



Request for Proposals (RFP No. S1-0725.5)

Title: Landscaping Services Various Locations

Issue Date: May 05, 2025

**Due Date: June 05, 2025, By 3:00 PM ET
LATE PROPOSALS WILL NOT BE ACCEPTED**

Issuing Department: City Manager

Direct all inquiries concerning this RFP to:

Christine Karem: christine.karem@wilmingtonnc.gov



Finance

Purchasing Division Post
Office Box 1810
Wilmington, NC 28402-1810



910 341-7830
910 341-7842 fax
wilmingtonnc.gov Dial 711
TTY/Voice

May 05, 2025

**RE: Request for Proposals – Landscaping Services Various Locations
RFP No. S1-0725.5**

To whom it may concern:

This Request for Proposals (RFP) will provide your firm with sufficient information to enable you to prepare and submit a proposal for services relating to Landscaping Services at various locations in the City of Wilmington.

The RFP includes a preliminary scope of work and general terms and conditions of any subsequent contract. The scope of services, as defined herein, may be modified after the contractor is selected for final selection. The general terms and conditions are part of any submitted proposal and will be incorporated into any subsequent contract. Submission of a proposal shall constitute acceptance of these terms and conditions. Conditional responses may be rejected.

Questions should be emailed to Darrell McCall at darrell.mccall@wilmingtonnc.gov no later than Tuesday, May 28, 2025. Answers to questions will be posted as addendum's on the city website at www.wilmingtonnc.gov.

Your RFP must adhere to the following submittal requirements to be considered responsive. This is a criteria-based project. The successful Contractor will be selected based on the quality, quantity, and best value of services provided for the available budget.

After the city determines the most qualified firm, the staff will negotiate with the firm to better define the final scope of work. If, for any reason, the City and the selected firm cannot agree on a scope for the fee available, the City will negotiate with the next most qualified firm.

The city promotes local and minority business participation in all construction and service contracts. Therefore, in accordance with the City of Wilmington's MBE/DBE Policy, the Proposer shall make a good-faith effort to identify and hire minority, socially, and/or economically disadvantaged (MBE/DBE's) subcontractors for this project. A complete copy of the City's MBE/DBE policy is available at my office.

My office should be contacted with questions concerning the proposed contract terms and conditions. I look forward to your proposal for this service.

Sincerely,

Christine R. Karem

Sr. Contract Specialist – M/WBE Coordinator

cc: Darrell McCall, Buildings and Facilities Superintendent

STATE OF NORTH CAROLINA COUNTY
OF NEW HANOVER

AFFIDAVIT AND CERTIFICATE OF
NON-COLLUSION, NON-SUSPENSION AND NON-CONVICTION

The undersigned, being first duly sworn, deposes and says:

1. I understand that for the purposes of this affidavit, the term "bidder" shall include the person(s), firm(s), or corporation(s) signing this affidavit, the undersigned's subcontractor(s), subsidiary(ies) and affiliate(s) and any officer, director, employee or agent of the bidder; and the term "conviction" shall include guilty pleas, pleadings of nolo contendere and similar pleas.
2. This Affidavit and Certificate is made in accordance with Article 3 of Chapter 133 of the North Carolina General Statutes; I certify that this proposal is made without prior understanding, agreement, or connection with any person(s), firm(s), or corporation(s) making bids or proposals; I further certify that the bidder has not entered into any agreement with any other bidder or prospective bidder or with any other person(s), firm(s) or corporation(s) relating to the price named in said proposal, nor any agreement or arrangement under which any person(s), firm(s) or corporation(s) is to refrain from bidding, nor any agreement or arrangement for any act or omission in restraint of free competition among bidders; I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards; and I further certify that the bidder will abide by all terms of this bid or proposal.
3. The bidder is not suspended or debarred from bidding by any federal or state governmental agency that is providing funds for this contract.
4. The bidder is not presently charged in an indictment or information with engaging in any conspiracy, combination, or other unlawful act in restraint of trade or any similar charges in any federal court or a court of this or any other state. The bidder, within one year immediately preceding the date of this affidavit, has not been convicted of charges or engaging in any conspiracy, combination, or other unlawful act in restraint of trade or similar charges in any federal court or a court of this or any other state.
5. If, during the time of this proposal, from the date advertised to the date bids are opened, the bidder is indicted or convicted of bid-rigging, I understand this proposal shall be rejected and not considered for award.
6. I hereby affirm that all information contained in this affidavit is true, correct, accurate and complete, and any untrue, incorrect, inaccurate or incomplete statements will result in the disqualification and rejection of this proposal. I certify that I am authorized to sign this bid and to make the representations set forth herein on behalf of myself and the bidder.

This the _____ day of _____, 2025.

COMPANY NAME _____

BY: _____
(Owner, Partner, or Corporate President, Vice President or Assistant
Vice President only)

ATTEST:

(Secretary, Assistant Secretary, Cashier or Assistant
Cashier only)

(TO BE EXECUTED ON BEHALF OF THE CONTRACTOR)

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public, certify that
(Name)

_____ personally came
(Name of Secretary, Assist. Sec., Cashier, Assist. Cashier)

before me this day and acknowledged that he (she) is _____
(Secretary, Assist. Sec.,

_____ of _____, a
Cashier, Assist. Cashier) (Name of Corporation)

corporation, and that by authority duly given and as the act of the corporation, the foregoing Affidavit was

signed in its name by its _____,
(President, Vice President, Assist. Vice President)

sealed with its corporate seal, and attest by himself (or herself) as its

(Secretary, Assist. Sec., Cashier, Assist. Cashier)

WITNESS my hand and official seal, this the _____ day of _____, 2025.

Notary Public My

Commission Expires: _____

(NOTARY SEAL)

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

AFFIDAVIT of COMPLIANCE
with N.C. E-VERIFY STATUTES

I, _____ (hereinafter the "Affiant"), duly authorized by and on behalf of _____ (hereinafter he "Employer") after being first duly sworn deposes and says as follows:

1. I am the _____ (President, Manager, CEO, etc.) of the Employer and possess the full authority to speak for and on behalf of the Employer identified above.
2. Employer understands that "E-Verify" means the federal E-Verify program operated by the United States Dept. of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.
3. _____ Employer employs 25 or more employees in the State of North Carolina, and is in compliance with the provisions of N.C. Gen. Stat. §64-26. Employer has verified the work authorization of its employees through E-Verify and shall retain the records of verification for a period of at least one year.

_____ Employer employs fewer than 25 Employees and is therefore not subject to the provisions of N.C. Gen. Stat. §64-26.
4. All subcontractors engaged by or to be engaged by Employer have or will have likewise complied with the provisions of N.C. Gen. Stat. §64-26.
5. Employer shall keep the City of Wilmington informed of any change in its status pursuant to Article 2 of Chapter 64 of the North Carolina General Statutes.

Further this affiant sayeth not.

This the _____ day of _____, 20_____.

Affiant

STATE OF NORTH
CAROLINA COUNTY OF _____

Sworn to and subscribed before me, this the _____ day of _____, 20_____.

Notary Public

[NOTARY SEAL]

My commission expires: _____

Introduction

The City of Wilmington is seeking proposals from qualified and experienced landscaping service providers to maintain and enhance the grounds of our facility. We require a comprehensive landscaping program to create a welcoming and professional environment for our tenants, employees, and visitors. The city intends to seek proposals to provide services at a fixed monthly rate for the next three (3) years, with the option to renew for two (2) additional years in twelve (12) month increments.

Standards for Performance

The Contractor shall retain professional personnel who are certified and licensed and have successfully and competently provided comprehensive landscape services on projects of similar scope and complexity. For the purpose of this contract, the successful vendor will be expected to deliver high-quality landscaping services, including but not limited to lawn care, seasonal plantings, tree and shrub maintenance, and irrigation system upkeep. Skyline Center values environmental sustainability and expects contractors to consider eco-friendly solutions when providing their services.

Qualifications Required:

- Certified Plant Professional on staff
- Licensed Pesticide Applicators on staff
- Possess NC Irrigation Contractors License
- Possess NC Landscape Contractors License
- Reference list for maintenance history of properties, this size

Timeline for RFP Process

Process Description	Date Due
RFP Advertised	May 05, 2025
Vendor RFP Questions	May 28, 2025, by 5:00 PM
City Responses to Vendor Questions	June 02, 2025, by 5:00 PM
RFP Submittals Due Date	June 05, 2025, 3:00 PM

Site Visitation Coordination and Pre-Proposal Questions:

Prospective proposers are encouraged to visit the facilities before submitting their proposals. Questions concerning this RFP should be directed to the Project Manager. Questions may be submitted no later than May 28, 2025, by 5:00 PM EST. All questions and answers regarding the RFP may be shared with all contractors interested in submitting a proposal.

Project Manager for the City of Wilmington:

Darrell McCall, Buildings and Facilities Superintendent

Email: darrell.mccall@wilmingtonnc.gov

Phone: 910-341-4610

Submittal Requirements:

Respondents must submit RFP certification documents, including the Affidavit of Non-Collusion. Submittals for this RFP must be enclosed in a sealed envelope, emailed, and titled: "RFP No. S1-0725.5 "Landscape Services Various Locations. The city must receive the RFP on or before 3:00 PM, Thursday, June 05, 2025, by 3:00 PM. Mailed or hand-delivered to the following address:

City of Wilmington
P.O. Box 1810 or
929 North Front Street, 10th Floor
Wilmington, NC 28401
Attn: Christine R. Karem, Sr. Contract Specialist

RFP received after the deadline above will not be considered and will be returned unopened to the return address on the submission envelope. The City reserves the right to reject any or all RFP for any reason and to waive any informality it deems in its best interest. Any requirements in the RFP that cannot be met must be indicated in the statement of qualifications. The Proposer must respond to the entire RFP. Any RFP received by the city that is incomplete in its responses will be immediately disqualified.

Rights to Submitted Materials:

All statements, responses, inquiries, or correspondence relating to or about this RFP and all reports, charts, and other documentation submitted by Proposers (other than materials submitted as and qualifying as trade secrets under North Carolina Law) shall become the property of the City when received. The entire statement of qualification shall be subject to the public records laws of the State of North Carolina except where a proper trade secrets exception has been made by the Proposers in compliance with the procedures allowed by North Carolina Law and marked in bold "**Confidential.**"

The City reserves the right to retain all submittals and to use any ideas in an RFP regardless of whether that RFP is selected. Submission of an RFP indicates acceptance by the Proposer of the conditions contained in this RFP.

References/Qualifications/Experiences:

The Proposer should describe its track record in performing services comparable to those specified in this RFP and other information relevant to determining the Proposer's ability to perform these services. This should also include a list of all the similar work performed by your firm over the past three (3) years. This list should include each client's name, contact and telephone number, the size and scope of work provided, effective dates of the contract(s) with the client, and the annual contract amount.

Evaluation Process

The City will consider the following factors in selecting a maintenance and service provider for this proposal:

Description	Point of Scale
The firm's overall experience in the field of landscaping services.	40 Points
Price of proposed services	20 Points
Responses from references	15 Points
Completeness and clarity of the proposal	15 Points
MBE/DBE	10 Points

The evaluation process will be directed primarily at those capabilities clearly shown in the written proposal submitted. However, the City may request any or all firms submitting proposals to make oral presentations to provide additional information. The City shall be the sole judge of all proposals, particularly which one best qualifies for acceptance. **The City reserves the right to accept the most responsive and responsible submittal, other than the lowest-priced proposal, and to negotiate with respondents if it appears to be in the City's best interest to do so.** The City reserves the right to reject any and all proposals. The rejection of any or all proposals shall not render the City liable for costs or damages. The proposal must be signed by an officer or agent with the authority to bind the Contractor legally.

SCOPE OF WORK

Locations:

929 N. Front Street - (The Skyline Center/Main Site)

†55 N. Brunswick Street (Parking Deck adjacent to Skyline Center) 1

15 N. 3rd Street (The United Bank Building)

Alternative #1 - Median Maintenance along Front Street from 3rd Street all the way to Brunswick Street.
(see aerial map)

The selected landscaping contractor will be responsible for the following tasks:

Main Site (Skyline Center)

1. Lawn Care Maintenance: 35 Visits per Calendar year

<u>MONTHS</u>	<u>FREQUENCY</u>
Jan-March	Monthly
Apr-Oct	Weekly
Nov-Dec	Monthly

This service includes:

- Mowing, edging, and trimming of lawn areas
- Blowing all hard surfaces
- Trash and debris removal.

2. **Shrub and Japanese Maple (qty. one at Skyline Center: see map for location) Maintenance: 10 per year**
 - Regular pruning and trimming of shrubs and Japanese Maple trees.
 - Inspection and maintenance of tree health, including disease and pest control.
 - Remove dead or damaged plants, bushes, and trees as needed.
 -
3. **Flower Maintenance: 10 per year**
4. **Fertilize Turf: 2 per year**
5. **Herbicide Turf: 8 per year**
6. **Herbicide Beds: 8 per year**
7. **Seasonal Plantings: 2 per year**
 - Design, installation, and care of seasonal plantings (e.g., flowers, ornamental plants) in designated areas of the grounds.
 - Replacement of dead plants with new annuals or perennials each season.
8. **Irrigation System: 4 per year**
 - Regular inspection and maintenance of irrigation systems to ensure proper function.
 - Monitoring and adjusting irrigation schedules based on seasonal needs.
9. **Mulching: 1 per year**
 - Apply mulch to flower beds, trees, and shrubbery to promote plant health, retain moisture, and reduce weed growth.
10. **Trash and Debris Removal: Each Lawn Care Visit**
 - Remove trash and debris from the landscape areas, including sidewalks, the parking lot, and any common areas.
 - Cleaning of walkways and entryways.
11. **Sustainability Practices:**
 - Implementation of eco-friendly and sustainable landscaping practices, such as using drought-resistant plants and minimizing the use of chemicals.
12. **Standby Services for Post Storm Site Readiness**
 - These services would include snow/ice removal in the Visitors' Parking lot and entrances to the building, including sidewalks and the plaza area. Post-hurricane or similar storm cleanup

North Lot

- **Mowing: 5 per year**
- **Trash and Debris Removal: Each mowing visit**

Parking Deck 155 N. Brunswick St.

1. Shrub Maintenance: 5 per year

- Regular pruning and trimming of shrubs.
- Removal of dead or damaged plants and bushes as needed

Irrigation System: 4 per year

- Regular inspection and maintenance of irrigation systems to ensure proper function.
- Monitoring and adjusting irrigation schedules based on seasonal needs.

Mulching: 1 per year

- Apply mulch to flower beds, trees, and shrubbery to promote plant health, retain moisture, and reduce weed growth.

The United Bank Building - 115 N. 3rd St & Adjacent Lot (see map attached)

1. Lawncare Maintenance 35 visits per year

<u>MONTHS</u>	<u>FREQUENCY</u>
Jan-March	Monthly
Apr-Oct	Weekly
Nov-Dec	Monthly

This service includes:

- Mowing, edging, and trimming of lawn areas
- Blowing all hard surfaces
- Trash and debris removal.

2. Trimming/Pruning Service:

- **Trim/Prune shrubs/hedges** in the service area (see map) **twice** annually (after spring growth hardens off and in the fall) and remove cuttings. Shrubs in bloom or **soon-to-bloom** will not be pruned. (ie. Camellias, Azaleas, and Gardenias will not be pruned after July 1st.)
- Inspect trees/shrubs for disease, and if treatment is needed, a proposal will be provided for approval.
- **Ornamental Winter Grasses, Liriope, and Crepe Myrtles**—once annually (when dormant). Crepe Myrtles will be cleaned up to address low-hanging branches, crossing branches, and/or shaping.

Irrigation System: 4 per year

- Regular inspection and maintenance of irrigation systems to ensure proper function.
- Monitoring and adjusting irrigation schedules based on seasonal needs.

Alternate 1 (see map for location)

Lawn Care Maintenance for medians along Front Street: **35 visits per year**

Reporting & Accounting

The contractor will provide standard proof of work documentation following the completion of the work. The document must include sufficient information to identify the facility where the work was performed, the equipment and/or components on which work was performed, the purpose of the work, the date and time, and the name /cert # of the technician executing the work. This should be submitted within 48 hours of the work being performed.

All work beyond and in addition to the scope of the contract shall be considered billable hours. Prior to rendering any additional services, a proposal with pricing must be submitted and approved by the City Representative.

The CONTRACTOR shall submit invoices corresponding to each order to the City with sufficient details to enable a review and assure compliance with the terms and conditions of the Agreement. The CITY shall make payments within 30 days of receipt of an approved invoice.

PROPOSAL

Signature: _____ **Date:** _____

By Signing above, I Certify that I have carefully read and fully understood the information contained in this RFP, that I have the capability to successfully undertake and complete the responsibilities and obligations of the Proposal being submitted, and that I have the authority to sign the Proposal on behalf of my organization.

BY (Printed): _____

TITLE: _____

COMPANY: _____

ADDRESS: _____

TELEPHONE: _____

EMAIL: _____

The proposer supplies the information recorded below for use in the preparation of the contract documents in the event of contract award:

1. Please indicate the type of business organization:

- (a) Proprietorship _____
- (b) Partnership _____
- (c) Corporation _____
- (d) Limited Liability Co. _____

2. If the business is a corporation, please answer the following questions:

Name and title of officers, authorized by Corporate Resolution, who will execute the contract on behalf of the corporation (generally President and Secretary).

The firm is incorporated in what state?

If the firm is a foreign corporation, does the firm have a certificate of authority from the

North Carolina Secretary of State? _____

3. If the business is a Partnership, please answer the following:

Name in full or all general partners and addresses:

Is this a limited or general partnership? _____

If a limited partnership, what is the state of registration? _____

If the business is a foreign limited partnership, does the business have a certificate of authority from the North Carolina Secretary of State? _____

4. If the business is a Proprietorship, please answer the following:

Name of owner: _____

5. If the business is a limited liability company, please answer the following:

List the names and titles of managers or member managers who will execute the contract on behalf of the company. _____

What is the state of the organization? _____

If the business is a foreign limited liability company, does the business have a certificate of authority from the North Carolina Secretary of State? _____

6. For all Vendors:

If the business operates under an assumed name, what is the assumed name?

Has a certificate of assumed name been filed in the New Hanover County Registry?

If so, please provide the recording information:

Deed Book _____ at Page _____.

Vendor Pricing

Location	Annual Cost
Skyline Center	
Parking Deck	
United Bank Building	
Alternate 1 Median Maintenance	
Total	

Acknowledgement of Addendums

The undersigned acknowledges receipt of any Addendums issued to this Project by recording the Addendum number and date are acknowledged below:

Addendum #1: _____ Dated: _____

Addendum #2: _____ Dated: _____

Addendum #3: _____ Dated: _____

ACKNOWLEDGEMENT OF DOCUMENTS

City of Wilmington – RFP-S1-0725.5-Landscape Services Various Locations

The undersigned Vendor acknowledges that the following required documents are a part of this RFP Submission Sheet and are attached hereto:

1. Affidavit of Non-Collusion
2. E-Verify
3. Acknowledge Introduction/ Intent/Purpose
4. Adherent to Timeline Responsive Requirement
5. Proposed time frame from beginning to end
6. City of Wilmington Vendor Application Packet (if necessary)

Company Name: _____

Company Address:

City/State/Zip:

Telephone Number: _____ **Fax Number:** _____

Federal Tax ID # _____

E-mail: _____

License # (if applicable) _____

I agree to the terms, conditions, and expectations as outlined in the Project Description of this Request for Proposal.

Signature: _____ **Date:** _____

Name (Print): _____ **Title:** _____

The City reserves the right to re-advertise and reject any or all proposals which are deemed to be non-responsive, late in submission, or unsatisfactory. The City of Wilmington shall have no obligation to award a contract for services as a result of this RFP.

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

CONTRACT NO:

SERVICES AGREEMENT

THIS AGREEMENT (hereinafter the "Agreement") is made and entered into on the date executed by all parties by and between the City of Wilmington, a North Carolina municipal corporation, hereinafter the "CITY" and XXXXXXXX, hereinafter referred to as the "CONTRACTOR." And collectively referred to as the parties

WITNESSETH:

1. Purpose of Contract

The CITY hereby agrees to purchase the services listed below from the CONTRACTOR and the CONTRACTOR agrees to provide all equipment, tools, materials and/or supplies required to provide Services hereunder to the CITY, as ordered in accordance with the provisions of this Agreement.

2. Contract Documents.

This Contract for Services consists of the following documents, all of which are by this reference incorporated herein and made a part of this Agreement. The parties agree that only the terms and conditions outlined in this Agreement, not those described or referenced in any of the following contract documents, shall apply unless explicitly stated otherwise in the body of this Agreement.

- a. Exhibit "A" – XXXXXXXX, attached.

3. Scope of Services

- a. The CONTRACTOR's scope of service, as listed in Exhibit "A," XXXXXXXXXXXX
- b. CONTRACTOR hereby agrees to perform, in a manner satisfactory to the CITY, professional and timely services as set forth in Exhibit "A" attached hereto and incorporated herein by this reference. The parties hereto acknowledge that the terms outlined in Exhibit "A" shall be valid and enforceable to the extent they are not inconsistent with the provisions as set forth herein, and to the extent that they are inconsistent, the provisions as set forth in this Agreement shall control.

- c. During the period of this contract, the CONTRACTOR and the CITY may negotiate and agree in writing to provide additional equipment and or services not herein described, but that are commonly provided by high quality professional vendors, and which may enhance the process and improve results.

4. Quantities and Price

CONTRACTOR will provide the services required by this Agreement at the following price:

XXXXXXXXXXXXXXXXXXXXXXXXXXXX.

5. Contractor Submissions and Payment

- a. The CONTRACTOR shall submit invoices corresponding to each order to the City with sufficient details to enable a review and assure compliance with the terms and conditions of this Agreement.
- b. Payments shall be made by the CITY within 30 days after receipt of an approved invoice.

6. Term of Contract

The term of this Agreement shall commence as of July 01, 2025, by all parties and shall continue until June 30, 2028, with an option to renew up to two (2) years on the same terms and conditions set forth in this Agreement.

7. Representatives of the Parties

The undersigned below is designated as the CITY's contract administrator for this Agreement. The contract administrator shall be responsible for monitoring the CONTRACTOR's performance, coordinating the CONTRACTOR's activities, approving all administrative requests by the CONTRACTOR, and approving all payments to the CONTRACTOR pursuant to this Agreement. Further, any notice required to the CITY under this Agreement shall be sufficient if mailed to the CITY by certified mail as indicated below:

Darrell McCall, Buildings and Facilities Superintendent
City of Wilmington
P.O. Box 1810
Wilmington, NC 28402
Email: darrell.mccall@wilmingtonnc.gov

XXXXXXXX shall be the CONTRACTOR's representative for this Agreement. Any notice required to the CONTRACTOR under this Agreement shall be sufficient if mailed to the CONTRACTOR by certified mail as indicated below:

Name
Address
Phone:
Email:

8. Release of Indemnity

To the fullest extent permitted by law, CONTRACTOR shall release, indemnify, keep and save harmless the CITY, its agents, officials and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the CITY or third persons, and to all property proximately caused by, directly or indirectly, the performance or nonperformance by CONTRACTOR (or by any person acting for CONTRACTOR or for whom CONTRACTOR is or is alleged to be in any way responsible), whether such claim may be based in whole or in part upon contract, tort (including alleged active or passive negligence or participation in the wrong), or upon any alleged breach of any duty or obligation on the part of CONTRACTOR, its agents, officials and employees or otherwise. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the CITY, its agents, officials, and employees including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses.

Expenses as used herein shall include without limitation the costs incurred by the CITY, its agents, officials, and employees, in connection with investigating any claim or defending any action and shall also include reasonable attorneys' fees by reason of the assertion of any such claim against the CITY, its agents, officials or employees. CONTRACTOR expressly understands and agrees that any performance bond or insurance protection required by this agreement, or otherwise provided by the CONTRACTOR, shall in no way limit CONTRACTOR's responsibility to release, indemnify, keep, and save harmless and defend the CITY as herein provided. The intention of the parties is to apply and construe broadly in favor of the CITY the foregoing provisions subject to the limitations, if any, set forth in N.C.G.S. 22B-1.

9. Personnel

It is mutually agreed that the CONTRACTOR is an independent contractor and not an agent of the CITY, and as such the CONTRACTOR shall not be entitled to any CITY employment benefits, such as, but not limited to, vacation, sick leave, insurance, workmen's compensation, or pension and retirement benefits.

10. Conflict of Interest

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

11. Non-Waiver of Rights

It is agreed that the CITY'S failure to insist upon the strict performance of any provision of this contract, 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.

12. Suspension or Termination of Agreement

- a) In the event that review of the CONTRACTOR'S performance shows non-conformance to the work required by this Agreement, the Scope of Services or other terms or conditions contained herein as a result of the CONTRACTOR'S errors, omissions or negligent acts, the CONTRACTOR shall be in breach of this contract and the CITY may take corrective action as

it deems necessary including, but not limited to, termination, withholding or reduction of payment.

- b) The CITY 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 CITY. If, in the opinion of the CITY, the CONTRACTOR remains in violation of this Agreement at the completion of the ten (10) day suspension period, the CITY shall have the right to terminate this Agreement whereupon all obligations of the CITY to the CONTRACTOR shall cease.
- c) 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. (CONTRACTOR shall be paid for all reimbursable expenses, without markup, which are due him.)
- d) The CITY and the CONTRACTOR shall have the right to terminate this Agreement without cause upon 30 days' notice to the other party.
- e) Nothing contained herein shall prevent the CITY from pursuing any other remedy, which it may have against CONTRACTOR including claims for damages.

13. Assignment of Agreement

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

14. Contract Disputes

In accordance with N.C.G.S. § 143-128.1(8) the parties agree to mediate contract disputes in excess of \$15,000.00. Within ten (10) days of such contract disputes, the parties shall select a mediator that is agreed upon by all parties involved in the dispute. If the parties cannot agree on a mediator or do not timely select a mediator, the City shall select the mediator. The parties and the mediator shall agree upon the mediator's rate of compensation. The parties to the dispute shall share in the payment of the mediator's compensation with the City paying a minimum of one-third of the compensation if the City is a party to the dispute.

15. Insurance Requirements

Before commencing any work, the CONTRACTOR shall procure insurance in the CONTRACTOR'S name and maintain all insurance policies for the duration of the contract of the types and in the amounts listed. The insurance shall provide coverage against claims for injuries to persons or damages to property which may arise from operations or in connection with the performance of the work hereunder by the CONTRACTOR, his agents, representatives, employees, or subcontractors, whether such operations by himself/herself or anyone directly or indirectly employed by him/her.

A. Commercial General Liability

- 1) CONTRACTOR shall maintain Commercial General Liability (CGL) and if necessary, Commercial Umbrella Liability insurance with a total limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location, or the general aggregate shall be twice the required limit.
- 2) CGL insurance shall be written on Insurance Services Office (ISO) "occurrence" form CG 00 01 covering Commercial General Liability or its equivalent and shall cover the liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- 3) The City of Wilmington, its officers, officials, agents, and employees are to be covered as additional insureds during and until completion of the work, under the CGL by endorsement CG 20 10 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of the CONTRACTOR; premises owned, leased or used by the CONTRACTOR; and under the commercial umbrella, if any. The coverage shall contain no special limitations on the scope of protection afforded to the City of Wilmington, its officers, officials, agents, and employees. Additional insured status for both ongoing and completed operations, in favor of City of Wilmington, its officers, officials, agents and employees, will be carried by Subcontractor performing installation.
- 4) There shall be no endorsement or modification of the CGL or Umbrella Liability limiting the scope of coverage for liability arising from explosion, collapse, underground property damage, or damage to the named insured's work, when those exposures exist.
- 5) The CONTRACTOR'S Commercial General Liability insurance shall be primary as respects the City of Wilmington, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of Wilmington, its officers, officials, and employees shall be excess of and not contribute with the CONTRACTOR'S insurance.
- 6) The insurer shall agree to waive all rights of subrogation against the City of Wilmington, its officers, officials, agents, and employees for losses arising from work performed by the CONTRACTOR for the City of Wilmington.

B. Workers' Compensation and Employer's Liability

- 1) CONTRACTOR shall maintain Workers' Compensation as required by the general statutes of the State of North Carolina and Employer's Liability Insurance.
- 2) 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.

- 3) The insurer shall agree to waive all rights of subrogation against the City of Wilmington, its officers, officials, and employees for losses arising from work performed by the CONTRACTOR for the City of Wilmington.

C. Business Auto Liability

- 1) CONTRACTOR shall maintain Business Auto Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$1,000,000 each accident.
- 2) Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos.
- 3) Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01.
- 4) Pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached when those exposures exist.
- 5) The CONTRACTOR'S Business Auto Liability insurance shall be primary as respects the City of Wilmington, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by The City of Wilmington, its officers, officials, and employees shall be excess of and not contribute with the CONTRACTOR'S insurance.
- 6) CONTRACTOR waives all rights against the City of Wilmington, its officers, officials, agents, and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by CONTRACTOR pursuant to Section 11.C.1 of this agreement.

D. Deductibles and Self-Insured Retentions

The contractor shall be solely responsible for the payment of all deductibles to which such policies are subject, whether The City of Wilmington is insured under the policy or not.

E. Miscellaneous Insurance Provisions

- 1) The policies are to contain, or be endorsed to contain, the following provisions:

- a. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not canceled by either party except after 30 days prior written notice has been given to The City of Wilmington, PO Box 1810, Wilmington, NC 28402-1810.
- b. If CONTRACTOR'S liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

2) Acceptability of Insurers

Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best's rating of no less than A VII unless specific approval has been granted by The City of Wilmington.

3) Evidence of Insurance

- a. The CONTRACTOR shall furnish The City of Wilmington with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the work, and thereafter upon renewal or replacement of each certified coverage until all operations under this Agreement are deemed complete.
- b. Evidence of additional insured status shall be noted on the certificate of insurance.
- c. With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to The City of Wilmington with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the period for which such insurance must be maintained.

4) Subcontractors

CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates for each subcontractor. All coverage for subcontractors shall be subject to all the requirements stated herein. Commercial General Liability coverage shall include independent CONTRACTORS' coverage, and the CONTRACTOR shall be responsible for assuring that all subcontractors are properly insured. Additional insured status for both ongoing and completed operations, in favor of City of Wilmington, its officer, officials, agents and employees, will be carried by Subcontractor performing installation.

A. Conditions:

- 1) The insurance required for this Agreement must be on forms acceptable to The City of Wilmington.
- 2) The CONTRACTOR shall provide that the insurance contributing to satisfaction of insurance requirements shall not be canceled, terminated, or modified by the CONTRACTOR without prior written approval of The City of Wilmington.

- 3) The CONTRACTOR shall promptly notify the Safety & Risk Manager at (910) 341-5864 of any accidents arising in the course of operations under the contract causing bodily injury or property damage.
- 4) Failure of The City of Wilmington to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of The City of Wilmington to identify a deficiency from evidence that is provided shall not be construed as a waiver of CONTRACTOR'S obligation to maintain such insurance.
- 5) By requiring insurance herein, The City of Wilmington does not represent that coverage and limits will necessarily be adequate to protect the CONTRACTOR and such coverage and limits shall not be deemed as a limitation of CONTRACTOR'S liability under the indemnities granted to The City of Wilmington in this Agreement.
- 6) The City of Wilmington shall have the right, but not the obligation of prohibiting CONTRACTOR or any subcontractor from entering the project site or withhold payment until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by The City of Wilmington.

16. Findings Confidential

All of the information, reports, cost estimates, plans, specifications and documents prepared or assembled by the CONTRACTOR under this contract are the property of the CITY. The CONTRACTOR agrees that any such documents shall not be made available to any individual or organization other than appropriate CITY officials without prior written approval of the CITY. 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 CITY.

17. No Presumption

None of the Parties shall be considered the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Agreement was drafted with substantial input by all Parties and their counsel, and no reliance was placed on any representations other than those contained herein.

18. Subcontracts

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

19. Entire Agreement

This Agreement constitutes the entire understanding of the parties.

20. Binding Effect

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

21. Continuing Obligation

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

22. 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.

23. Interpretation/Governing Law

All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina without regard to any conflicts of law principles and subject to the exclusive jurisdiction of federal or state courts within 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. The place of this Agreement, its situs and forum, shall be Wilmington, New Hanover County, North Carolina, and in said County and State shall all matters, whether sounding in contract or tort relating to the validity, construction, interpretation, or enforcement of this Agreement be determined.

24. Minority Business Enterprise (MBE)

The CITY desires that minority business enterprises have the maximum opportunity to participate in the performance of this Agreement and will:

- (a) Promote affirmatively (where feasible) in accordance with North Carolina General Statute 143-129, together with all other applicable laws, statutes, and constitutional provisions the procurement of goods, services in connection with construction projects for minority owned business enterprises.
- (b) Ensure that competitive and equitable bidding opportunities are followed to afford minority business enterprises' participation. Strive to obtain contract and subcontract awards to minority business enterprises.
- (c) Identify and communicate to the minority business enterprises community procedures and contract requirements necessary for procurement of goods and services for construction projects and subcontracts.
- (d) Provide technical assistance as needed.
- (e) Promulgate and enforce contractual requirements that the general contractor on all construction projects shall exercise all necessary and reasonable steps to ensure that minority business enterprises participate in the work required in such construction contracts.
- (f) The CONTRACTOR shall ensure that minority business enterprises have the maximum opportunity to compete for and perform portions of the work included in this Agreement and shall not discriminate on the basis of race, color, national origin or sex. The

CONTRACTOR shall include this special provision, Minority Business Enterprise (MBE), in all subcontracts for this Agreement. Failure on the part of the CONTRACTOR to carry out the requirements set forth in this special provision may constitute a breach of contract and after proper notification may result in termination of the Agreement or other appropriate remedy.

(g) A minority business enterprise is defined as a business, with at least fifty-one (51%) percent owned and controlled by minority group members. The minority ownership must exercise actual day-to-day management. Minority group members may consist of Black Americans (an individual of the Black race of African origin), Hispanic Americans (an individual of a Spanish speaking culture and origin at parentage), Asian Americans (an individual of a culture, origin or parentage traceable to the areas of the Far East, Southeast Asia, the Indian subcontinent and the Pacific Islands), Indian Americans (an individual who is an enrolled member of a Federally recognized Indian tribe, or recognized by the tribe as being an Indian, as evidenced by a certification of a tribal leader), American Aleuts or any recognized minority group approved by the CITY.

(h) A Woman Business Enterprise is a business with at least fifty-one (51%) percent owned and controlled by women who exercise actual day-to-day management.

(i) The CONTRACTOR shall exercise all necessary and reasonable steps to ensure that Minority Business Enterprises and Woman Business Enterprises participate in the work required in this Agreement. The CONTRACTOR agrees by executing this Agreement that he will exercise all necessary and reasonable steps to ensure that this special provision contained herein on Minority Business Enterprise is in compliance.

25. 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 CITY'S actual cost and neither party intends to waive its sovereign immunity by reason of this Agreement.

26. Saving Clause

If any section, subsection, paragraph, sentence, clause, phrase, or portion of this contract 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.

27. Other Laws and Regulations

CONTRACTOR will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances including those regarding toxic, hazardous and solid waste and any 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 Health and Human Resources, the North Carolina Office of State Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Quality, Health Departments, and any other federal, state or local agency having jurisdiction, to ensure 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. CONTRACTOR specifically acknowledges and agrees that CONTRACTOR, and any subcontractors it uses, has complied with, and shall continue to comply with the provisions of the federal E-Verify program in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes. CONTRACTOR shall maintain adequate safeguards with respect to sensitive customer information in conformance with and pursuant to 16 C.F.R. §681.1 and in accordance with N.C. Gen. Stat. §132-1.10 and §75-65.

28. Amendments

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

29. 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 contract 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. 14173 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 contract and may result, at CITY'S option, in a termination or suspension of this contract in whole or in part.

30. Non-Appropriations Clause

In the event no CITY funds or insufficient CITY funds are appropriated or otherwise available by any means whatsoever in any fiscal year for any payment due under this contract, the CITY will immediately notify CONTRACTOR of such occurrence and this contract shall create no further obligation of the CITY as to such fiscal year and shall be null and void, except as to the portions of payments for which funds shall have been appropriated and budgeted. In such event, this Agreement shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to the CITY of any kind whatsoever.

31. Counterparts.

This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

32. No Publicity

No advertising, sales promotion or other materials of the CONTRACTOR or its agents or representations may identify or reference this contract or the CITY in any manner absent the written consent of the CITY. Notwithstanding the foregoing, the parties agree that the CONTRACTOR may list the CITY as a reference in response to requests for proposals and may identify the CITY as a customer in presentations to potential customers.

33. CITY Not Liable for Special or Consequential Damages

The CITY shall not be liable to the CONTRACTOR, its agents or representatives or any subcontractor for or on account of any stoppages or delay in the performance of any obligations of the CITY, or any other consequential, indirect, or special damages or lost profits related to this Agreement.

34. Public Records

CONTRACTOR acknowledges that the CITY is a public entity, subject to North Carolina's public records laws (N.C. Gen. Stat. 132) and that any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial process.

If CONTRACTOR believes documents related to the Agreement contain trade secrets or other proprietary data, CONTRACTOR must notify the CITY and include with the notification a statement that explains and supports CONTRACTOR'S claim. CONTRACTOR must also specifically identify the trade secrets or other proprietary data that CONTRACTOR believes should remain confidential.

In the event the CITY determines it is legally required to disclose pursuant to law any documents or information CONTRACTOR deems confidential trade secrets or proprietary data, the CITY, to the extent possible, will provide CONTRACTOR with prompt written notice by certified mail, fax, email, or other method that tracks delivery status of the requirement to disclose the information so CONTRACTOR may seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The notice will include a period of time for the CONTRACTOR to seek court-order protection or other legal remedies as deemed appropriate by CONTRACTOR. If CONTRACTOR does not obtain such court ordered protection by the expiration of said time period, the CITY may release the information without further notice to CONTRACTOR.

35. Authority to Act

Each of the persons executing this Agreement on behalf of CONTRACTOR does hereby covenant, warrant, and represent that the CONTRACTOR is a duly organized and validly existing legal entity authorized to transact business within the State of North Carolina, that the CONTRACTOR has full right and authority to enter into this Agreement, and that each and all persons signing on behalf of the CONTRACTOR were authorized to do so.

IN WITNESS WHEREOF, the CITY has caused this Agreement to be duly executed in its name and behalf and the CONTRACTOR has caused this Agreement to be duly executed in its name and behalf.

CITY OF WILMINGTON, NORTH CAROLINA

BY: _____
Authorized City Signature, Title

DATE: _____

WITNESS:

Daryle L. Parker, Purchasing Manager

APPROVED AS TO FORM:

Gina Essey, Assistant City Attorney

FINANCE OFFICER’S CERTIFICATION STATEMENT

This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.

This ___ day of _____, 2025.

Martha Wayne, Finance Director

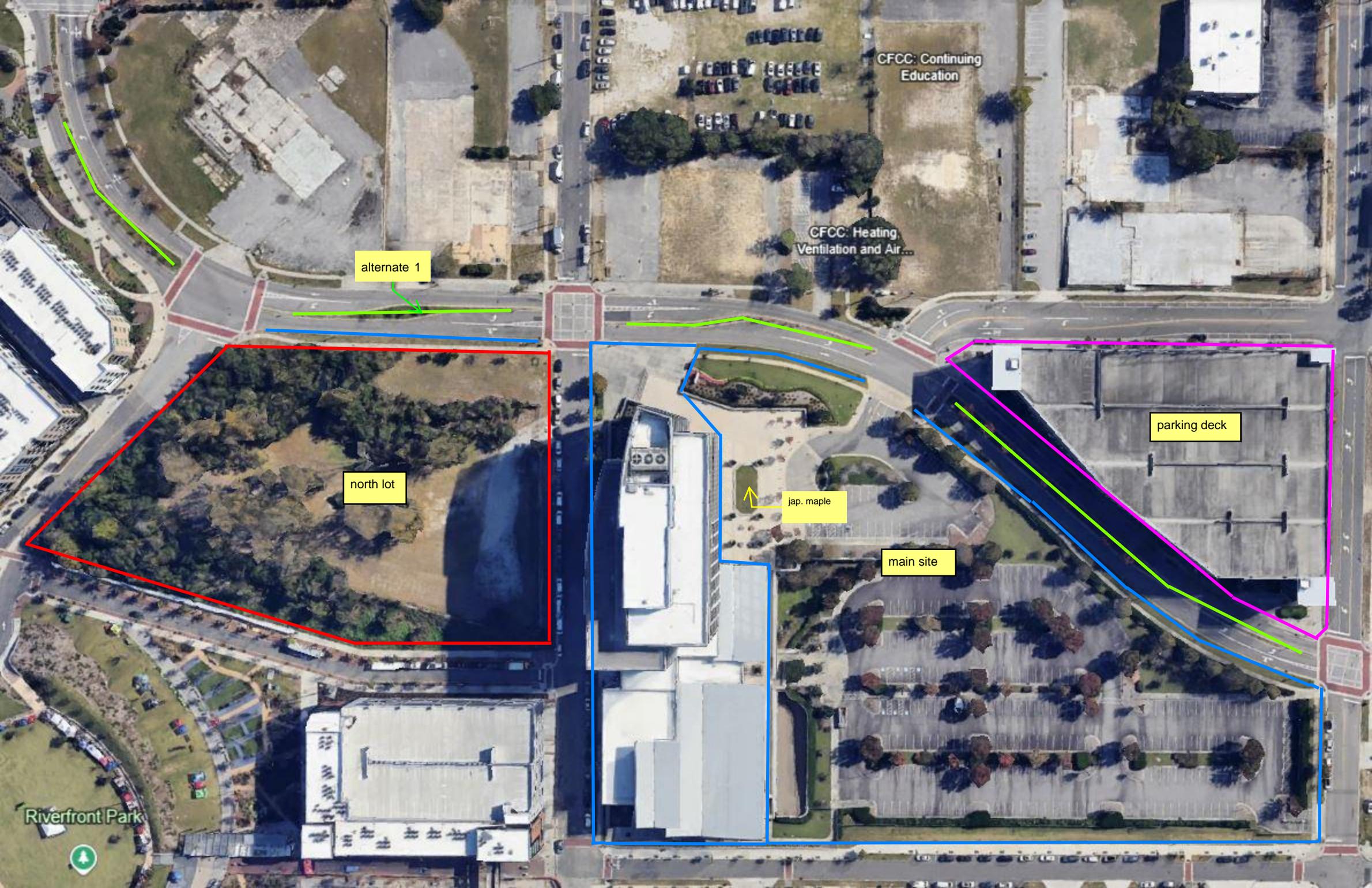
Project String: _____

Org./Obj: _____ Project: _____

Amount of Contract: \$ _____

Requisition: # _____

Federal ID Number: #56-6000239



CFCC: Continuing Education

CFCC: Heating Ventilation and Air...

alternate 1

north lot

jap. maple

main site

parking deck

Riverfront Park



