unenforceable; provided, however, severability shall not prevent this entire Agreement from being void in the event any portion or provision of this Agreement that is of the essence of this Agreement shall be void. This is the entire agreement of the Parties on the

subject matter hereof, and all prior negotiations, representations, proposals, letters, agreements, understandings, or other communications between the Parties, whether written or oral, are hereby merged into the Agreement and superseded by this Agreement. This Agreement shall not be modified unless such modifications are evidenced in writing, signed by both Parties. Nothing herein shall be construed to give any right or benefits hereunder to anyone other than the Parties. This Agreement shall be governed by the laws of the State of North Carolina without the application of the laws of any other state. The exclusive venue for all mediations and litigation and any 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. 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) or 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. [FOR LAWYERS ONLY] Legal Services. Deposits of funds belonging to PWC shall be made to a bank trust account, and Provider shall account to PWC for the receipt and disbursement of all trust funds. Any interest earned on trust deposits shall be transferred by the custodial bank directly to the NC State Bar IOLTA foundation in accordance with applicable NC State Bar Rules. In order for Provider to represent PWC effectively, PWC shall disclose fully and accurately all relevant facts and keep Provider apprised of all developments relating to Provider's representation of PWC. All information from PWC shall be treated as privileged and confidential in accordance with applicable NC State Bar rules. Provider shall use Statewide Title as the title insurer for PWC unless PWC gives prior written consent to the use of an alternative title insurer. Provider does not guarantee the outcome of any legal representation. Statements regarding expected outcomes of legal matters are Provider's best professional estimate only, and are limited by Provider's knowledge at the time the estimates are expressed. Provider has the right to exercise its discretion to elect to withdraw from legal representation of PWC at any time upon delivery of written notice of termination to PWC. If Provider elects to withdraw from representation of PWC in pending litigation, PWC shall promptly cooperate in taking all steps necessary to free Provider from any obligation to perform further services or incur additional costs or expenses, including the execution of any documents necessary for Provider to complete its withdrawal. Copyright and other intellectual property rights in all attorney work product generated in the course of performance of the Services by Provider shall belong to Provider and may be used by Provider, subject to the foregoing confidentiality and

privilege restrictions and subject to PWC's irrevocable license to use such work product for the purposes for which it was provided. PWC is the sole intended beneficiary of the work product. Provider shall not be liable for damages caused by reliance on work product for any purpose other than that for which it was prepared.

[FOR CONSULTANTS, ARCHITECTS, ENGINEERS OR SURVEYORS] Professional Services. Except with PWC's knowledge and prior written consent, the Provider shall not engage in any activity or accept any employment, interest or contribution that would reasonably appear to compromise the Provider's professional judgment with respect to the Services. The 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 executed this Agreement by their duly authorized representatives effective the day and year first above written.

Fayetteville Public Works Commission

[INSERT PROVIDER FULL LEGAL NAME]

By: _____
David W. Trego, CEO/General Manager

By: _____
_____, _____
(Printed Name) (Title)

Date: _____

Date: _____

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

By: _____
Rhonda Haskins, Chief Financial Officer

SAMPLE