REQUEST FOR PROPOSAL
Construction Equipment Maintenance
RFP # 20S0930

NOTICE IS HEREBY GIVEN that the Cape Fear Public Utility Authority (hereinafter referred
to as "CFPUA" or "the Authority") is requesting proposals for Maintenance for Off-Road Construction Equipment.

CFPUA will receive such proposals in the office of and addressed to:

Cape Fear Public Utility Authority
Finance Department
ATTENTION: Teresa Horsboll, Assistant Procurement Manager

UP TO THE HOUR OF 2:00 PM., Wednesday, July 15, 2020

Firms shall submit their bids, before the date and time of the deadline for receipt of proposals in .pdf format to bids@cfpua.org. A reply will be sent to the email address submitting the bid to confirm receipt. It is the submitting firms' responsibility to confirm that CFPUA has received the bid forms via email. If email reply is not received from bids@cfpua.org, please call 910-332-6401 or 910-332-6589 before the submission deadline.

Copies of the bid document are available from the CFPUA, by emailing bids@cfpua.org or by calling the Procurement Office of Cape Fear Public Utility Authority at (910) 332 – 6401 if unable to download from our website www.cfpua.org

All proposals forms must be properly executed and submitted as part of the bid. The CFPUA reserves the right to reject any or all bids.

Teresa Horsboll
Assistant Procurement Manager

Construction Equipment Maintenance
RFP # 20S0930
Instructions for Bidders

Deadlines Schedule:

Request for quotes	**June 24, 2020**
Deadline for Questions (must be emailed)	**July 8, 2020 @ 2:00 PM**
Deadline for Receipt of proposals	**July 15, 2020 @ 2:00 PM**
Proposed date of Award	**July 22, 2020**

Proposals will be received by Cape Fear Public Utility Authority, to provide service for construction equipment, no later than the date and time specified above at Cape Fear Public Utility Authority. It is the bidder's responsibility to ensure bid is submitted correctly and on time. Late bids will not be accepted. CFPUA reserves the right to reject any and/or all proposals in connection to this project and to waive formalities in the bid. This is NOT a public bid opening.

To register to bid so you receive any updates or changes, for any questions regarding this bid, and for bid submission, email bids@cfpua.org . Questions regarding the bid will be received up to the date and time stated above.

Proposals must be submitted showing prices as requested on the Bid Proposal Form. All proposals forms must be completed and signed.

All bids shall be valid for a period of 60 days pending approval and awarding of contract.

Quoted price should not include any sales or use tax.

Cape Fear Public Utility Authority reserves the right to reject any and/or all bids received, or to select the proposal which, in our opinion, is in the best overall interest of CFPUA.

Proposals will be evaluated by determining the lowest responsible, responsive bidder considering:

- Accuracy of bid submission
- Bidder's ability and capacity to provide scoped services.
- Promptness of response and service times.
- References or past performance

Bidder must meet all the above requirements for the proposal to be considered.

Local Preference Policy
The Cape Fear Public Utility Authority has adopted a Local Preference Policy. Please refer to our website for details. Visit www.cfpua.org, click on the My Business tab, then on Purchasing.

NCGS 143-131 specifies that informal bids are not subject to public inspection until the contract is awarded.

Request for Proposal
Construction Equipment Maintenance
RFP # 20S0930
Scope of Work

Cape Fear Public Utility Authority is seeking cost proposals based on labor rates and parts mark-up for the servicing of Off-Road Construction Equipment.

Attached is a listing of the Construction Equipment that is currently in our fleet. This list will expand and contract as the fleet changes.

Services solicited include but are not limited to:

1. Contractor will furnish the garage facility and all labor, parts, and supplies necessary for the proper equipment maintenance. If routine maintenance is done at a CFPUA site, Contractor will furnish all labor, parts, safety equipment and supplies necessary for the proper equipment maintenance.

2. Routine maintenance, such as changing oil, oil filter, air filter, fuel filters, hydraulic filters, cab filters, pilot control filters, checking (and correcting) all fluid levels, inspect hydraulic lines, inspect all hoses, inspect tires, inspect tracks, inspect top and bottom track rollers, inspect idlers, inspect brakes, check lights, wiper blades, and back up / travel alarms.

3. Routine Maintenance schedule will be based on engine hours (300) or annual service dependent on equipment usage.

4. Scheduled CPFUA Equipment service shall have priority attention.

5. Repair work beyond Routine Maintenance. Contractor will notify CFPUA of all potential work beyond routine maintenance with a written estimate.

6. Contractor shall clearly define any hazardous waste disposal fees or environmental fees, and any shop fees.

7. Contractor will notify CFPUA of all potential manufacturer warranty work.

8. Contractor agrees to maintain an up-to-date file on all cost and charges incurred in the maintenance of each piece of Authority equipment.

9. Contractor agrees to make available to the Authority: a work or service order signed by a CFPUA employee.

10. The following Routine Maintenance Services shall be performed on the Construction Equipment. Responders should be able to accommodate at least two (2) pieces of CFPUA Equipment per day. We require a fixed hourly labor price for these services. The maintenance schedules will be based on engine hours. Filter preference: original equipment manufacturer (OEM) or Baldwin filters should only be used (which ever will give CFPUA the most savings).
    - Change the oil

- Replace oil filter(s)
- Replace all fuel filter(s)
- Replace air filter in engine and cabin (as recommended by manufacturer)
- Replace water filter if applicable
- Replace transmission oil filter
- Replace hydraulic oil filter(s)
- Replace pilot filter(s)
- Visually inspect hydraulic lines
- Visually inspect hoses
- Visually Inspect(Call with price before replacement)
  - antifreeze/coolant reservoir levels
  - engine air filtration system
  - belts
  - brake fluid level in transparent reservoir
  - wiper blades
  - exterior lights
  - backup / travel alarms
- Check and top off the following fluids:
  - transmission/transaxle fluids
  - differential fluid
  - power steering fluid
  - windshield washer fluid
  - battery water (excluding sealed batteries)
- Check tire pressure
- Inspect tracks (steel and rubber), track rollers, idler rollers,
- Inspect brakes. Adjust air breaks if applicable
  - Check for air leaks
  - Lube

CFPUA reserves the right to have its Equipment serviced by another party should the Contractor fail to perform in a timely manner.

Contract start date will be August 1, 2020. All Proposals are subject to renewal each year, upon mutual agreement. The initial term of agreement will be twelve (12) months, with the option to renew after annual review, for up to three (3) additional twelve (12) month terms. See Terms and Renewal in the draft service agreement document for more information.

Late bids will not be accepted. CFPUA reserves the right to reject any and/or all proposals in connection to this project and to waive formalities in the bid. This is NOT a public bid opening.

SECTION 1: ROUTINE MAINTENANCE Construction Equipment
Cost Proposal Sheet RFP #20S0930

Routine Maintenance Services shall be performed on the Construction Equipment. Responders should be able to accommodate at least two (2) pieces of CFPUA Equipment per day. We require a fixed hourly labor price for routine services

COMPANY NAME:_____

Fixed Hourly Labor Rate: $_____ (regular business hours, at your shop)
Materials Mark Up: _____% Over Cost of Item.

Hazardous Waste Fee $_____ Shop/Consumables Fee $_____

Please Explain any additional fees not included above:

_____

ESTIMATED SERVICE TURN-AROUND TIMES:
All scheduled Authority Equipment will receive priority attention.

Service Description	**Enter Estimated Time in Hours : Minutes**
Full service with oil change	:
Belt replacement	:
Hydraulic line replacement	:
Brake pads and rotors (one axle)	:
Brake pads and rotors (two axles)	:
Transmission service	:
Coolant flush	:
Tune-up	:
Transmission replacement	:
Electrical diagnostics	:

SECTION 2: EMERGENCY OR ON-SITE EQUIPMENT Repairs or Servicing
Cost Proposal Sheet RFP #20S0930

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COMPANY NAME:_____

Labor per Hour:

$_____per hour, *outside* of regular business hours including holidays

$_____per hour, for regular business hours, service at CFPUA yard

$_____per hour, *outside* of regular business hours including holidays, service at CFPUA yard

$_____per hour, for roadside assistance during regular business hours

$_____per hour, for roadside assistance *outside* of regular business hours including holidays

Materials Mark Up:_____% Over Cost of Item.

Flat fee $_____ or mileage fee $_____ for after hours or emergency field service work

IF mileage fees are charged, are they calculated from the contractor's shop to the repair site?
Yes____ No____. If no, explain:_____

ESTIMATED EMERGENCY RESPONSE TIME to any location within **New Hanover County** is_____hours.

ESTIMATED EMERGENCY RESPONSE TIME to any location within 30 mile radius of **New Hanover County** is_____hours.

Questionnaire for RFP #20S0930

This information will be used in the proposal evaluation process.

Company Name:_____

1. Number of Years Company has been in business? _____

2. Please attach a copy of your business license or NC Secretary of State number.

3. Professional associations and memberships and/or other community involvement

   _____

   _____

4. Number of people employed _____

5. Total number of certified technicians _____

6. Are your company's mechanics or technicians commissioned or do they receive compensation for work performed or sold?

   _____

   _____

7. List any additional services that your company can provide outside of Preventative Maintenance Work (example: A/C repair and services, machine shop, etc.)

   _____

   _____

8. List any item that you would have to "Sublet" if found during Preventative Maintenance, list the companies you normally outsource this work to and the percent over your cost that you will charge CFPUA for sublet services. Note: Awarded Contractor will not be reimbursed for outsourced services that they can perform in-house. All sublet items must be listed below. (Attach separate sheet if needed.)

Type of Service	Company(ies) may sublet to	% over your cost
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

9. As an authorized equipment repair provider, you will be asked to certify that you believe the estimated repairs made to equipment are the minimum repairs necessary to make the vehicle operationally worthy and safe. Is this something your business would be willing to attest to? Yes_____ No_____

10. Can you provide a certificate of liability insurance covering the limits of insurance described in Terms and Conditions – Draft Service Agreement? Yes_____ No_____

11. The awarded contractor will be required to enter into a Contract for Services with the CFPUA. A sample of the Contract is attached for review. Will you be able to comply with the terms and conditions of the Contract and sign such Contract? Yes_____ No_____

12. Providers will be required to submit itemized invoices detailing the cost per part, the number of labor hours and hourly rates per service, as well as sales tax on parts. Will you be able to provide itemized invoices for reimbursement? Yes_____ No_____ Please attach a standard example of an invoice.

13. Did you provide references of similar business customers on separate letterhead? At least 3 references should be current. Include business name, contact name, contact phone number, and business address.

14. What are your regular days and hours of operation? _____

15. What software will be used to track equipment maintenance and associated costs. Please attach sample reports that can be generated. A breakdown by equipment is preferred. _____

16. Is your business an authorized sales or service center for a particular make of Construction equipment? Yes____ No_____. If so what make(s)_____

17. Can you provide heavy equipment transportation? Yes_____ No_____

    If so, what is your average pickup/ delivery fee._____

18. Are your grounds secured? Yes_____ No_____

    Please explain._____

19. References: Provide at least three (3) current inspection customers and their contact information, to include Company name, contact name, phone number and/or email address.

Company Name	Contact Name	Phone	Email

By signing this Bid Proposal Sheet, the Company, if selected, agrees to perform the services listed in the preceding pages and bill for services using the rates quoted on this "Bid Proposal Sheet". A Company representative, hereby acknowledges that he has read, understands and agrees to the "Standard Terms and Conditions" in the draft service agreement.

Please provide the following information on your company:

Company Legal Name:	
Mailing Address:	
City, State, Zip:	
Phone:	**Email:**
Printed Name:	**Title:**
Signature:	**Business License:**

Type of Company:
check one

__**Sole Proprietor**

__**Partnership**

__**Corporation** **State of incorporation:** _____

__**LLC** **State of incorporation:** _____

Is your company a minority owned company? _____Yes _____No
If so is it _____MBE _____WBE _____HUB_____DBE

Cape Fear Public Utility Authority
2020
MASTER LISTING

Year	Make/Model	Description
2011	Argo (Tundra)	Argo Avenger 8x8
2009	Argo (Tundra)	Argo Avenger 700 8x8 ATV
2018	Argo 18 Conquest XT	Argo 18 Conquest 8x8 XT Industrial Yellow
2017	Argo Conquest 8x8 Ti	8 wheel Amphibious Vehicle
2015	ASV / Terex PT110	Forestry Compact Track Loader
2019	Bobcat T870 T4	Compact Track Loader w/ severe duty bucket
1999	Ditch Witch	Trencher
2019	I40EXC2-DCR-45VDB-OLPK14	Mulcher for Excavator Deere 210
2015	con Mulcher BH074SS-S-35-L	Bull Hog Forestry Mulcher Attachment for Terex PT110
	Gradall 542	4x4 Forklift
	Gradall 543D-6	4x4 Forklift
2000	Hyundai HL740TM-S	Front End Loader
2016	JCB 100C-1	Mini Excavator
2006	JCB 214	Backhoe w/ 24" bucket
1999	JCB 214	Backhoe
1999	JCB 214 Sitemaster	Backhoe
2018	JCB 427 ZX T4F	Front End Bucket Loader
2007	JCB E2EX	Excavator
2000	JCB HT411B	Front End Loader
1992	John Deere	590D CRWLR Excavator
	John Deere	Gator HPX
	John Deere	Gator TX
	John Deere	Gator TX
	John Deere	Gator TX
1987	John Deere	215S Tractor
2012	John Deere 210GCL	Excavator - 50K
2006	John Deere 270 DLC	Excavator
1989	John Deere 644E	Front End Loader
2011	John Deere 7330	Tractor
2018	John Deere HPX615E	Gator, John Deere, HPX615E (MY18)
2018	John Deere HPX815E	Gator, John Deere, HPX815E (MY18)
2007	John Deere HPX 4x4	Gator
2009	John Deere HPX 4x4	Gator
2013	John Deere HPX 4x4	Gator
	John Deere XUV	Gator
	Komatsu	Excavator - Hydraulic
2002	Komatsu PC45MR-1	Mini Excavator
2009	Kubota KX 161-3	Mini Excavator
2012	Kubota KX121R3AT3	Excavator (mini) w/ Hammer Breaker
	Lay-Mor 6HC-6	Sweeper/Rolling Broom
2002	New Holland 7610-S	Tractor
2005	New Holland TB110	TRACTOR
2019	TYM 394 HST	Small Tractor w/ bucket

NORTH CAROLINA
COUNTY OF NEW HANOVER

CONTRACT NO: 20S0930

AGREEMENT BETWEEN
THE CAPE FEAR PUBLIC UTILITY AUTHORITY
AND

_____

THIS CONTRACT made and entered into this __ day of _____, 20__, by and between **CAPE FEAR PUBLIC UTILITY AUTHORITY**, hereinafter referred to as "AUTHORITY", located in New Hanover County, North Carolina and;_____, a corporation organized under the laws of the State of North Carolina and hereinafter referred to as "CONTRACTOR".

W I T N E S S E T H :

1. **Scope of Services:** Routine and Unscheduled

Maintenance for Construction Equipment as outlined in Cape Fear Public Utility Authority Request for Proposal

2. Contractor Duties

The Contractor shall supply all materials, equipment, labor, and other items needed to perform and execute the work (hereinafter referred to as the Work) described in the Proposal. The Work will be performed on the equipment at the Contractors' place of business, or common CFPUA location where equipment is parked when not in use, or in case of emergency, at the location of the equipment. Authority will provide Contractor with such permissions as required for access to the sites. The Work shall be performed in accordance with generally accepted industry standards, practices, and principles applicable to the work, and the Work sites maintained reasonably free of trash and waste materials. The Contractor shall supervise and direct the Work and shall be solely responsible for and in control of the means, methods, procedures, techniques and sequences of doing the Work. Except as otherwise provided in the Scope of Work, the Contractor shall pay for all labor, equipment, tools, transportation, subcontractors fees, and other items needed to perform and execute the Work.

Contractor will be responsible for obtaining a signature (both written and printed) on the service paperwork, showing receipt of the stated work. Contractor will provide detailed monthly reports of equipment expenses by equipment asset number or s/n, and department. At the end of the year a summary report for each piece of equipment from the previous year shall be submitted to authority to include all maintenance charges and dates of inspection.

3. Schedule

The routine maintenance work will be based on engine hours (300 hours) or annually. Contractor will be required to co-ordinate with Authority's Representative to schedule routine or extended maintenance, repairs, and inspections. Contractor will obtain permission prior to beginning any work beyond the work considered as routine maintenance such as extended service work or repairs to Equipment which are recommended due to problems found during the inspection or routine maintenance process.

4. Delivery of Materials

Contractor is responsible for all off loading of materials and furnishing tools and equipment necessary to complete repairs, maintenance.

5. Additional Work

Any repairs identified during the performance of routine maintenance shall be described and submitted in writing along with an estimated cost of repair. The Authority must approve the repair prior to such repair being undertaken.

6. Custody and Care of Property

Contractor agrees that he/she shall be responsible for the proper custody and care of any Equipment or property furnished for use in connection with the performance of this contract or purchased by it for this contract (i.e. repair manuals) and will reimburse Authority for loss of damage of such property. Authority's Equipment and trailers should be stored in a secure location if it is necessary for them to remain in the contractor's custody over night.

7. Supervision and Superintendence

Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Authority's requirements. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of the work.

Contractor shall provide competent, suitably qualified personnel to complete the Work as required by these documents. Contractor shall at all times maintain good discipline and order at the Site.

Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work outside of regular working hours without Authority's written consent (which will not be unreasonably withheld) given after prior written notice to Authority. After hour emergency service work is excluded.

Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects,

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attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.

8. <u>Safety and Protection</u>

Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to (1) all persons on the Site or who may be affected by the Work and (2) all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site.

Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. All damage, injury, or loss to any property referred to in this Safety and Protection section caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the acts or omissions of Authority or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Authority has accepted the work.
CFPUA is committed to providing safe conditions for employees, contractors, vendors, and visitors while occupying CFPUA facilities. Strict adherence to State and Federal OSHA and EPA Regulations will be required.

Hazard Communication Programs: Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employees at the Site in accordance with Laws or Regulations.

Contractor shall not be responsible for any unforeseen hazardous environmental condition uncovered or revealed at the site, however, Contractor shall be responsible for a hazardous environmental condition created with any materials brought to the site by the contractor, subcontractor, supplier, or anyone else for whom Contractor is responsible. If contractor encounters or creates a hazardous environmental condition, Contractor shall deal with the condition in accordance with applicable Federal and State regulations.

9. <u>Tests and Inspections</u>

Contractor shall give Authority timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests. Contractor shall provide Authority with results of all testing.

10. <u>Warranties</u>

Contractor shall warranty their repairs for no less than (90) days for workmanship, and for the full manufacturer warranty period on materials.

11. Invoicing

Contractor shall bill Authority on an as completed basis for any pre-approved repair work and scheduled maintenance work. Invoices shall include all sales taxes paid relative to the Work, Purchase Order number, description of item(s), quantities, unit price, extended price, freight, state and local taxes, date of delivery and equipment number. Receipted freight bills shall support invoices for prepaid transportation charges.

The Authority is not exempt from North Carolina State and local tax. North Carolina and local sales tax shall be shown as a separate item on the invoice.
The Cape Fear Public Utility Authority is exempt from and will not pay *federal* taxes. An exemption certificate will be furnished upon request.

All invoices are to be mailed to the Finance Department to the remittance address listed on the Purchase Order or emailed to ap@cfpua.org .Each purchase order must be invoiced separately. Invoices for partial shipments will be accepted and final invoices should indicate completion of order. Reference the purchase order number on all invoices. The Authority will not be responsible for any goods/services delivered without a purchase order. Terms are **Net 30.**

12. Contract Price

The Authority hereby agrees to pay to the Contractor in lawful money of the United States for the faithful performance of this agreement in accordance with quoted prices as set forth in the Cost Proposal sheet, subject to allowable additions and deductions through amendments, a total not to exceed amount of **$60,000** per 12 month contract term. There is no guarantee of using the full value of the contract in a 12 month term.

13. Payment of Contract Price

Payment will be made by the Authority in full for all delivered services and products as soon after complete delivery and receipt of a correct invoice can be processed in accordance with these specifications. Terms are **Net 30.**

The Authority may withhold payments if the Authority has received claims of lien by subcontractors for unpaid labor or materials, if the work of the Contractor is defective, if the Contractor fails to diligently pursue the work with reasonable dispatch, or if the amount requested is not consistent with the level of Work actually performed.

14. Terms and Renewal

Contract will be effective Aug 1, 2020 and will be for an initial term of twelve (12) months. Contractor is bound to the quoted prices for the full twelve (12) month term.

Upon each anniversary date of any resulting agreement, Authority and Contractor, upon mutual agreement, shall have the option to renew this contract for one twelve (12) month term. This contract may be renewed up to three (3) times at the same prices, terms and conditions as stated in the original contract.

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15. Authority's Representative

Authority designates the following as its representative, who shall have authority to transmit instructions, receive notices and information, and enunciate the Authority's policies and decisions in regards to the Work in their respective areas:

Julia Faircloth	Contract/Bid - Primary
Teresa Horsboll	Contract/Bid - Secondary
Kevin Boyett	Service - Primary
Thomas Burdette	Service – Secondary

A contact from each division may be assigned upon award of contract.

16. Records

Contractor shall maintain all records, documents, notes, and financial information related to performance of the Work in accordance with generally accepted accounting principles and practices and shall provide the Authority access to such information if requested. Any information, data, instruments, documents, studies or reports given to or prepared or assembled by Contractor under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of Authority.

17. Errors/Deficiencies

Contractor shall, without additional compensation, make any corrections to inferior or incomplete work done under this agreement if it is determined that Contractor is responsible for any errors or deficiencies.

18. Notices

All notices required under this agreement shall be in writing and mailed first class by US Mail, postage prepaid, to the address for each party set forth above.

19. Limitations on Authority's Responsibilities

The Authority shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Authority will not be responsible for Contractor's failure to perform the Work in accordance with this agreement.

20. Release and Indemnity

To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify, hold harmless, and defend the officers, directors, members, partners, employees, agents, contractors and other Contractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs)

arising directly or indirectly out of the obligations herein undertaken or resulting from the operations conducted, to the extent caused by any negligent act or omission of CONTRACTOR, any sub-Contractor of CONTRACTOR, or any individual or entity directly or indirectly employed by any of them to perform any of the Services or anyone for whose acts any of them may be liable.

21. Personnel

It is mutually agreed that CONTRACTOR is an independent contractor and not an agent or employee of the AUTHORITY, and as such the CONTRACTOR, or any employees thereof, or sub-contractors, or any employees thereof, shall not be entitled to any Authority employment benefits, such as, but not limited to, wages or salary, vacation, sick leave, insurance, workers' compensation, or pension and retirement benefits.

21.1 E-Verify

CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if CONTRACTOR utilizes a subcontractor, CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

22. Conflict of Interest

No paid employee of the AUTHORITY shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this agreement.

23. Non-Waiver of Rights

It is agreed that the AUTHORITY'S failure to insist upon the strict performance of any provision of this agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this agreement.

24. Suspension or Termination of Agreement

1. In the event that review of the CONTRACTOR'S performance shows non-conformance to the work required by this contract, the Scope of Services or other terms or conditions contained herein as a result of the CONTRACTOR'S negligent errors, omissions or acts, the CONTRACTOR shall be in breach of this agreement and the AUTHORITY may take corrective action as it deems necessary including, but not limited to, termination, withholding or reduction of payment.

2. The AUTHORITY shall also have the right to suspend this agreement upon written notice to the CONTRACTOR. Such written notice shall state the reasons for suspension and allow for a review period of ten (10) days during which the CONTRACTOR shall be provided with an opportunity to respond with an explanation or justification, and/or shall undertake any reasonable remedial action required by the AUTHORITY. If, in the opinion of the AUTHORITY the CONTRACTOR remains in violation of this agreement at the completion of the ten (10) day

suspension period, the AUTHORITY shall have the right to terminate this agreement whereupon all obligations of the AUTHORITY to the CONTRACTOR shall cease.

3. In the event this project is terminated prior to completion of the services by the CONTRACTOR, the CONTRACTOR shall be paid for services performed to the date of termination. (In no event will the amount due CONTRACTOR in the event of termination exceed that amount set forth in paragraph IV of this agreement. CONTRACTOR shall be paid for all reimbursable, as defined herein, which are due him.)

4. This agreement may be terminated without cause by the AUTHORITY with thirty (30) days written notice to CONTRACTOR.

5. Nothing contained herein shall prevent the AUTHORITY from pursuing any other remedy which it may have against CONTRACTOR including claims for damages.

25. Assignment of Agreement

It is mutually agreed by the parties hereto that this agreement is not transferable by CONTRACTOR without the written consent of the other party to this agreement.

26. Insurance Requirements

CONTRACTOR shall maintain insurance from companies licensed to write business in North Carolina, with an A.M. Best rating of “A” or higher, and acceptable to the AUTHORITY, of the kinds and minimum amounts specified below.

Certificates and Notice of Cancellation. Before commencing work under this contract, CONTRACTOR shall furnish AUTHORITY with certificates of all insurance required below. Certificates shall indicate the type, amount, class of operations covered, effective date and expiration date of all policies.

Each insurance policy required by this contract shall be endorsed to state that coverage shall not canceled by either party except after 30 days prior written notice has been given to Cape Fear Public Utility Authority, 235 Government Center Drive, Wilmington, NC 28403.

The Certificate of Insurance, naming the AUTHORITY as an additional insured where specified, shall be further evidenced by an actual endorsement furnished to the AUTHORITY from the insurer within thirty (30) days of the signing of the contract between the CONTRACTOR and the AUTHORITY, and is included as Attachment D of this AGREEMENT.

The amount of insurance to be provided for all coverages listed under this section shall be not less than $1,000,000.00, unless otherwise specified, per occurrence for claims arising from bodily injury and/or property damage, including accidental death which may arise directly or indirectly from CONTRACTOR'S performance of professional services under this contract. The CONTRACTOR shall be responsible for any liability directly or indirectly arising out of professional services performed under this contract by a subcontractor which liability is not covered by the subcontractor's insurance.

1. **Commercial General Liability**

The CONTRACTOR shall take out and maintain during the life of this contract COMMERCIAL GENERAL LIABILITY INSURANCE, coverage. The AUTHORITY shall be named as an additional insured under this policy. Unless otherwise specified, this coverage shall be written providing liability limits at least in the amount of $1,000,000 per occurrence/$3,000,000 aggregate, Combined Single Limits, applicable to claims due to bodily injury and/or property damage arising from an occurrence. Exclusions applicable to explosion, collapse and underground hazards are to be deleted when the work involves these exposures. The AUTHORITY shall be named an additional insured on this policy.

2. **Workers' Compensation and Employer's Liability**

Contractor shall maintain Workers' Compensation as required by the general statutes of the State of North Carolina and Employer's Liability Insurance.

The Employer's Liability, and if necessary, Commercial Umbrella Liability insurance shall not be less than $500,000 each accident for bodily injury by accident, $500,000 each employee for bodily injury by disease, and $500,000 policy limit.

The insurer shall agree to waive all rights of subrogation against the Cape Fear Public Utility Authority, its officers, officials, and employees for losses arising from work performed by the contractor for Cape Fear Public Utility Authority.

3. **Business Auto Liability**

The CONTRACTOR shall take out and maintain during the life of this agreement AUTOMOBILE LIABILITY INSURANCE. Such coverage shall be written on a comprehensive form covering owned, non-owned, hired and leased Equipment, providing liability limits at least in the amount of $1,000,000 per occurrence combined single limits applicable to claims due to bodily injury and/or property damage.

The CONTRACTOR shall furnish the schedule of insurance carried under this contract in the form of a Certificate of Insurance attested by the insurance carrier or appointed agent, indicating the type, amount, class of operations covered, effective date and expiration date of all policies. This Certificate shall be in three (3) counterparts and when the contract is signed by the CONTRACTOR, a copy thereof shall be inserted in each copy of the contract documents and upon insertion shall become a part of such documents.

4. **Garagekeeper's Legal Liability**

If storing Equipment, the contractor shall maintain garagekeepers insurance with a limit of not less than $150,000.00 for property damage to Equipment and vehicle equipment while in the contractor's care, custody, or control; including losses caused by collision and comprehensive perils.

5. **On-Hook Cargo** – *Only if Towing Equipment*

Contractor shall maintain On-Hook Cargo insurance with a limit of not less than $150,000.00 for property damage to Equipment and vehicle equipment or miscellaneous equipment while in the course of transit. The required limit of insurance shall apply separately per vehicle or piece of equipment if the mode of transport allows for more than one unit.

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27. Findings Confidential

All of the information, reports, cost estimates, plans, specifications and documents prepared or assembled by the CONTRACTOR under this agreement are confidential. The CONTRACTOR agrees that any such documents shall not be made available to any individual or organization other than appropriate AUTHORITY officials without prior written approval of the AUTHORITY. Nothing contained in this paragraph shall be construed to prevent the CONTRACTOR from making information, reports and documents available to those individuals or firms directly concerned with the project involved with prior written agreement of the AUTHORITY.

28. Subcontracts

The CONTRACTOR shall utilize no subcontracts for carrying out the services to be performed under this agreement without the written approval of the AUTHORITY.

29. Entire Agreement

This agreement constitutes the entire understanding of the parties.

30. Binding Effect

This agreement shall be binding upon the heirs, successors, assigns, agents, officials, employees, independent contractors, and subcontractors of the parties.

31. Continuing Obligation

The parties will make and execute all further instruments and documents required to carry out the purposes and intent of the agreement.

32. Reference

Use of the masculine includes feminine and neuter, singular includes plural; and captions and headings are inserted for convenience of reference and do not define, describe, extend or limit the scope of intent of the agreement.

33. Interpretation

All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard.

34. Immunity Not Waived

This agreement is governmental in nature for the benefit of the public and is not intended to be for private profit or gain. Any fees charged hereunder are intended to reflect as closely as possible the AUTHORITY'S actual cost and neither party intends to waive its sovereign immunity by reason of this agreement.

35. Saving Clause

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If any section, subsection, paragraph, sentence, clause, phrase or portion of this agreement is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

36. Other Laws and Regulations

CONTRACTOR will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances regarding toxic, hazardous and solid wastes and any other pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. CONTRACTOR will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Management, Health Departments, and any other federal, state or local agency having jurisdiction, to insure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder.

37. Amendments

This agreement shall not be modified or otherwise amended except in writing signed by the parties.

38. Non-Discrimination

CONTRACTOR will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this agreement because of race, creed, color, sex, age, disability or national origin. To the extent applicable, CONTRACTOR will comply with all provisions of Executive Order No. 11246 the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state and local laws, ordinances, rules, regulations, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this agreement and may result, at AUTHORITY'S option, in a termination or suspension of this agreement in whole or in part.

39. Dispute Resolution

In the event of any dispute between the parties arising out of or in connection with the Agreement or the services or work contemplated herein; the parties agree to first make a good faith effort to resolve the dispute informally. Negotiations shall take place between the designated principals of each party. If the parties are unable to resolve the dispute through negotiation within forty-five (45) days, then either party may give written notice within ten (10) days thereafter that it elects to proceed with mediations pursuant to the commercial mediation rules of the American Arbitration Association. In the event that mediation is not invoked by the parties or that mediation is unsuccessful in resolving the dispute, then either party may submit the controversy to a court of competent jurisdiction located in New Hanover County, North Carolina which shall be the sole forum for any litigation with respect to this Agreement or the

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subject matter thereof. The foregoing is a condition precedent to the filing of any action other than an action for injunctive relief or if an applicable statute of limitations may expire.

Each party shall be responsible for its own costs and expenses including attorneys' fees and court costs incurred in the course of any dispute, mediation or legal proceeding. Provided, however, that the fees of the mediator and any filing fees shall be shared equally by the parties.

40. Environmental Policy:

The Authority has developed and implemented an ISO 14001 Environmental Management System (EMS), and is third party certified. Per the certification the Authority must ensure all persons doing work on their behalf is made aware of our Environmental Policy. Visit www.cfpua.org, click on How Do I…?, Learn About, and then choose Environmental Protection. Contractor/Vendor certifies by signing this agreement that they have reviewed the Environmental Policy and understand their work contributes to the effectiveness of the EMS and may have a positive or negative impact on the Environment.

41. Advertising:

No advertising, sales promotion, other materials or presentations of the Contractor will identify or reference this contract, or the Cape Fear Public Utility Authority's name without the written consent of the Authority. This includes professional conferences, meetings and other events where the Contractor may be discussing or referencing either verbally or in writing Cape Fear Public Utility Authority and/or the services or products covered under this contract. Exception may be taken to the above with regard to listing the Authority as a job history reference in responses to requests for proposals.

41. Iran Divestment Act Certification:

The Contractor named in this agreement is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. Article 6E, §147. Contractor shall not utilize any subcontractor found on the State Treasurer's Final Divestment List located on the State Treasurer's website at the address www.nctreasurer.com/Iran

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SIGNATURES

IN WITNESS WHEREOF, the OWNER has caused this Agreement to be duly executed in its name and behalf and the CONTRACTOR has cause this Agreement to be duly executed in its name and behalf and its corporate seal to be hereunto affixed, and attested to.

CONTRACTOR **CORPORATE SEAL:**

NAME:_____

ADDRESS:_____

_____

SIGNED BY: _____ ATTESTED BY:_____

[President, Vice Pres, Assistant Vice Pres] *[Secretary, Officer]*

PRINT NAME:_____ PRINT NAME:_____

TITLE:_____ TITLE:_____

I, _____, a Notary Public, certify that the corporation's Secretary,
[Notary (Print)]
Assistant Secretary, or Trust Officer, _____ personally
[Secretary, Officer]
came before me this day and acknowledged that s/he is the Secretary or Trust Officer of _____, a Corporation, and that by authority duly given and

as act of the corporation, the foregoing instrument was signed in its name by its

President, Vice President, or Assistant Vice President, _____, sealed with
[President,VP,AVP]
its Corporate Seal, and attested by him/herself as its Secretary, Assistant Secretary, or Trust

Officer.

WITNESS my hand and official seal this the _____ day of _____, 20____.

_____

Notary Public My commission expires: _____

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OWNER

CAPE FEAR PUBLIC UTILITY AUTHORITY SEAL:

235 Government Center Drive
Wilmington, North Carolina 28403

BY: _____ ATTEST: _____

Jim Flechtner
Executive Director

Donna S. Pope
Clerk to the Board

NORTH CAROLINA
_____COUNTY

I, _____ the undersigned Notary Public do hereby certify that Donna S. Pope personally came before me this date and acknowledged that she is the Clerk to the Board of Cape Fear Public Utility Authority, Wilmington, North Carolina, and that, by authority duly given and the act of the Board, the foregoing document was signed in its name by its Executive Director, sealed with its corporate seal, and attested by herself as its Clerk.

WITNESS my hand and official seal this the ____ day of _____, 20 ____.

_____
Notary Public

My commission expires: _____

AUTHORITY ATTORNEY'S CERTIFICATION

This instrument has been reviewed and is approved as to form this the ____ day of _____, 20____.

_____
Linda Miles
Consulting Attorney to the Board

AUTHORITY ACCOUNTANT'S CERTIFICATION

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act this the _____ day of _____, 20____.

_____
John McLean
Chief Financial Officer

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