

CITY OF FAYETTEVILLE REQUEST FOR QUALIFICATIONS



ON-CALL PROFESSIONAL ENGINEERING SERVICES FOR DAM-RELATED PROJECTS

COF1516975

ISSUED: September 7, 2025

DUE: October 7, 2025

The City of Fayetteville is soliciting Qualifications Statements from experienced individuals and firms to provide professional engineering services related to various dam-related projects to include inspection, design, and construction oversight.

ISSUED BY:
CITY OF FAYETTEVILLE

PRIMARY CONTACT:
KIM TOON, PROCUREMENT MANAGER
kimberlytoon@fayettevillenc.gov

(910) 433-1942

OFFERORS ARE NOT REQUIRED TO RETURN THIS FORM.



A message from the City of Fayetteville City Manager, Dr. Douglas J. Hewett, ICMA-CM

The City of Fayetteville is fully committed to provide Small Local Business Enterprises (SLBE's) an equal opportunity to participate in all aspects of City contracting including but not limited to participation in the procurement of contracts relating to the construction of and improvements to facilities throughout the City. It is also the policy of the City to prohibit discrimination against any person or business in pursuit of these opportunities on the basis of race, sex, color, religion or national origin and to conduct its contracting and purchasing programs so as to prevent such discrimination. The City is also committed to follow all applicable State and Federal law as they relate to procurement practices.

The City will actively seek and identify qualified SLBE 's and offer them the opportunity to participate in the procurement of contracts for all City purchasing and service contracts as well as construction and repair contracts.

The City aspires to spend 40% of its eligible contract dollars with small local suppliers and contractors. Towards this end the City's Charter has been amended by the General Assembly (H.B. 198) to allow the City to establish a race and gender-neutral small business enterprise program to promote the development of small local businesses. The City is authorized to establish bid and proposal specifications that include subcontracting goals and good-faith effort requirements to enhance participation by small business enterprises located in Cumberland and Hoke Counties.

For more information or questions about the SLBE policy, please contact the Purchasing Division at 910-433-1942.

CITY OF FAYETTEVILLE


Dr. Douglas J. Hewett, ICMA-CM
City Manager

Table of Contents

- Section 1 – Request for Qualifications 5
 - 1.1 Introduction..... 5
 - 1.2 Submittal of Qualifications Package 5
 - 1.3 Questions..... 5
 - 1.4 Table of Deadlines 6
- Section 2 - Submittal Package Requirements 6
 - 2.1 Letter of Transmittal/General Information/Executive Summary 6
 - 2.2 Organization of Consultant Team, Firm Capacity and Workload 6
 - 2.3 Personnel Qualifications..... 7
 - 2.4 Experience and Expertise 7
 - 2.5 Project Understanding, Approach and Schedule 8
- Section 3 - Evaluation and Award of Projects 9
 - 3.1 Evaluation 9
 - 3.2 Award 9
- Section 4 - Scope of Work 10
 - 4.1 General Dam Subject Matter Expert (SME):..... 10
 - 4.2 College Lake Dam Retrofit: 11
- Section 5 – City of Fayetteville General Contracting Terms 13
- Exhibit A – Professional Services Agreement 17

Section 1 – Request for Qualifications

1.1 Introduction

The City of Fayetteville (“the City”) is requesting Statements of Qualifications (SOQs) from firms with expertise in a range of dam-related engineering services. These services may include impoundment analysis, dam breach modeling, storage structure improvements, detailed design and permitting, construction oversight, and dam inspections. The City intends to select at least one firm to provide on-call professional engineering services over the next five (5) years.

1.2 Submittal of Qualifications Package

Qualification submittal must follow the format as defined in Section 2 SUBMITTAL PACKAGE REQUIREMENTS. A total of three (3) hard copies and one (1) USB flash drive containing a PDF of the qualifications package must be received no later than 2:00 p.m., October 7, 2025. Late submittal will not be considered.

Firms should tailor their submittal to provide the most pertinent information as to their qualifications, personnel and experience in the work areas specified.

Qualifications packages shall be mailed or personally delivered to:

City of Fayetteville Purchasing Department
Attention: Kimberly S. Toon, Purchasing Manager
RFQ-On-Call Professional Engineering Services for Dam-Related Projects
433 Hay Street
Fayetteville, NC 28301

Submittals shall be limited to a maximum of thirty (30) double-sided standard typewritten pages (8½” x 11”, font size 10 or larger). Promotional literature, brochures, etc. will be considered as part of the page limit. The front and back cover, tabs, acknowledgement of addendum, as well as exhibits will not be counted toward the page limit. Packages which exceed the page limit may be rejected as non-compliant. The electronic version must be submitted as a high quality viewable and printable Portable Document File (PDF). Qualifications packages must be enclosed in a sealed envelope or package and clearly marked: **“On- Call Professional Engineering Services for Dam-Related Services”**.

1.3 Questions

Prospective offerors can submit all questions via email to KimberlyToon@fayettevillenc.gov by September 22, 2025, 5:00 p.m. Answers to questions will be provided via addendum on the City’s website by September 30, 2025, 5:00 p.m. Please title the subject line of the email as **“On-Call Professional Engineering Services for Dam-Related Services”**. It is the offeror's responsibility to ensure that all addenda have been reviewed, signed and returned. A signed copy of each addendum must be included in the proposal package in the appendix section. Prospective firms are strictly prohibited from contacting any City official or employee regarding this Request for Qualifications, except in the manner prescribed above. Violation of this provision may result in disqualification of the firm’s submittal.

1.4 Table of Deadlines

Action	Date and Time	Location/Other
Proposers written questions to be submitted	September 22, 2025, 5:00 p.m.	Email: KimberlyToon@fayettevillenc.gov
Posting of questions on City website	September 30, 2025, 5:00 p.m.	City Website
RFQ Due Date - Qualifications due from Proposers	October 7, 2025, 2:00 p.m.	City of Fayetteville Purchasing Department Attention: Kimberly Toon, Purchasing Manager 433 Hay Street Fayetteville, NC 28301

Section 2 - Submittal Package Requirements

The qualifications package shall consist of the following information, tabbed as identified and in the order indicated. A firm who submits a package that does not follow the order or address each of the sections specified below may be deemed non-responsive.

2.1 Letter of Transmittal/General Information/Executive Summary

1. Provide firm name, year established, address, telephone number, email address and contact person. Briefly describe your firm's operating history.
2. Provide a statement letter that the firm will provide Certificate(s) of Insurance with limits as required in the Professional Services Agreement (see Exhibit A).
3. Provide statement letter that the firm will be able to execute the PSA as shown in Exhibit A.
4. The prime contractor shall be licensed in the state of North Carolina for the applicable work described hereafter. Provide proof of firms licensing in North Carolina through NCBELS. Proof can be included in the Appendix section of the submittal.
5. Identify if the firm is classified as a Disadvantaged Business Enterprise.
6. State any conflicts of interest your firm or any key individual may have with this program or with the City. List any pending or settled lawsuits or professional liability claims in which the company was involved during the past five (5) years.
7. Concisely address the highlights of the proposal, along with the strengths and expertise of the firm and the project team proposed to successfully accomplish the project objectives.

2.2 Organization of Consultant Team, Firm Capacity and Workload

1. Team Organizational Chart showing all firms (both prime and sub-consultant), contractual relationship between firms, and names of specific staff proposed for this project, including their titles. Identify certified Minority Business Enterprise (MBE) or Women Business Enterprise (WBE) firms, if any.
2. Responsibilities to be fulfilled by each team member assigned to the project(s). Clearly delineate roles and responsibilities of the various team members, identify specialty, level of expertise,

education and direct work experience on projects in the area(s) of respective expertise. The description of responsibilities will include an estimated percentage of the total project that is to be completed by each individual team member whether prime Consultant or sub-Consultant.

3. Clearly identify the project manager and describe how services and project(s) will be successfully managed. Based upon experience, the project manager should provide a prioritized listing of the most important factors for successfully providing the services the City is requesting. Also, describe how quality will be controlled and ensured.
4. Identify the office location of the project manager and project team members. In the event that services and project work may be performed by staff in multiple office locations, please describe how this will be managed to best serve the City of Fayetteville. Identify adequacy, availability, and ability of personnel to complete the task. Provide a description of firm's capacity, including staffing, list of current projects and schedules for completion.
5. Include a standard hourly rate chart for all personnel associated with this project. Please note this is a generic standard hourly rate chart by the hour and not a cost fee for this proposal. Additionally, please state your firm's billing practice for travel time for personnel who may have to travel extensively to Fayetteville for site meetings and to perform site inspections.

2.3 Personnel Qualifications

1. Provide a resume detailing professional qualifications of key management and staff personnel to be assigned to the project(s).
2. For those staff involved in Hydrology & Hydraulic (H&H) modeling and other software used in projects similar to this scope, please provide a table showing approximate years of actual experience with the software and 3-5 names of projects reflecting that experience with a description of what their role was in the project. Include experiences as it relates to spillway and outlet design, water balance studies, reservoir sedimentation and flow control and energy dissipation
3. For those staff involved in the Construction Oversight, provide a table showing approximate years of actual experience related to this scope, and 3-5 names of projects reflecting that experience with a description of what their role was in the project. Please include all certifications of these individuals.

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

2.4 Experience and Expertise

Summary of at least five (5) projects of similar scope for which the Consultant was primarily responsible within the last five (5) years. Firms should limit the experiences included within the proposal to those that are similar to the services requested by the City. This section should also include the qualifications of any proposed sub-Consultants, if applicable. Each of the project summaries will include the following:

1. Description of the project including size and scope.
2. Project schedule (initial schedule and actual / final schedule), including an explanation of delays, if any.
3. Initial project budget and final project cost.
4. Description of services rendered by the Consultant and degree of involvement (prime Consultant or sub-Consultant).
5. Associated firms involved and their assigned responsibilities.

6. Key principal and associated staff involved along with their assigned responsibilities.
7. Brief summary of client's program along with key design elements and how the Consultant addressed them.
8. Experience should demonstrate a comprehensive understanding and ability to complete environmental permitting, impoundment storage, dam breach analyses, and storage structure design improvements.
9. Experience should demonstrate the ability to perform similar work with municipalities or agencies of similar size and complexity as being requested.
10. Experience should demonstrate direct expertise in the design and construction of dams engineered to withstand overtopping events and related instrumentation monitoring.
11. Experience should demonstrate a comprehensive understanding and ability to complete the following services that may be required: environmental assessments, wetland delineation, easement acquisition, grant funding acquisition, NEPA/SEPA/federal/state/local permitting, environmental site assessments, dam structure design, general structural design, geotechnical engineering, and construction management. Team experience should highlight these and other pertinent capabilities, including expertise in EJCDC construction contracts.
12. Project references including names, addresses, email and telephone numbers.
13. Please review Section 4 Scope of Work for detailed experience needs.

2.5 Project Understanding, Approach and Schedule

Clearly define the tasks and activities necessary to meet the objectives outlined in the Scope of Work of Section 4 and in this RFQ. This should also include responses to each of the following items:

1. Provide the resources your firm will use to address this project: people, equipment, software, etc.
2. Provide a narrative to demonstrate how well the firm understands the purpose and scope of the project.
3. Describe your scope (methodology, data collection, modelling review, quality control/quality assurance, etc.) to address each bulleted point outlined in Scope of Work. This should include the tasks and narrative of how your firm will comply with the Scope of Work and what special services and products your firm has to meet our needs.
4. Describe why your firm should be selected to include any unique qualities which you feel make your firm well-suited to perform the work.
5. Provide your experience in completing similar or larger projects that can contribute to achieving the objectives of each of the bulleted items set out in the Scope of Work.
6. Provide a description of how the firm provides the desired services and quality control to ensure adequate level of service and successful project completion and management.
7. Provide a preliminary project schedule that should demonstrate an understanding of the delivery of the project to include management tool, techniques and procedures to maintain the project schedule.
8. Provide sufficient detail to demonstrate your approach and understanding for the complete design for the College Lake Dam Retrofit project, assuming a project start date of January 2026

Section 3 - Evaluation and Award of Projects

3.1 Evaluation

The City will consider and evaluate qualifications packages in accordance with N.C.G.S. 143-64.31. Qualifications packages will be evaluated by a committee composed of City of Fayetteville personnel. As part of the evaluation process, the City reserves the right to request additional information and/or interview any or all firms. It is the intent of the City to select an on-call list (referred to herein as “list”) of qualified firms using a Qualifications-Based Selection (QBS) process to provide these services on an as- needed basis. After the evaluation, an on-call list will be developed, and firms will be notified. Tentative schedule for determining and finalizing the on-call list is November 2025.

This is not a bid. There will not be a public opening. The following criteria and weighting will be the sole basis on which Consultants will be selected for evaluation:

Criteria	Weight
Letter of Transmittal/General Information/Executive Summary	5
Organization of Consultant Team, Firm Capacity and Workload	10
Personnel Qualifications	20
Experience and Expertise	25
Project Understanding, Approach and Schedule	40

Proposals will be evaluated by a review committee using a scoring system based on weighted evaluation criteria outlined above. Each evaluator will independently assess and score each proposal according to the criteria and weights provided. Final scoring for each proposal will be determined by averaging the total weighted scores assigned by all evaluators. Firms will be ranked in order from highest to lowest based on their average total score. This method ensures a fair and balanced assessment by accounting for individual evaluator perspectives while minimizing scoring bias. In the event of a tie, the City reserves the right to apply additional qualitative review or request clarifications to determine final rankings. The City intends to select at least two (2) firms to provide the outlined services over the next five (5) years. A minimum score of 80 must be met to be considered.

3.2 Award

All firms selected to be part of the list will be required to execute a Professional Services Agreement (PSA) and individual Work Authorizations for projects for which they are selected. As part of the submittal, firms may submit exceptions to the Professional Services Agreement, which may be considered by the City for acceptance. The City reserves the right to accept or reject any proposed exception or modification to the PSA. Firms unwilling or unable to sign the PSA (see Attachment A) may be considered non-responsive.

The list shall be effective for a period of five (5) years with an option to extend for additional one-year periods, not to exceed two additional years, or a maximum of seven (7) total years from the effective date of the list. Selection by the City for the on-call list is not a guarantee that any firm will receive a project. As projects arise, the City will review the firms included on the list and decide as to the most qualified firm to perform work on a specific project. The City makes no guarantee of a specific volume of work or a total

contracted amount arising from this solicitation. Additionally, the City makes no guarantee that the quantity of work (whether measured in monetary terms or otherwise) will be spread equally or according to any other specific criteria among the firms on the list. The City intends to select multiple qualified Consultants for the list but reserves the right to award in the quantity determined to be in the best interest of the City, including the rejection of all offers and re-solicitation of the work.

Selected firms that do not meet the City's performance expectations, routinely decline opportunities to participate in projects offered, or lose significant internal expertise submitted with the original RFQ response may be removed from the list.

While it is the City's intent to utilize the list for dam related services over the five (5) year period, the City reserves the right to issue separate solicitations for a specific project or projects when it is determined to be in the best interest of the City to do so. In such cases, all firms currently included on the list would be invited to participate. The City also reserves the right to include firms who are not included on the list resulting from this solicitation.

The City reserves the right to accept qualifications-based submittals from new firms at its discretion and, upon evaluation, add new firms to the list if it is determined to be in the best interest of the City. New firms shall be defined as those firms who express an interest in working with the City and did not receive or decline an invitation to submit a qualifications package in response to the City's original request.

Selected firms shall agree to provide information regarding changes in ownership, operation, or personnel to the City in a timely manner. The City, upon evaluation of information received, reserves the right to remove a firm from the list.

Upon selection of a firm for a particular project, the firm and the City shall negotiate and agree to the scope of work, responsibilities, and compensation for the project, after which a Work Authorization for the project will be executed by the firm and the City.

All information and materials submitted in response to this solicitation shall become the property of the City of Fayetteville and shall be subject to the provisions of North Carolina public records laws.

Section 4 - Scope of Work

4.1 General Dam Subject Matter Expert (SME):

The intent of this RFQ is to obtain the services of professional engineering consultants wishing to assist the City with engineering services related to Dams. These services include but are not limited to the types of work below.

Impoundment Analysis:

Consultant will outline the tasks necessary to conduct a comprehensive analysis of an existing or proposed impoundments to evaluate hydraulic, structural, environmental, and operational characteristics.

Dam Breach Modeling:

Consultant will outline the tasks necessary to develop and execute dam breach analysis to assess

potential impacts of failures of subject dams, inundation mapping, impact assessments, and reporting.

Storage Structure Improvements:

Consultant will outline tasks necessary to evaluate, design, and implement improvements to existing storage structures to enhance capacity, limit downstream impacts, and compliance with regulatory standards.

Detail Design and Permitting:

Consultant will outline tasks necessary for the completion of detailed engineering design and regulatory approvals for the construction or rehabilitation of dams. This should be for all specialized dam design, to include instrumentation and monitoring experience with a key focus of this task demonstrating expertise in the design and construction of dams engineered to withstand overtopping events.

Construction Oversight:

Consultant will outline the services to be provided during the construction phase of a dam project, including observation, documentation, and coordination activities necessary to ensure that construction is completed in accordance with the approved plans, specifications, permits, and applicable regulatory standards.

Dam Inspections and Emergency Action Plan Development (EAPs):

Consultant will outline the tasks necessary to conduct formal dam inspections and prepare or update Emergency Action Plans (EAPs) in accordance with applicable state and federal dam safety regulations to ensure continued structural integrity, regulatory compliance, and preparedness for emergency scenarios. Provide experience with development of maintenance programs.

4.2 College Lake Dam Retrofit:

College Lake Dam (CUMBE-061) is an earthen dam owned by the City, located at the end of Waterbury Drive. The dam has been breached by the removal of the existing riser structure; however, the barrel pipe remains intact through the embankment. In its current condition, the dam is vulnerable to blockages, resulting in a rising pool elevation with no spillway present or overtopping protection.

As part of the Carvers Creek Watershed Study, a detailed evaluation of the existing dam was conducted to determine whether full removal or modification would better manage flow attenuation and reduce downstream impacts during storm events. The study concluded that the most cost-effective solution was to reconstruct the dam as a dry dam, designed to temporarily store water and gradually release it downstream over time, thereby mitigating flood risks.

As an individual task under this RFQ, the selected consultant will be responsible for providing comprehensive design and construction services for the College Lake Dam Retrofit. The consultant will receive the College Lake Dam Analysis Memorandum along with other relevant data and documentation prior to initiating work on this task. Task requirements include, but are not limited to:

Project Approach and Understanding Requirements:

1. Include a listing and description of each phase of the project as you understand it, identifying key staff who will be assigned to each phase of the project.

2. This project will require staff to be experienced in HEC-RAS and HEC-HMS modeling, at a minimum. Please elaborate on your experience working on similar projects utilizing these software packages for this type of work. Please note additional tools and software you may use and recommend including software used in dam studies that cover hydrology & hydraulic (H&H) modeling, geotechnical analyses, structural design, etc.
3. Environmental permitting will be critical to the success of this dam project. College Lakes Dam has been breached and any future improvements, regardless of H&H viability, will require Federal and State environmental permitting. The selected SME will need to demonstrate experience in permitting of dams as impoundments, particularly in conversion of a breached dam to operate as a dry dam.
4. The SME should also demonstrate experience in the design and construction of dams engineered to withstand overtopping events.
5. Describe how the firm will provide the desired services and quality control/assurance to ensure appropriate level of service and successful project implementation. Specifically elaborate on QC/QA to ensure accurate data/modeling analyses.
6. Provide and update a master schedule to meet the needs of the City, as well as scheduling and project control methodology that will be used to ensure the schedule will be met. The timeline should include key milestone dates and a detailed description of project tasks. Assume start date of January 2026.

Final Report and Deliverables

Deliverables from the selected SME should include the following along with supporting documents and electronic files. Please describe your experience providing reports with the following detail.

1. Comprehensive report providing all details of methodology and results with tables and figures to present the Hydrology & Hydraulic (H&H) and dam breach modeling analyses. Report shall include recommended dam improvements with associated opinions of probable construction cost.
2. Summary of the project's quality control/quality assurance acceptance criteria and achievements. Provide a percentage range/level of confidence in the modeling results and recommendations.
3. Identify potential funding sources with project cost/benefit analyses that may support pursuit of various agency funding.
4. Sealed construction drawings, technical specifications and project special provisions, and construction bid documents.

Section 5 – City of Fayetteville General Contracting Terms

ASSIGNMENT

It is the intent of this Agreement to secure the personal services of Contractor and failure of Contractor for any reason to make the personal services available to the City of Fayetteville for the purposes described in this contract shall be cause for termination of this contract. Contractor shall not assign this contract without prior written consent of the City of Fayetteville.

GOVERNING LAW

The validity, interpretation, and execution of this contract and the performance of and rights accruing under this Contract are all to be governed by the laws of North Carolina.

COMPLIANCE WITH LAWS

Contractor agrees to comply with all applicable statutes, ordinances, and regulations of the United States, the State of North Carolina, the City and units of local government.

SEVERABILITY

The parties agree that if any provision of this contract shall be held invalid for any reason, the remaining provisions shall not be affected if they may continue to conform with the purposes of this contract and the requirements of applicable law.

DEFAULT

In the event of substantial failure by Contractor to perform in accordance with the terms of this contract, City of Fayetteville shall have the right to terminate Contractor upon ten (10) days written notice in which event Contractor shall have neither the obligation nor the right to perform further services under this contract nor shall the City of Fayetteville be obligated to make any further payment for work that has not been performed.

DIVESTMENT OF COMPANIES BOYCOTTING ISRAEL OR INVESTING IN IRAN CERTIFICATION

Contractor certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58; (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. 147-86.81 as a company engaged in the boycott of Israel ((i) and (ii) to be collectively referred to as “FD Lists”); and (iii) it will not take any action causing it to appear on the Treasurer’s FD Lists created by the NC State Treasurer during the term of this Contract. By signing this Contract, Contractor further agrees, as an independent obligation, separate and apart from this Contract, to reimburse the City for any and all damages, costs and attorneys’ fees incurred by the City in connection with any claim that this Contract or any part thereof is void due to Contractor appearing on the Treasurer’s FD Lists at any time before or during the term of this Contract.

E-VERIFY

Contractor 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. Contractor 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). Contractor hereby pledges, attests and warrants through execution of this Agreement that

Contractor complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired

by Contractor shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Agreement.

FORCE MAJEURE

Neither party shall be deemed to be in default of its obligations hereunder if and *so long as* it is prevented from performing such obligations by an act of war, hostile foreign actions, adverse governmental actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

MORALITY CLAUSE

If, in the sole opinion of the City, at any time Contractor any of its owner(s) or employee(s) or agent(s) (collectively referenced as an "Actor") engages in any one or more of the actions below, the City may immediately upon written notice to Contractor, terminate this Agreement, in addition to any other rights and remedies that the City may have hereunder or at law or in equity:

1. bring disrepute, contempt, scandal, or public ridicule to the Actor;
2. subject the Actor to prosecution;
3. offend the community or public morals/decency;
4. denigrate individuals or groups in the community served by the City;
5. is scandalous or inconsistent with community standards or good citizenship;
6. adversely affect the City's finances, public standing, image, or reputation;
7. is embarrassing or offensive to the City or may reflect unfavorably on the City; and,
8. is derogatory or offensive to one or more employee(s) or customer(s) of the City.

NON-APPROPRIATION

Notwithstanding any other provisions of this contract, the parties agree that payments due hereunder from the City are from appropriations and monies from the City Council and any other governmental entities. In the event sufficient appropriations or monies are not made available to the City to pay the terms of this agreement for any fiscal year, this contract shall terminate immediately without further obligation of City.

INDEMNIFICATION

To the extent permitted by law, the Contractor agrees to defend, indemnify and hold harmless the City, its elected officials, employees, agents, successors, and assigns, from any and all liability and claims for any injury or damage caused by any act, omission or negligence of the Contractor, its agents, servants, employees, contractors, licensees, or invitees. Indemnification of the City by the Contractor does not constitute a waiver of the City's governmental immunity in any respects under North Carolina law. Contractor assumes entire responsibility and liability for losses, expenses, demands and claims in connection with or arising out of any injury, or alleged injury (including death) to any person, or damage, or alleged damage, to property of the City or others sustained or alleged to have been sustained in connection with or to have arisen out of or resulting from the negligence of the Contractor, his subContractor, agents, and employees, in the performance of the work/service set forth in the Standard Specifications and Special Provisions, and any changes, addenda, or modifications including losses, expenses or damages sustained by the City, and agrees to indemnify and hold harmless the City, its officials, employees or volunteers from any and all such losses, expenses, damages, demands and claims and agrees to defend any suit or action brought against them, or any of them, based on any such alleged injury or damage, and to pay all damages, cost and expenses in connection therewith or resulting therefrom. As an integral part of this Agreement, Contractor agrees to purchase and maintain during the life of this Agreement contractual liability insurance in the amount required in the general liability insurance requirements and to furnish proper evidence thereof.

Indemnification by the Contractor does not constitute a waiver of the City's governmental immunity in any respect under North Carolina law.

TERMINATION FOR CAUSE

In the event of substantial failure by Contractor to perform in accordance with the terms of this contract, City of Fayetteville shall have the right to terminate Contractor upon ten calendar (10) days written notice in which event Contractor shall have neither the obligation nor the right to perform further services under this contract nor shall the City of Fayetteville be obligated to make any further payment for work that has not been performed. Contractor shall provide to the City of Fayetteville all reports, surveys or other related documents upon the City's request.

TERMINATION FOR CONVENIENCE

Upon thirty (30) calendar days' written notice to Contractor, the City of Fayetteville may, without cause and without prejudice to any other right or remedy legally available to the City of Fayetteville, terminate this Contract. Upon such notice, Contractor shall have neither the obligation nor the right to perform services under this contract nor shall the City of Fayetteville be obligated to make any further payment for work that has not been performed in accordance with the terms stated herein. In such case of termination, Contractor shall be paid for the completed and accepted work executed in accordance with this Contract prior to the written notice of termination. Additionally, upon mutual agreement, Contractor may be paid for any completed and accepted work which takes place in order to achieve a specifically identified item in the scope of services or a milestone of the Contract, between the written notice of termination and the effective date of termination. Unless otherwise stated or agreed upon, the effective date of termination shall automatically occur 30 days after the written notice is sent by the City of Fayetteville. Contractor shall provide to the City of Fayetteville all reports, surveys or other related documents upon the City's request.

PROTEST

Protest related to this procurement must be addressed to the Purchasing Manager for City of Fayetteville, 433 Hay St, Fayetteville, NC 28301 and shall be received, in writing, within 2 calendar days of bid award. Responses will be in writing by email and first-class mail not later than 7 calendar days following receipt of said protest by the Purchasing Manager.

SURVIVAL OF TERMS

All warranties, covenants, and representations contained within this contract and all applicable work authorizations, if any, shall continue in full force and effect for three (3) years after the execution and delivery of the final product, act, or service taken in furtherance of this contract. Survivability shall not be impacted, or otherwise shall not be rendered null or void, by the termination or natural expiration of this contract or other applicable work undertaken in furtherance of this contract.

VENUE AND FORUM SELECTION

The Parties expressly agree that if litigation is brought in connection with this contract and (1) the litigation proceeds in the Courts of the State of North Carolina, the parties agree that the appropriate venue shall be in Cumberland County (Fourteenth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina.

INDEPENDENT VENDOR

Vendor is an Independent Vendor and shall undertake performance of the services pursuant to the terms of this Agreement as an Independent Vendor. Vendor shall be wholly responsible for the methods, means and techniques of performance. City shall have no right to supervise methods and techniques of performance

employed by Vendor but City shall have the right to observe such performance.

AMENDMENT

The City and Vendor may, from time to time, request changes in services to be performed by Vendor. Any such changes that are mutually agreed upon by the City and Vendor shall be incorporated herein by written amendment to this Agreement. It is mutually agreed and understood that no alteration or validation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties hereto, and that any oral understanding or agreements not incorporated herein, unless made in writing and signed by the Parties hereto, shall not be binding.

ENTIRE AGREEMENT

Agreement constitutes the entire agreement between the Parties. Any proposed change to this Agreement shall be submitted to the City for its prior approval. No modification, addition, deletion, etc., to this Agreement shall be effective unless and until such changes are reduced to writing and executed by the authorized officers of each Party.

AUDIT CERTIFICATION

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Contractor Name (Print)

Contractor Signature

Date of Signature

Exhibit A – Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT FOR ON-CALL CONSULTING SERVICES

BETWEEN

CITY OF FAYETTEVILLE
FAYETTEVILLE, NORTH CAROLINA

AND

[CONSULTANT'S NAME]

[DATE]

**STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND**

**PROFESSIONAL SERVICES AGREEMENT
FOR ON CALL CONSULTING SERVICES**

THIS AGREEMENT, effective the day **[Date]** by and between **THE CITY OF FAYETTEVILLE, NORTH CAROLINA** (hereinafter referred to as **CITY**), with principal business offices at Fayetteville, North Carolina, and **[CONSULTANT'S NAME]** (hereinafter referred to as **CONSULTANT**), a corporation with principal business offices at **[Principal office as shown on NC Secretary of State's Website]**.

WITNESSETH:

WHEREAS, CITY, is engaged in the operation and maintenance of facilities and services which from time to time require revision, renovation and extension of existing facilities, and the construction of new facilities and other related projects; and

WHEREAS, the professional services of engineers, architects, surveyors and others will from time to time in the future be needed by the **CITY** in the renovation of existing facilities, and in the construction of new facilities and other related projects; and

WHEREAS, pursuant to N.C.G.S. § 143-64.31 it is the public policy of this State that municipalities announce all requirements for architectural, engineering and surveying services, to select firms qualified on the basis of demonstrated competence and qualification and to negotiate contracts for services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, CONSULTANT provides professional **[type of services]** consulting services of the nature required by the **CITY** and employs trained and experienced engineering, technical and/or other personnel possessing adequate knowledge, skills and experience to provide professional services to the **CITY**; and

WHEREAS, the parties contemplate that the on-call services of **CONSULTANT** will be performed on an as needed basis, in various stages in accordance with separate authorizations to be issued by **CITY**, and the parties desire to set forth the basic terms of their agreement in this Professional Services Agreement rather than in separate authorizations to be issued by **CITY**.

NOW THEREFORE, IN CONSIDERATION of the premises and the mutual covenants herein contained, the parties hereto do hereby contract and agree as follows:

ARTICLE 1. TERM OF AGREEMENT. The term of this Professional Services Agreement for On-Call Consulting Services shall be for three (3) years from the date it is effective. The Agreement may be extended thereafter by mutual written agreement of the parties.

1.1. ASSIGNMENT. It is the intent of this Professional Services Agreement to secure the professional [type of services] services of **CONSULTANT** and failure of **CONSULTANT** for any reason to make the professional engineering services available to the **CITY** for the purposes described in this Professional Services Agreement shall be cause for termination of this Agreement. **CONSULTANT** shall not assign this Agreement without prior written consent of the **CITY**. Nothing contained in this paragraph shall prevent **CONSULTANT** from employing such independent consultants, associates and subcontractors as it may deem appropriate to assist **CONSULTANT** in the performance of services rendered.

ARTICLE 2. COMPENSATION. **CONSULTANT** shall submit to **CITY** monthly invoices for services performed and accepted during that month. **CITY** agrees to pay **CONSULTANT**'s monthly invoice within thirty (30) days after said invoice is received by the **CITY**. Adjustments to an invoice for billing errors may extend the time for payment. For clarity, compensation to **CONSULTANT** shall be based upon task and/or work authorizations that are provided to and agreed upon by the **CITY**. The signing of this Professional Services Agreement does not bind or obligate the **CITY** to pay **CONSULTANT** any compensation.

2.1. VERIFICATION OF INVOICES. **CITY** has the right to require the **CONSULTANT** to produce for inspection all **CONSULTANT**'s time records, salaries of personnel and charges for direct expenses for which cost-plus compensation is provided. **CONSULTANT** agrees to provide **CITY** with said records on a timely basis and cooperate with **CITY** to verify the accuracy of all invoices.

2.2. NON-APPROPRIATION. Notwithstanding any other provisions of this Agreement, the Parties agree that payments due hereunder from the **CITY** are from appropriations and monies from the City Council and other governmental entities. In the event sufficient appropriations or monies are not made available to the **CITY** to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the **CITY**.

ARTICLE 3. PROFESSIONAL STANDARDS AND DUTIES OF CONSULTANT. **CONSULTANT** shall be held to the same standard and shall exercise the same degree of care, skill and judgment in the performance of services for **CITY** as is ordinarily provided by a similar professional under the same or similar circumstances at the time in Cumberland County, North Carolina. **CONSULTANT** warrants that the professional engineering services completed for **CITY** under this Agreement shall be performed utilizing the degree of care and skill exercised by diligent and prudent members of the same profession performing similar services on a national basis. **CONSULTANT** agrees that the professional engineering services performed shall be in a safe and workmanlike manner in compliance with all applicable laws, ordinances and regulations or rules. All professional engineering services provided by the **CONSULTANT** which are, or must be, performed by licensed professionals, will be performed by such professionals licensed by the State of North Carolina.

3.1. CONSULTANT NOT RESPONSIBLE FOR CONSTRUCTION MEANS OR SAFETY. Notwithstanding anything to the contrary: **CONSULTANT** for general construction projects shall not be responsible for any general contractor's or other project participant's failure to fulfill their contractual responsibilities to the **CITY**, nor shall **CONSULTANT** be responsible for construction means, methods, techniques, sequences, or procedures. Neither shall

CONSULTANT be responsible for a project safety program or safety precautions unless **CONSULTANT** sets forth a safety program which is accepted by **CITY** and becomes a part of the agreement between the parties.

3.2. CONSULTANT AS CONSTRUCTION MANAGER. In the event the **CITY** contracts with the **CONSULTANT** to provide Construction Management Services, but subject to Article 3.1, the **CONSULTANT** shall make site visits appropriate to the stage of construction to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Construction Contract Documents. **CONSULTANT** will endeavor to protect **CITY** against defects and deficiencies in the work of contractors and will report any observed deficiencies to **CITY**. In no event shall **CONSULTANT** be responsible for any contractor's, subcontractor's, vendor's, or other project participant's failure to comply with federal, state or local laws, ordinances, regulations, rules, codes, orders, criteria, or standards unless it has contracted with the **CITY** to do so.

ARTICLE 4. ESTIMATES OF COST AND TIME. Although **CONSULTANT** has no control over the cost of labor, materials, equipment or services furnished by others, or over contractor's, subcontractor's, or vendor's methods of determining prices, or over competitive bidding or market conditions, nevertheless **CONSULTANT's** cost estimates and time estimates shall be made on the basis of current labor and material prices and the **CONSULTANT's** experience and qualifications, and **CONSULTANT's** estimates shall be provided consistent with the standards set out in Article 3 (*Professional Standards and Duties of Consultant*). Although **CONSULTANT** has no control over the resources provided by contractors to meet contract schedules, nevertheless **CONSULTANT's** estimates or forecast of schedules shall be provided consistent with the standards set out in Article 3 (*Professional Standards and Duties of Consultant*). **CONSULTANT** does not guarantee that project costs and schedules will not vary from the estimates and schedules given to **CITY**.

ARTICLE 5. LIABILITY, INDEMNIFICATION AND INSURANCE.

5.1. GENERAL. The **CITY** and **CONSULTANT** have considered the risks and potential liability that may exist during the performance of services by **CONSULTANT** and have agreed to allocate such liabilities in accordance with this Article. During the performance of services under this Agreement, **CONSULTANT** shall purchase and maintain insurance coverage as hereinafter set forth, without lapse or changes contrary to the requirements of this section. Words and phrases used in this Article shall be interpreted in accordance with customary insurance industry usage and practice.

5.2 INDEMNITY & PROFESSIONAL LIABILITY INSURANCE. To the extent permitted by law, **CONSULTANT** agrees to indemnify and hold harmless the **CITY** and its elected officials, employees, agents, successors, and assigns, from any and all liability and claims for any injury or damage to the extent caused by any negligent or tortious act, omission or negligence of **CONSULTANT**, its agents, servants, employees, contractors, licensees, or invitees. Indemnification of the **CITY** by **CONSULTANT** does not constitute a waiver of the **CITY's** governmental immunity in any respect under North Carolina law. **CONSULTANT** agrees to purchase and maintain professional liability insurance (errors and omissions insurance) in the amount of \$1,000,000 coverage for each claim, with a general aggregate of \$2,000,000. Said insurance

coverage shall be underwritten by an insurance company authorized to do business in the State of North Carolina by the North Carolina Department of Insurance, with an A.M. Best rating of not less than A.

5.3 INDEMNITY & GENERAL LIABILITY INSURANCE. CONSULTANT agrees to indemnify and hold the CITY, its servants, agents and employees, harmless from and against all liabilities, claims, demands, suits, losses, damages, costs and expenses (including attorney's fees) for third party bodily injury to or death of any person, or damage to or destruction of any third party property, to the extent caused by the negligence of CONSULTANT, CONSULTANT's employees, and CONSULTANT's subcontractors, for whom CONSULTANT is legally responsible during the performance of services under this Agreement. CONSULTANT shall purchase and maintain at all times during performance of services under this Agreement Commercial General Liability Insurance ("CGL") with combined single limits of \$1,000,000.00 coverage for each occurrence with a general aggregate of \$2,000,000.00, designating the CITY as an additional insured and which said insurance provides CONSULTANT with insurance for contractual liability which CONSULTANT has assumed pursuant to the terms of this Agreement.

5.4. OTHER INSURANCE. In addition to professional liability insurance and commercial general liability insurance set forth above, CONSULTANT further agrees to purchase and maintain at all times during the performance of services under this Agreement insurance coverage as follows:

- Worker's Compensation Insurance as required by North Carolina law and said policy shall also afford coverage to CONSULTANT for employer's liability.
- Automobile liability insurance with \$1,000,000.00 combined single limit for each accident covering bodily injury and property damage.
- The CGL policy required above shall include independent contractor liability coverage.
- If applicable, the CGL policy required above shall provide CONSULTANT with products and completed operations insurance. Said coverage is to be written on an occurrence basis, with coverage extended for such a period of time in which suits can be filed before the running of the statute of limitations, on any claim for injury to person or property due to negligence of CONSULTANT in the design of any building designed by the CONSULTANT under the terms of this Agreement.

5.5. CERTIFICATES OF INSURANCE. CONSULTANT shall provide to CITY, within a reasonable time after request, certificates from the insurer(s) indicating the amount of insurance coverage, the nature of such coverage, and the expiration date of the policy for each of the insurance coverage requirements contained in Article 5.

ARTICLE 6. INDEPENDENT CONTRACTOR. CONSULTANT is an Independent Contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an Independent Contractor at all times. CONSULTANT shall be wholly responsible for the methods, means and techniques of performance. CITY shall have no right to supervise methods and techniques of performance employed by CONSULTANT, but CITY shall have the right to observe such performance.

ARTICLE 7. COMPLIANCE WITH LAWS. CONSULTANT agrees that in performing

services pursuant to this Agreement to comply with all applicable regulatory requirements including federal, state and local laws, rules, regulations, orders, codes, criteria, and standards. **CONSULTANT** shall be responsible for procuring all permits, certificates, and licenses necessary to allow **CONSULTANT** to perform services under this Agreement. **CONSULTANT** shall not be responsible for procuring permits required for the construction of any building, unless such responsibility is specifically agreed to by **CONSULTANT**.

ARTICLE 8. CITY'S RESPONSIBILITIES. **CITY** will furnish to **CONSULTANT** all of **CITY'S** requirements for the project, including, but not limited to, scope of work, program, time constraints, schedule milestones, financial constraints, design objectives and design constraints, which are available to the **CITY** or which the **CITY** can reasonably obtain to furnish to **CONSULTANT** to enable **CONSULTANT** to respond to **CITY**. Additionally, the **CITY** shall also be responsible for the following:

- Make final decisions utilizing information supplied by **CONSULTANT**.
- Designate personnel to represent **CITY** in matters involving the relationship between **CITY**, **CONSULTANT** and third parties.
- Provide such accounting, independent cost estimating, and insurance counseling services as may be required by the project.
- Provide such legal services as **CITY** may require or **CONSULTANT** may reasonably request with regard to legal issues pertaining to the project, including those which may be raised by contractors, subcontractors, vendors or other project participants.
- Enter into contracts for the purchase, construction, or other services with contractors, subcontractors, and vendors.
- Provide financing for the project and make all payments in accordance with the terms of the contract.

ARTICLE 9. TERMINATION OF CONTRACT FOR CAUSE. In the event of substantial failure by **CONSULTANT** to perform in accordance with the terms of this contract, the **CITY** shall have the right to terminate **CONSULTANT** upon ten (10) calendar days' written notice in which event **CONSULTANT** shall have neither the obligation nor the right to perform further services under this contract nor shall the **CITY** be obligated to make any further payment for work that has not been performed. **CONSULTANT** shall provide the **CITY** all reports, surveys or other related documents upon the **CITY'S** request.

ARTICLE 10. TERMINATION OF CONTRACT FOR CONVENIENCE. Upon thirty (30) calendar days' written notice to **CONSULTANT**, **CITY** may, without cause and without prejudice to any other right or remedy legally available to the **CITY**, terminate this Agreement. Upon such notice, **CONSULTANT** shall have neither the obligation nor the right to perform services under this Agreement nor shall the **CITY** be obligated to make any further payment for work that has not been performed in accordance with the terms stated herein. In such case of termination, **CONSULTANT** shall be paid for the completed executed in accordance with this Agreement prior to the effective date of termination. Additionally, upon mutual agreement, **CONSULTANT** may be paid for any completed and accepted work which takes place in order to achieve a specifically identified item in the scope of services or a milestone of the Agreement, between the written notice of termination and the effective date of termination. Unless otherwise stated or agreed upon, the effective date of termination shall automatically occur thirty (30) days after the written notice is sent

by the CITY. Upon request by the CITY, CONSULTANT shall provide to the CITY all reports, surveys or other related documents upon the CITY's request and at the CITY's cost. CONSULTANT has no liability for CITY's use of incomplete reports, surveys or related documents.

ARTICLE 11. NONDISCLOSURE OF PROPRIETARY INFORMATION. CONSULTANT shall consider all information provided by CITY and all drawings, reports, studies, calculations, plans, specifications, and other documents resulting from the CONSULTANT'S performance of the services to be proprietary, unless such information is available from public sources. CONSULTANT shall not publish or disclose proprietary information for any purposes other than the performance of the services without the prior written authorization of CITY. CONSULTANT shall not make any written or verbal statement to any press or news media concerning the Project without the written authorization of CITY.

ARTICLE 12. NOTICE. Any formal notice, demand, or request required by or made in connection with this agreement shall be deemed properly made if delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

TO CITY: **CITY OF FAYETTEVILLE**
 ATTENTION: DR. DOUGLAS J. HEWETT
 CITY MANATER
 433 HAY STREET
 FAYETTEVILLE, NORTH CAROLINA 28301

TO CONSULTANT: **[CONSULTANT'S NAME]**
 ATTENTION: CONSULTANT'S CONTACT NAME HERE
 [CONSULTANT'S CONTACT TITLE HERE]
 [CONSULTANT'S ADDRESS]

Nothing contained in this Article shall be construed to restrict the transmission of routine communication between representatives of CONSULTANT and CITY.

ARTICLE 13. FORCE MAJEURE. Neither party shall be deemed to be in default of its obligations hereunder or responsible for any delay or failure of performance if and *so long as* it is prevented from performing such obligations by an act of war, hostile foreign actions, adverse governmental actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

ARTICLE 14. GOVERNING LAW. The validity, interpretation, and execution of this Agreement and the performance of and rights accruing under this Agreement are all to be governed by the laws of the State of North Carolina.

ARTICLE 15. MISCELLANEOUS.

15.1. NONWAIVER FOR BREACH. 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 relegated to such remedies as provided by law.

15.2. PRECEDENCE. In the event of any conflict or discrepancy between the terms of this Agreement and the specific written authorization to proceed pursuant to this Agreement, then the written authorization to proceed shall be given precedence over this Agreement in resolving such conflicts or discrepancies. If any conflict or discrepancy is discovered by either party hereto, then the written authorization to proceed, or this Agreement, shall be modified or amended, as necessary.

15.3. SEVERABILITY. The Parties agree that if any provision of this Agreement shall be held invalid for any reason, the remaining provisions shall not be affected if they may continue to conform to the purposes of this Agreement and the requirements of applicable law.

15.4 STATUTE OF LIMITATIONS. No action, regardless of form, arising out of this Agreement may be brought by either party after the applicable statute of limitations giving rise to the alleged cause of action.

ARTICLE 16. INTEGRATED AGREEMENT. The CITY's authorization to proceed and this Professional Services Agreement for Consulting Services shall be integrated into and shall become the integrated agreement between the parties. CONSULTANT and CITY agree that all prior negotiations, representations, letters, agreements, understandings, or other communications between them, whether written or oral, are hereby merged into the Agreement and that the Agreement supersedes all such prior negotiations, contracts and/or agreements. This Agreement shall not be modified unless such modifications are evidenced in writing, signed by both CONSULTANT and CITY.

ARTICLE 17. BENEFITS LIMITED TO PARTIES. Nothing herein shall be construed to give any right or benefits hereunder to anyone other than CITY and CONSULTANT.

ARTICLE 18. VENUE AND FORUM. The Parties expressly agree that if litigation is brought in connection with this Agreement and (1) the litigation proceeds in the Courts of the State of North Carolina, the Parties agree that the appropriate venue shall be in Cumberland County (Fourteenth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the Parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina.

ARTICLE 19. E-VERIFY. CONSULTANT hereby acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. CONSULTANT further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). CONSULTANT hereby pledges, attests and warrants through execution of this

Agreement that **CONSULTANT** complies with the requirements of Article 2 of Chapter 64 of North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by **CONSULTANT** shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Agreement.

ARTICLE 20. MORALITY CLAUSE. If, in the sole opinion of the **CITY**, at any time **CONSULTANT** or any of its owner(s) or employee(s) or agent(s) (collectively referenced as an “Actor”) engages in any one or more of the actions below, the **CITY** may immediately upon written notice to **CONSULTANT**, terminate this Agreement, in addition to any other rights and remedies that the **CITY** may have hereunder or at law or in equity:

9. bring disrepute, contempt, scandal, or public ridicule to the Actor;
10. subject the Actor to prosecution;
11. offend the community or public morals/decency;
12. denigrate individuals or groups in the community served by the **CITY**;
13. is scandalous or inconsistent with community standards or good citizenship;
14. adversely affect the **CITY**'s finances, public standing, image, or reputation;
15. is embarrassing or offensive to the **CITY** or may reflect unfavorably on the **CITY**; and,
16. is derogatory or offensive to one or more employee(s) or customer(s) of the **CITY**.

ARTICLE 21. DIVESTMENT OF COMPANIES BOYCOTTING ISRAEL OR THAT INVEST IN IRAN CERTIFICATION. **CONSULTANT** certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. § 147-86.58; (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. § 147-86.81 as a company engaged in the boycott of Israel ((i) and (ii) to be collectively referred to as “FD Lists”); and (iii) it will not take any action causing it to appear on the Treasurer’s FD Lists created by the NC State Treasurer during the term of this Agreement. By signing this Agreement, **CONSULTANT** further agrees, as an independent obligation, separate and apart from this Agreement, to reimburse the **CITY** for any and all damages, costs and attorneys’ fees incurred by the **CITY** in connection with any valid claim, brought by a third party, that this Agreement or any part thereof is void due to **CONSULTANT** appearing on the Treasurer’s FD Lists at any time before or during the term of this Agreement.

ARTICLE 22. CITY’S TERMS SUPERSEDE. To the extent that there are terms in any of the attachments that conflict with the terms of this Agreement, the terms of this Agreement are superseding.

ARTICLE 23. SURVIVAL OF TERMS. All warranties, covenants, and representations contained within this Agreement and all applicable work authorizations, if any, shall continue in full force and effect for three (3) years after the execution and delivery of the final product, act, or service taken in furtherance of this Agreement. Survivability shall not be impacted, or otherwise shall not be rendered null or void, by the termination or natural expiration of this Agreement or other applicable work undertaken in furtherance of this Agreement.

ARTICLE 24. NON-DISCRIMINATION. **CONSULTANT** agrees not to discriminate by reason of age, race, religion, color, sex, national origin, disability or other applicable law while

performing the services required herein.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives effective the day and year first above written.

ATTEST:

CITY OF FAYETTEVILLE

JENNIFER L. AYRE
City Clerk

Dr. Douglas J. Hewett, ICMA-CM
City Manager

DATE: _____

[CONSULTANT'S NAME]

BY: _____

PRINT: _____

TITLE: _____

DATE: _____

DRAFT

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

TIFFANY R. MURRAY
Chief Financial Officer