

**MEMBER COOPERATIVE BID AGREEMENT
FOR JOINT PURCHASING OF
UTILITY MATERIALS, SUPPLIES AND EQUIPMENT**

THIS IS A MEMBER COOPERATIVE BID AGREEMENT made effective the _____ day of _____, 2021, among the North Carolina municipalities and other local political subdivisions, authorities, and agencies of local government being parties signatory to this Agreement either originally or by counterpart executed from time to time (referred to herein individually as a "**Participating Member**" and collectively as the "**Participating Members**") and ELECTRICITIES OF NORTH CAROLINA, INC., a joint municipal assistance agency ("ElectriCities").

RECITALS

A. Each Participating Member desires to purchase various materials, supplies and items of equipment for use in the operation of its electric utility system (referred to herein collectively as ("**Utility Equipment**") during the 2021-2024 calendar years; and desires to jointly advertise and receive bids for fixed prices on those items of Utility Equipment to obtain the lowest price reasonably available to them.

B. Pursuant to §160A-460 et seq. of the General Statutes of North Carolina, the Participating Members desire to join in this Agreement for the purpose of jointly advertising for and receiving bids for one or more vendors to provide a fixed price or prices to supply various items or category of items of Utility Equipment as may be desired by two or more of Participating Members, to identify the lowest responsive and responsible bidder(s) for each item or category of items, to award a fixed price contract and establish a process whereby each of the Participating Members may issue purchase orders against such fixed price contracts as specified in the bid documents, and to have ElectriCities provide administrative assistance to the Participating Members in the bid and award process and in the administration of the contracts, all in conformity with the requirements of North Carolina General Statute § 143-129 and other relevant public procurement laws.

COVENANTS

NOW, THEREFORE, the parties hereto agree as follows:

1. Scope of Member Cooperation. The Participating Members associate themselves under this Agreement for the purpose of proceeding jointly in the competitive procurement of various items of categories of Utility Equipment. As set forth below, the Participating Members, with the administrative assistance of ElectriCities, shall prepare the appropriate bid materials, place required advertisements, receive bids, determine the lowest responsive and responsible bidder(s) (the "**Vendor(s)**"), award a fixed price contract and establish a process whereby each of the Participating Members desiring to participate in a joint bid may issue purchase orders against such contracts directly to the Vendor(s). The Participating Members acknowledge and agree that this Agreement is for the purpose of interlocal cooperation

under North Carolina General Statute §160A-460 et seq. and not as a partnership or joint venture. No Participating Member shall have the power or right to bind or act on behalf of any other Participating Member except as expressly set forth in this Agreement. Neither this Agreement, nor the fixed price contract contained in the bid documents, shall be considered a requirements contract, and a Participating Member will have no obligation to a Vendor under or in connection with the same until and only if the Participating Member issues a purchase order as specified in the bid documents against the fixed price contract to that Vendor. The fixed price contract shall provide that by issuing a purchase order as specified in the fixed price contract to a Vendor for a particular item, the Participating Member will be covenanting not to purchase that item, and that item only, from a source other than the successful Vendor for the term of the fixed price contract. Except as set forth in the preceding sentence, nothing herein shall preclude a Participating Member from purchasing any item or category of Utility Equipment from any source or under any procedures it deems appropriate, in its sole and absolute discretion.

2. Term. The term of this Agreement shall commence on the date hereof and shall end on December 31, 2024.

3. Participation of ElectriCities. Pursuant to this Agreement, the Participating Members have requested that ElectriCities assist them in the administration of the joint bid process and to exercise each other and further powers as may be reasonably necessary to administer the joint fixed price contract as deemed in the best interest of the Participating Members. Except as provided in Section 7 below, the Participating Members shall jointly and severally release, indemnify, defend and hold harmless ElectriCities, and its officers, directors, commissioners, officials, employees and agents, from and against any and all loss, liabilities, claims, damages, fines, penalties, clean-up costs and other pollution related items, costs, fees (including reasonable attorney's fees) and expenses related thereto (referred to herein collectively as "Damages"), resulting or arising out of the services to be provided hereunder by ElectriCities, including, without limitation, those resulting or arising out of the acts or omissions.(negligent or otherwise) of ElectriCities or its officers, directors, commissioners, officials, employees or agents, except those resulting solely from their gross negligence or willful misconduct.

4. Appointment of an Acting Member. By joining in the execution of this Agreement, each Participating Member hereby authorizes the City of Rocky Mount (Rocky Mount"), or such other Participating Member as shall be designated as provided below, to act on its behalf under this Agreement pursuant to North Carolina General Statute §160A-460 et seq. At any time and from time to time, Rocky Mount or a majority of the Participating Members may designate a Participating Member other than Rocky Mount to perform the tasks of Rocky Mount for one or more of the joint bids to be made pursuant to this Agreement. Hereinafter Rocky Mount and the other Participating Member(s), if any are designated as herein provided, shall be referred to as the "**Acting Member**" in connection with each joint bid.

a. Powers and Duties. With the assistance of ElectriCities, the Acting Member, or its delegates under North Carolina General Statute §143-129(a), shall have the following powers and duties:

(i) To canvass or otherwise determine what items or categories of Utility Equipment are desired by the Participating Members, and for which of those items or categories bidding under this Agreement might be advisable,

(ii) To prepare a joint invitation for bids for each item or category of Utility Equipment to be jointly bid hereunder, with appropriate terms and specifications, together with a joint advertisement consistent with the public bid laws, and with the joint purchase approach contemplated by this Agreement. In carrying out this duty, the Acting Member shall observe the following requirements:

(1) The bid documents shall clearly state:

(a) That upon award, the Vendor agrees to enter into the fixed price contract included in the bid documents within the time period set forth in the bid documents, which period shall not exceed thirty (30) days, and to comply with all purchase orders, if any, issued by a Participating Member;

(b) That no contract enforceable against any Participating Member is formed until that Participating Member accepts the fixed price contract and issues its individual purchase order as specified in the bid documents to the Vendor and that the Participating Member's liability to the successful Vendor shall exist solely pursuant to, and only to the extent of, its individual purchase orders.

(2) The right shall be reserved to make multiple awards when it appears in the best interest of the Participating Members. The joint advertisement shall be placed in newspapers having general circulation or any other media permitted in the then current North Carolina General Statutes addressing public bidding and advertisement, and otherwise qualified to advertise legal notices, in each Participating Member desiring to participate in a joint bid.

(3) The location for the receipt and opening of the public bids shall be the offices of ElectriCities in Raleigh, North Carolina, or such other location as shall be designated by the Acting Member.

(iii) To examine the bids to identify all bids complying with the terms and specifications of the invitation for bids, and to tabulate all complying bids, identifying the lowest responsive and responsible bidder or bidders, taking into consideration matters permitted by law and deemed appropriate by the Acting Member; to cause the tabulation and the identification of the lowest responsive and responsible bidder(s) to be transmitted by ElectriCities to each Participating Member, or its delegates under North Carolina General Statute §143-129(a); thereafter, unless otherwise instructed by a majority of the Participating Members desiring to participate in a joint bid, or unless good cause appears to the Acting Member to either recall the tabulation due to error or to reject all bids and cancel the procurement (notification of which decisions shall be transmitted to each Participating Member), to cause a notice to be sent to the lowest and best responsive and responsible Vendor on behalf of all Participating Members desiring to participate in a joint bid together with a fixed price contract form to be executed as set forth in the bid documents;

(iv) to execute fixed price contracts on behalf of the Participating Members desiring to participate in a joint bid and to cause the transmittal of copies of each such contract to each Participating Member desiring to participate in a joint bid, or its delegees under North Carolina General Statute § 143-129(a); and

(v) to exercise such other and further powers as may be reasonably necessary to administer the joint fixed price contracts or as otherwise consistent with the public procurement procedures of the Acting Member.

b. **Hold Harmless.** Each of the Participating Members, other than the Acting Member; hereby jointly and severally agrees, to the fullest extent permitted by law, to release, indemnify, defend and hold harmless the Acting Member, and its officers, councilmen, officials, employees and agents, from and against any and all Damages resulting or arising out of acts or omissions (negligent or otherwise) of the Acting Member, or its officers, councilmen, officials, employees or agents as the Acting Member, except those resulting solely from their gross negligence or willful misconduct, including without limitation, the Acting Member's execution of the Fixed price Contract on behalf of the Participating Members. ElectriCities and the Participating Members agree that the provisions of this paragraph 4(b) shall apply separately to each joint bid conducted pursuant to this Agreement and that the "Acting Member" may be different for one or more joint bids and that this paragraph shall be interpreted and applied accordingly.

5. Purchase Orders. Each Participating Member or its delegees under North Carolina General Statute §143-1 29(a), shall be responsible for preparing and executing its own purchase order or orders for each item or category of items of Utility Equipment it desires to purchase pursuant to this Agreement, if any, which purchase orders shall not be inconsistent with the bid documents used in this cooperative bidding. Each purchase order shall provide that the Participating Member shall be solely liable for obligations to the party shown as Vendor on the purchase order and shall permit each Participating Member, at its option, to waive bonding requirements as provided in the North Carolina General Statutes.

6. Administration of Purchase Contracts. Each Participating Member shall be solely responsible for the administration and enforcement of its respective purchase orders, if any, and to see that the party shown as Vendor on the purchase order fulfills its obligation to that Participating Member. Each Participating Member will notify ElectriCities as soon as is practicable of any problems or disputes with a vendor, and ElectriCities shall use its good faith efforts to assist the Participating Member in its efforts to resolve the problem or dispute. Each Participating Member hereby agrees, to the fullest extent permitted by law, to release, indemnify, defend and hold harmless the other Participating Members, and their respective officers, councilmen, officials, employees and agents, from and against any and all Damages arising or resulting from that Participating Member issuing a purchase order in connection with a joint bid conducted pursuant to this Agreement.

7. Costs and Expenses. ElectriCities shall bear the administrative costs and expenses of activities it participates in pursuant to this Agreement, including the costs of placing all joint legal advertisements in connection with the public bid. Costs may be recovered as agreed upon between ElectriCities and the Participating Members.

8. Assignment. To the extent allowed by applicable law, no Participating Member may assign this Agreement or any of its rights or obligations hereunder without the prior consent of all the other Participating Members.

9. Notice. Except as provided in Section 4.a. hereof, all notices and other communications authorized or required hereunder shall be in writing and shall be deemed given when hand delivered, upon confirmation of receipt of facsimile transfer or three (3) days after being sent by certified mail, return receipt requested, postage prepaid, to ElectriCities and the Participating Members at the last address of each as on record at ElectriCities, or such other address or addresses as a Participating Member hereto may hereafter designate by notice to the other parties hereto given in the manner provided for notices hereunder:

ElectriCities of North Carolina, Inc.
Procurement Specialist
Post Office Box 29513
Raleigh, NC 27626-0513
Facsimile Number: (919) 715-6055

10. Counterparts. This Agreement may be executed in two or more counterparts or through the use of counterpart signature pages. The signature of any party on any counterpart signature page, even if executed after the date of this Agreement, shall be deemed to be a signature to, and may be appended to, a counterpart of this Agreement. All such counterparts and counterpart pages shall be deemed an original and all of which shall together constitute one and the same instrument binding on all parties to this Agreement, notwithstanding that all parties may not have executed all counterparts or the same counterpart, or that counterpart signature pages have been executed after the date of this Agreement and appended to a counterpart of this Agreement. A Participating Member may only directly participate in fixed price contracts jointly bid pursuant to this Agreement where the newspaper notice for that joint bid is published for the first time after the counterpart signature page for that Participating Member is received by ElectriCities. However, nothing herein shall preclude a Participating Member from utilizing Section 143-129(g) of the North Carolina General Statutes or other rights it may have in connection with a joint bid made pursuant to this Agreement to fulfill its public procurement requirements.

11. Entire Agreement. This Agreement constitutes the entire agreement among ElectriCities and the Participating Members with respect to the subject matter described herein, and this Agreement may not be modified except by a writing executed by all the Participating Members. The exhibit and counterpart signature pages attached hereto from time to time are hereby incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this Agreement in the manner prescribed by law, to be effective the day and year first above written.

ELECTRICITIES OF NORTH CAROLINA, INC.



By: _____
Roy Jones
Chief Executive Officer

CITY of ROCKY MOUNT
(as a Participating Member and as Acting
Member)

By: _____

Mayor

ATTEST:

Clerk
[SEAL]

SEPARATE ADDITIONAL SIGNATURE PAGE
FOR PARTICIPATING MEMBER

MEMBER COOPERATIVE BID AGREEMENT
FOR JOINT PURCHASING OF
UTILITY MATERIALS, SUPPLIES AND EQUIPMENT

Town of Apex
Participating Member

By: _____

Catherine Crosby
[Printed Name]

Title: Town Manager

ATTEST:

Clerk
[SEAL]