



Request for Proposals (RFP No. S12-0626.1)

Title: On-Call Tree Services

Issue Date: June 8, 2026

Due Date: JUNE 25, 2026, by 3:00PM ET
LATE SUBMISSIONS WILL NOT BE ACCEPTED

**Issuing Dept: Asset & Property Management-Landscape
Maintenance**

Direct all inquiries concerning this RFP to: Aaron Reese,
aaron.reese@wilmingtonnc.gov



Finance

Purchasing Division
929 N. Front St. 10th Floor
Post Office Box 1810
Wilmington, NC 28402-1810

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

June 8, 2026

RE: Request for Proposals – On-Call Tree Services
RFP No.: S12-0626.1

Dear Sir or Madame:

This Request for Proposal (RFP) will provide your firm with sufficient information to enable you to prepare and submit a proposal for On-Call Tree Services for pruning, removal and stump grinding for the City of Wilmington on an as needed basis.

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 final selection(s) are made by the City. The general terms and conditions are part of any submitted proposal and will be incorporated as needed into any subsequent contract(s). Submission of a proposal shall constitute acceptance of these terms and conditions. Conditional responses may be rejected.

Potential respondents should email kathy.braynt@wilmingtonnc.gov to acknowledge receipt of the RFP and to inform the City of its intent to respond. Provide the name, title, address, telephone, and email address of the contact person. Addenda will be posted to the City's Web Site www.wilmingtonnc.gov.

For your RFP to be considered responsive, it must adhere to the submittal requirements that follow. The successful Firm will be selected based on its qualifications, experience, and expertise. Firms must be registered with the North Carolina Secretary of State or hold a Certificate of Authority to do business in the State of North Carolina and possess all the accreditations and licenses necessary to conduct tree services in the State of North Carolina.

It is the goal of the City to promote local and minority business participation in all construction and service contracts. Therefore, in accordance with the City of Wilmington's MBE/DBE Policy, the Appraiser shall make a good faith effort to identify and hire minority subcontractors when opportunities exist in this project.

Questions concerning the proposed contract terms and conditions should be addressed to my office. I hope to receive your proposal for this service.

Sincerely,

Daryle L. Parker
Purchasing Manager

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I. STATEMENT OF PURPOSE

To provide on-call tree services for pruning, removal and stump grinding. Includes emergency response for trees that will impact public facilities and amenities and non-emergency response for routine tree work.

Proposals shall be submitted to the Purchasing Division at the address listed below no later than **3:00 P.M., Thursday, June 25, 2026.**

City of Wilmington Purchasing Division
929 N Front Street 10th Floor
PO Box 1810
Wilmington, NC 28402
Attention: Daryle L. Parker, Purchasing Manager

The City of Wilmington will contract with the firm that can provide the required services for this specific scope of work. All questions regarding this RFP should be directed to Aaron Reese, City Arborist at aaron.reese@wilmingtonnc.gov

II. Scope of Work

Tree Removal. Designated trees shall be removed in their entirety, including stump grinding. All debris resulting from the removal of trees shall be taken from the site and legally disposed of. This includes, but is not limited to, wood, limbs, leaves, fruit, sawdust, and wood chips.

Stump Grinding. Stump removal activities shall be performed in a manner consistent with Tree Care/Arboricultural and Landscape industry standards that ensure safe and lawful conduct of the work zone in proximity to roadways, pedestrian access areas, parked and moving vehicles, motorists, cyclists and pedestrians, underground utilities, and adjacent structures and improvements.

The stump and all surface roots will be expected to be ground to a depth of 24" or until stump/roots are completely removed, whichever is first. The Contractor is not responsible for grinding surface roots beyond a six (6) foot radius from the outside edge of the stump or into neighboring private property.

Each grinding area/stump hole shall be backfilled with material generated from grinding operations and compacted to a level approximately three inches above surrounding, existing grade to allow for decomposition/settling. Excess material must be removed from the site and disposed of. If extra fill material is required to avoid leaving a depression in the grinding area, contractor shall be responsible for obtaining and installing said extra material at no additional cost to the City.

Tree Pruning.

Direction of City arborists shall take precedence.

General

- a. No more than 25% or one-fourth (1/4) of the live crown shall be removed unless limbs present a hazard.
- b. All cuts shall be made with sharp pruning tools as close as possible to the trunk or parent limb, without cutting into the branch collar or leaving a protruding stub.
- c. All branches too large to support by one hand shall be precut to avoid splitting or ripping of the bark. When necessary, ropes or other equipment shall be used to lower large branches or stubs to the ground.

- d. The use of climbing spurs or hooks is prohibited.
- e. Reduction cut pruning should be avoided. Removing the entire limb is preferable. Where reduction cut pruning may be considered, the whole limb or leader shall be removed to the parent leader or limb unless the ratio of the live wood to leaf area of the limb or leader is sufficient to support that limb or leader. If more than one-fourth leaf surface area of the limb or leader needs to be removed, remove the whole limb.
- f. When removing a parent leader or limb to a lateral (reduction cut), the lateral shall be at least one-third (1/3) the diameter of the parent leader or limb being removed.
- g. Priorities for pruning. The following priorities shall be followed to assist in the decision process for limb removal:

1. Risk mitigation, 2. Clearance, 3. Restoration, 4. Structural

h. Clearance. Clearance is specified in two diameter ranges. These are guidelines. Crown raising shall be completed to provide adequate clearance based on the site conditions and location of the tree. Limb removal decisions should be based on the goal of reaching clearance standards through whole limb removal and the health of the tree. Generally, lateral branches should not be removed below one-third the total height of the tree.

h.1 Clearance – clearances over the right of way and from buildings, traffic control devices, signs and streetlights. Trees 6-12 inches in diameter at breast height; Limbs shall be removed to provide 6 feet clearance over and from the side of permanent structures. Limbs shall be removed from the lower one third of the tree to provide under canopy clearance. Trees 13 inches or greater in diameter at breast height; Limbs shall be removed to provide 6 feet minimum clearance over and from the side of permanent structures. Limbs shall be removed to provide an overhead clearance of 14 feet over the street. Limbs shall be removed to provide an overhead clearance of 8 feet over the sidewalk and under the canopy.

i. Private trees. Trees located on private property that have hazardous limbs that may fall into the right of way, are blocking traffic control devices or do not meet the clearance standards as detailed below shall be pruned to correct these problems. The safety prune specification shall be used in these cases, and work completed shall be restricted to pruning the portions of the tree that present a risk to the public right-of-way.

Safety Prune Objective

The purpose of this pruning is to remove hazardous branches, prune storm damage, provide adequate clearance from permanent structures and elevate for under-canopy clearance.

- a. Risk mitigation -- Hazardous limbs to be removed. Broken limbs lodged in the tree. Broken hanging limbs in the tree. Dead or split branches 1 inch or greater in diameter. Decaying branches with less than 33% sound wood 1 inch or greater in diameter.
- b. Restoration – storm damaged branches to be removed. Broken lateral branches and leaders living or dead 1 inch or greater in diameter. Waterspouts – where removing an entire lateral or leader with sprouts may not be desirable, leave one to three sprouts. More vigorous sprouts should be thinned or headed to control length growth or ensure adequate attachment for the size of the sprout.

Crown Reduction Prune

Objective -- reduce the structural stresses on limbs or leaders with decay present or codominant stems with included bark by reducing the length or height of limbs or leaders.

- a. Where specified or if defects are revealed while pruning the tree, reduce the height or length of limbs or leaders by one-third using proper reduction pruning techniques as specified above in section “General”, items e & f.
- b. Perform a safety prune as specified.

Structural Prune

Objective -- to promote a single leader, strong scaffold branch structure and suitable permanent branch

selection for clearance requirements at maturity on young and semi-mature trees.

a. Remove broken, dead, diseased or dying branches.

b. Trunk development – one central leader

- Tree species that do not form a single central leader, skip this step.
- Branches forming multiple leaders in a single leader type tree shall be removed. Leave the most dominant leader or select one. If you cannot remove a competing leader, subordinate with a reduction or heading cut to reduce the height of the less dominant leader.

c. Clearance

- At least one-half the foliage should originate on branches in the lower two-thirds of the tree. Remove branches that are below the height of the tree that will maintain this proportion.

d. Permanent branches – branches attached to the trunk that will remain on the tree throughout its lifetime.

- The lowest branches should be selected on each side of the tree to meet clearance standards.
- Permanent scaffold branches should be spaced 6- 12 inches apart by thinning for the first five years then 18 inches apart thereafter. Branches directly above should be spaced 15-36 inches for small-to medium-sized trees and 60 inches for large trees.
- A permanent branch should be less than one-half the diameter of the parent limb.
- Remove branches to meet this desired spacing or if this will require removing too much leaf area, prune them as temporary branches.

e. Temporary branches – branches that will be left at this pruning but will eventually be pruned in later pruning.

- Head or reduce these branches to suppress their growth and allow the permanent branches to develop.

Response Times.

Emergency Response: Contractor shall begin work within twenty-four (24) hours of being notified of a need for service. Situation-based changes to this timeline may be approved by the City as necessary.

Non-emergency Response: After notification of a need for service, contractor shall begin work within thirty (30) days and complete work by the close of the 60-day period following start of work.

Protection of Utilities. Tree/stump removal operations may be conducted in areas where electric, telephone, cable television, gas, fiber optic, stormwater inlets, and water/sewer facilities exist. The contractor shall protect all utilities from damage, shall immediately contact the appropriate utility if damage should occur, and shall be responsible for all claims for damage due to its operation. If the contractor has properly contacted the utility in sufficient time to arrange for the required work by the utility, delays encountered by the contractor in waiting for the utility to complete its work shall not be the responsibility of the contractor. Prior to commencement of work, the contractor shall contact NC 811 (1-800-632-4949) to obtain locations of underground utilities and the City of Wilmington, Traffic Engineering Division for locations of underground traffic signal cables.

The contractor is responsible for securing utility locates prior to grinding. If buried infrastructure is encountered and measures taken to avoid them involve deviation from these standards, the Contractor will be responsible for notifying the Project Manager.

Protection of Property. The contractor shall take all necessary precautions to eliminate damage to adjacent trees and shrubs, lawns, or other real or personal property. Vegetation surrounding a tree/stump marked for removal shall be disturbed as little as possible.

III. Overview of the On-Call Projects Process

The selected firm(s) will enter in the City's Standard Professional Consultant Services Agreement (see sample provided as Attachment "A") to perform services on an "On-Call" (task order) basis to be negotiated with the City.

Task Orders. Task orders will include the cost of complete tree/stump removal and/or tree pruning, including removal of all wood, limbs, other tree parts, stump shavings, any uncovered trash or debris, compensation for any damages, and a final clean-up of the site. (See sample provided as Attachment "B")

Detailed List of Work. A detailed list of work to be performed will be provided with each request for service regardless of response time type.

PAYMENT AND QUOTES:

Selected contractor will provide quotes for designated work after notification of need for services. Work may be invoiced upon completion of each approved work list.

IV. Qualification Requirements

Qualified bidders must possess a current business license. A copy of your business license or business tax certificate must be included with your submittal to be further considered.

Qualified responders must provide at least three (3) references indicating past performance of general tree work performed under contract(s) similar in size and scope. For the sake of this request, size and scope for removals would be approximately 25 trees and stumps of a minimum 20-inch diameter in various locations to be completed within a 30-day period and pruning of 25 trees of various size within a 30-day period.

A committee selected by the City will review the RFPs and select the most qualified firm for an interview. After the most qualified is determined by the City, the staff will enter into negotiations with that firm to better define the final scope of work and negotiate a fee. If for any reason the City and the selected firm cannot agree on a scope and fee, the City will enter into negotiations with the next most qualified firm.

Working Hours

The contractor shall schedule work between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, excluding government holidays, unless otherwise authorized by the Project Manager.

Inspection of Work

Work performed under contract shall be reported to the Project Manager on a weekly basis. All work must be completed to the satisfaction of the Project Manager, or his/her representative, and any questions as to proper procedures or quality of workmanship will be resolved by same. The contractor shall be notified of all work not performed to the satisfaction of the Project Manager with the expectation that said items shall be completed within two (2) weeks. No invoices will be paid until the work is completed as specified.

Damage to Property

Any damage to property as the result of the contractor's operations shall be the responsibility of the contractor. Should the damage not be rectified within the time agreed upon or to the satisfaction of the Project Manager, the City reserves the right to repair or replace that which was damaged and assess the contractor such costs as may be reasonable and related to damage caused by the contractor and deduct such costs from any payment due the contractor. The contractor shall inform the Project Manager of any damage

caused by the contractor's operation on the day such damage occurs.

Personnel and Equipment

The contractor shall supply all material, equipment, and personnel necessary for the performance of this contract. All equipment must be in compliance with RFP specifications and all applicable federal, state, and local rules and regulations. All responders must have in their possession, or available to them by formal agreement at the time of submittal, all necessary equipment, devices, tools, materials, and supplies necessary to perform the work specified herein. The contractor shall provide the necessary resources to complete contract specifications as specified in completion schedule.

Include typical tree equipment in Appendix A: Qualifying Assets. Include capability of accessing a crane if needed.

Work Crew Supervision

The contractor shall provide qualified supervision of each crew at all times while working under this contract. Each supervisor shall be authorized by the contractor to accept and act upon all directives issued by the City.

Safety and Work Standards

Tree work shall be completed by qualified tree workers and, at a minimum, supervised by an ISA certified arborist and qualified in accordance with current federal, state and local laws. The work shall be completed in accordance with the most current editions of the American National Standards Institute's ANSI A300 "Tree, Shrub and Other Woody Plant Maintenance – Standard Practices"; American National Standards Institute's ANSI Z133.1; Pruning, Trimming, Repairing, Maintaining, and Removing Trees and Cutting Brush – Safety Requirements, the International Society of Arboriculture's Pruning Best Management Practices.

All equipment to be used and all work to be performed must be in full compliance with OSHA and the most current revision of the American National Standards Institute Standard Z-133 and A300 standards. Blocking public streets shall not be permitted unless prior arrangements have been made with City Traffic Engineering. The contractor is responsible for having vehicles moved during arboriculture work. The Contractor shall be solely responsible for pedestrian and vehicular safety and control within the work area. The contractor shall provide adequate barricades, flag person(s), signs, and/or warning devices during the performance of the contract to protect the motorists and pedestrians. All placements of cones, signs, and barricades must conform to the American Traffic Safety Standards. Flashing lights mounted on a vehicle shall not be deemed sufficient or adequate protection.

Debris and Chip Disposal

Legal disposal of all debris generated by work described within this contract will be the responsibility of the contractor. The contractor shall clean up the site and remove and dispose of all debris at the end of each day's operation. Site cleanup shall include removal of sawdust, chips, soil, wood, etc. from the street, sidewalk, and general work area with appropriate tools for the job. All costs associated with removal of debris shall be included in bid price.

V. RFP Submittal Requirements

Please prepare and organize your Statement of Qualification based on the requirements provided below. Any other information you would like to include should be placed in a separate section at the back of your

Statement of Qualification.

1. Cover Letter / Statement of Interest – Provide a cover letter / statement of interest submitted under the firm(s) name on the firm’s letterhead containing the signature and title of the person or an official of the firm who is authorized to commit the firm to a potential contract with the City. The cover letter should express the firm’s interest and serve as an executive summary of the proposal. This document should also include the physical address of the primary proposer and the e-mail address of the person to be notified of the award, manually and duly signed by an authorized corporate office, principal, or partner.
2. **Five (5) copies of your qualifications statement and an electronic version (PDF format) on (1) one flash drive must be submitted to Daryle L. Parker, Purchasing Manager, P.O. Box 1810 or delivered to 929 North Front Street, 10th Floor, Wilmington, NC 28402 no later than 3:00 p.m., Thursday, June 25, 2026.**

It is the goal of the City to promote local and minority business participation in all construction and service contracts. Therefore, in accordance with the City of Wilmington's MBE/DBE Policy, the appraiser shall make a good faith effort to identify and hire minority subcontractors for this project. A complete copy of the City's MBE/DBE policy is available at my office.

Proposals submitted after the stated deadline will not be accepted for consideration.

Standard Consulting Service Agreement

A sample of the City’s On-call Professional Services Agreement (Agreement), including insurance requirements, is provided as Exhibit “A”.

A sample of the City’s Standard Task Order is provided as Exhibit “B”.

VI. SELECTION EVALUATION CRITERIA

Proposals will be evaluated and ranked by City of Wilmington staff. City staff will assess the submitting firm’s qualifications, experience, and strength of the proposer in terms of the ability and resources to perform the work. The proposal receiving the highest ranking are likely to be invited for an interview. The City may, at its discretion, request that an applicant modify or supplement their submission with additional information.

Proposals may be evaluated based upon, but not limited to, the following criteria:

- The qualifications and specific experience of the key project team members
- Quality and completeness of the proposal
- Experience with engagement of similar scope and complexity
- Satisfaction of previous clients

The City reserves the right to make the selection based at its sole discretion. A subcommittee selected by City staff will evaluate the proposals provided to this RFP.

Qualifications packages will be evaluated using the following criteria and weights:

1. Qualifications and experience of the proposed team members for the requested services.	40%
2. Qualifying Assets/Equipment	20%
3. References	20%
4. Demonstration of Firm's Capacity and Availability to Respond.	10%
5. M/WBE Outreach Experience	10%

Based on input from this review process a recommendation will be made to the City Manager. The City Manager will make a recommendation to the City Council for the award of contract services.

The City reserves the right to award a contract to the firm that the City feels best meets the requirements of the RFP. The City reserves the right to reject any and all proposals prior to the execution of the Agreement, with no penalty to the City.

Receipt of proposals in response to this RFP does not oblige the City in any way to engage any firm.

EXHIBITS:

Exhibit "A" – City's Sample On-Call Professional Services Agreement

Exhibit "B" Sample of the City's Standard Task Order.

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.

5. 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.

6. 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.

7. 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 _____, 2026.

COMPANY NAME _____

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

ATTEST:

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

(CORPORATE SEAL)

(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 _____, 2026.

Notary Public

My Commission Expires: _____

(NOTARY SEAL)

On-Call Tree Services

CERTIFICATION

Proposers Signature: _____ **Date:** _____

By signing above, I certify that I have carefully read and fully understand the information contained in this RFP; and that I have the capability to successfully undertake and complete the responsibilities and obligations of the Proposal being submitted and have the authority to sign Proposal on behalf of my organization. **It is the offeror's responsibility to ensure that all addenda have been reviewed prior to proposal submission.**

BY (Printed): _____

TITLE: _____

COMPANY: _____

ADDRESS: _____

TELEPHONE: _____

EMAIL: _____

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

1. Please indicate type of business organization:

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

2. If 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 corporation (generally President and Secretary).

Firm is incorporated in what state?

If firm is a foreign corporation, does firm have a certificate of authority from the North Carolina Secretary of State? _____

3. If 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 state of registration? _____

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

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

Name of owner: _____

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

List the names and title of managers or member-managers who will execute the contract on behalf of the company? _____

What is state of organization? _____

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

6. For all bidders:

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 _____.

STATE OF NORTH CAROLINA

EXHIBIT "A"
PROFESSIONAL SERVICES AGREEMENT
CONTRACT NO.: _____

COUNTY OF NEW HANOVER

**ON-CALL PROFESSIONAL SERVICE AGREEMENT
MASTER CONTRACT**

THIS MASTER 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 referred to as the "CITY" and **COMPANY** hereinafter referred to as the "**CONTRACTOR**".

W I T N E S S E T H

WHEREAS, the CITY desires to retain and engage the CONTRACTOR to perform certain professional services hereinafter described, and further that the parties hereto desire to reduce the terms of this Agreement to writing.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed upon by the parties, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

1. Term of Agreement. The term of this Agreement shall commence as of the date set forth above and shall a duration of three (3) years or the length of time necessary to complete assigned Task Order(s). Thereafter, this Agreement may have an option to renew up to two (2) years on the same terms and conditions set forth in this Agreement. In the event that any Work, Service, Object, or Value, contemplated within the Scope of Work of the Agreement, was provided by the CONTRACTOR to the CITY and with the CITY's consent, prior to the execution of this Agreement, then the terms of this Agreement shall also govern all aspects of provision of that Work, Service, Object, or Value, unless such provision was governed by a previously written, valid, and executed Agreement between the Parties.

2. CONTRACTOR's Services. The 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. Specific projects and /or deliverables identified by the City will be negotiated through scope of work and fee discussions and arranged through a Task Order. The CONTRACTOR agrees to provide, in accordance herewith, the professional consulting services described in each separate Task Order issued hereunder. Each such Task Order shall contain a Project Description, a detailed Scope of Services, Project Schedule, Deliverables, Compensation Terms, Key Personnel,

Subcontractors and special provisions or conditions specific to the Services being authorized. Each Task Order, when assigned by the parties, shall be incorporated into, and form integral parts of this Agreement and shall be subject to the terms and conditions hereof. In the event of a conflict between this Agreement and any Task Order issued hereunder, the terms of the Task Order shall govern the provisions of the particular Services involved. The parties agree that only the terms and conditions outlined in this Agreement, not those described or referenced by Exhibit "A," of subsequent Task Orders, shall apply unless explicitly stated otherwise in the body of this Agreement or in the body of subsequent Task Orders.

3. Compensation to CONTRACTOR. The terms of payment for Services provided by the CONTRACTOR shall be set forth in each Task Order. CONTRACTOR shall be compensated on fixed fee basis for each separately issued Task Order for the services listed in this Agreement. Payment will be made within 30 days after receipt of an approved invoice. The CITY hereby agrees to pay reimbursable expenses with no more than a five percent (5%) markup within 30 days after receipt of an approved invoice with receipts attached. The CITY agrees to pay travel and meal expenses at the current GSA mileage and per diem rates without mark-up within 30 days after receipt of an approved invoice.

4. Termination or Cancellation of Agreement

A. Termination without Cause: CITY shall have the right to terminate this Agreement at any time and without cause upon thirty (30) days written notice to the other party. Upon receipt of Notice of Termination, the Contractor shall immediately discontinue all services directed (unless the Notice directs a date specific for services to terminate). As soon as practicable after receipt of a written Notice of Termination without cause, the Contractor shall submit a statement to the City showing in detail the Work performed under this Agreement through the date of termination. The CITY shall pay the Contractor for Work rendered through the date of termination.

B. Termination for Cause: CITY shall have the right to terminate this Agreement because of the failure of the Contractor to fulfill its obligations under the Agreement by giving fifteen (15) days' written notice to Contractor. The Notice of Termination shall specify the nature, extent, and effective date of the termination.

C. Breach of Contract Rights and Remedies

All contracts in excess of \$100,000 shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate. The Violations and Breach of Contracts clause flow down to all third-party contractors and their contracts at every tier. For purposes of this Agreement, breach shall include the Contractor and any subsequent named subcontractor.

1. Rights and Remedies of the Owner - The CITY shall have the following rights in the event that it deems the Contractor guilty of a breach of any term under the Agreement.
 - a. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
 - b. The right to cancel this Contract as to any or all of the work yet to be performed;
 - c. The right to specific performance, an injunction or any other appropriate equitable remedy; and

d. The right to money damages.

2. Rights and Remedies of the Contractor - Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Agreement, which may be committed by the CITY, the Contractor expressly agrees that no default, act or omission of the CITY shall constitute a material breach of this Agreement, entitling Contractor to cancel or rescind the Agreement (unless the CITY directs Contractor to do so) or to suspend or abandon performance.

3. Remedies - Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the CITY will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the CITY takes action contemplated herein, the City will provide the Contractor with written notice that the CITY considers that such a breach has occurred and will provide the Contractor twenty (20) days from the receipt of said notice to respond and corrective action must begin within thirty days (30) of receipt of the written notice from the City. The Contractor shall be given a reasonable period of time to complete any corrective action according to industry standards.

a. Substantial failure shall be defined as:

- i. Failure to perform duties that cause injury or harm, interferes with the rights of the parties, defeats the purpose or benefit of the contract, or threatens health or safety; or
- ii. A material breach that defeats the benefit of the contract; or
- iii. A willful, intentional or reckless failure to meet the obligations of the contract; or
- iv. A violation of essential terms of the contract; or
- v. Failure to use required materials or specifications of the contract; or
- vi. Failure to complete the terms of the contract in a timely manner; or
- vii. Failure to maintain the required insurance; or
- viii. Failure to comply with industry standard of care or workmanship

5. Records. The CITY has the right to audit all records pertaining to this Agreement both during its performance and after its completion. Further, upon termination of this Agreement, the CONTRACTOR shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials produced by CONTRACTOR in connection with services rendered pursuant to this Agreement. If compensation for expenses shall be provided to CONTRACTOR, the CONTRACTOR shall maintain all expense charge documents for a period of three (3) years following the completion of this agreement and said documents shall only be forwarded to the CITY upon request.

6. Ownership of Documents. The CONTRACTOR agrees that all materials and documents developed pursuant to this Agreement shall be the exclusive property of the CITY, and the CONTRACTOR shall retain no property or copyright interest therein. Further, upon termination of this Agreement, the CONTRACTOR shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials received or obtained from the CITY in connection with services rendered

pursuant to this Agreement.

7. Independent CONTRACTOR. This Agreement does not create an employee/employer relationship between the parties. It is the intention of the parties that the CONTRACTOR will be an independent CONTRACTOR and not the CITY's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the federal Internal Revenue Code, the provisions of the North Carolina revenue and taxation laws, the North Carolina Wage and Hour Act, the North Carolina Workers' Compensation Act, and the provisions of the North Carolina Employment Security Law. The CONTRACTOR will retain sole and absolute discretion in the judgment of the manner and means of carrying out the CONTRACTOR's activities and responsibilities hereunder. The CONTRACTOR agrees that he/she/it is a separate and independent enterprise from the CITY; and that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the services described herein. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the CITY, and the CITY will not be liable for any obligation incurred by the CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

8. Release and 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, any negligent, reckless, or intentional act or omission of CONTRACTOR (or by any subcontractor, agent, employee, or other person or entity for which the CONTRACTOR is liable or responsible). Upon a finding of fault that the damage or injury alleged was proximately caused by the CONTRACTOR as described above, the provisions of this Section shall include any claims for equitable relief or for damages 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 and defending any action, and shall also include reasonable attorneys' fees. 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 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. Representatives of the Parties. Becky Hawke, City Manager, 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:

Becky Hawke, City Manager
City of Wilmington
P.O. Box 1810
Wilmington, NC 28402-1810

_____, 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:

Representative
Company, Inc.
Address
Raleigh, NC 27603

10. 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 wastes 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 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.G.S. § 132-1.10 and §75-65.

11. Insurance Requirements.

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 under the CGL by endorsement CG 20 10 or CG 20 33 **AND** CG 20 37 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of the CONTRACTOR; products and completed operations 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.
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, agents and employees for losses arising from work performed by the CONTRACTOR for the City of Wilmington.
4. The U.S. Longshore and Harborworkers Compensation Act endorsement shall be attached to the policy when the services will be on or in close proximity to navigable waterways.
5. The Maritime Coverage endorsement (WC 00 02 01) shall be attached to the policy when the contracted services involve the use of watercraft.

NOTE: Additional requirements needed if you have a borrowed servant, offshore platforms or federal act situations. (Federal Acts such as the Defense Base Act, Migrant and Seasonal Agricultural Worker Protection Act, and the Federal Coal Mine Health and Safety Act, etc.)

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. CONTRACTOR waives all rights against the City of Wilmington, its officers, officials, agents and employees for recovery of damages to the extent these damage are covered by the business auto liability or commercial umbrella liability insurance obtained by CONTRACTOR pursuant to Section 11.C.1 of this agreement.
6. 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.

D. Professional Liability Insurance

1. CONTRACTOR shall maintain in force for the duration of this contract professional liability or errors and omissions liability insurance appropriate to the CONTRACTOR's profession. Coverage as required in this paragraph shall apply to liability for a professional error, act, or omission arising out of the scope of the CONTRACTOR's services as defined in this contract. Coverage shall be written subject to limits of not less than \$1,000,000 per claim.
2. If coverage required in paragraph 1 above is written on a claims-made basis, the CONTRACTOR warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 (two) years beginning from the time that work under the contract is complete.

E. Deductibles and Self-Insured Retentions

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

F. Miscellaneous Insurance Provisions

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

1. Each insurance policy required by this contract shall be endorsed to state that coverage shall not be 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.
2. 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.

G. 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.

H. Evidence of Insurance

1. 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 contract are deemed complete.
2. Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in Section 11.
3. 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.

I. Subcontractors

CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates for each sub CONTRACTOR. All coverage for subcontractors shall be subject to all of the requirements stated herein. Commercial General Liability coverage shall include independent CONTRACTOR's coverage, and the CONTRACTOR shall be responsible for assuring that all subcontractors are properly insured.

J. Conditions

1. The insurance required for this contract must be on forms acceptable to the City of Wilmington.
2. The CONTRACTOR shall provide that the insurance contributing to satisfaction of insurance requirements in Section 11. Minimum Scope and 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. The City of Wilmington reserves the right to obtain complete, certified copies of all required insurance policies, at any time.
5. 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.
6. 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 contract.
7. The City of Wilmington shall have the right, but not the obligation of prohibiting CONTRACTOR or any sub CONTRACTOR 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.

12. 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.

13. Entire Agreement and Amendment. This Agreement, including any Exhibits attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the parties, and no warranties, inducements, considerations, promises or other inferences shall be implied or impressed upon this Agreement that are not set forth herein. This Agreement shall not be altered or amended except in writing signed by all Parties.

14. No Assignment. No party shall sell or assign any interest in or obligation under this Agreement without the prior express written consent of all the parties.

15. 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.

16. Non-Waiver of Rights. It is agreed that the CITY'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.

17. Binding Effect. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

18. 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 this Agreement.

19. 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.

20. Saving Clause. 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.

21. Time. Time is of the essence in this Agreement and each and all of its provisions.

22. Immunity Not Waived. This Agreement is governmental in nature, for the benefit of the public. CONTRACTOR acknowledges that City reserves all immunities, defenses, rights or actions arising out of City's sovereign status under applicable law. No waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of City's entry into this Agreement.

23. Non-Appropriation. 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 Agreement, then the City will immediately notify CONTRACTOR of such occurrence and this Agreement 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.

24. 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.

25. 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 CITY's option, in a termination or suspension of this agreement in whole or in part.

26. 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.

27. 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 forgoing, the parties agree that the CONTRACTOR may list the CITY as a reference in responses to requests for proposals, and may identify the CITY as a customer in presentations to potential customers.

28. 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 Contract.

29. Public Records. CONTRACTOR acknowledges that the CITY is a public entity, subject to North Carolina's public records laws (N.C.G.S. §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 also must 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 time period for CONTRACTOR to seek court ordered 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.

30. Minority Business Enterprise (MBE)

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

1. Promote affirmatively (where feasible) in accordance with N.C.G.S. § 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.
2. 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.
3. 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.
4. Provide technical assistance as needed.
5. Promulgate and enforce contractual requirements that the general CONTRACTOR or 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.

The CONTRACTOR shall ensure that minority business enterprises have the maximum opportunity to compete for and perform portions of the work included in this contract 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 contract. 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 contract or other appropriate remedy.

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.

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.

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 contract. The CONTRACTOR agrees by executing this contract that he will exercise all necessary and reasonable steps to ensure that this special provision contained herein on Minority Business Enterprise is complied with.

Federal Contract Provisions

A. Federal Applicability

The Work to be performed under this Contract will be financed in whole or in part with Federal funding. As such, Federal laws, regulations, policies, and related administrative practices apply to this Contract. The most recent of such Federal requirements, including any amendments made after the execution of this Contract, shall govern this Contract, unless the Federal Government determines otherwise. This Section identifies the Federal requirements that are applicable to this Contract. The Contractor is responsible for complying with all applicable provisions.

To the extent applicable, the Federal requirements are deemed incorporated into this Contract by reference and shall be incorporated into any subcontract or subcontract executed by the Contractor pursuant to its obligations under this Contract. The Contractor and its subcontractors, if any, hereby represent and covenant that they have complied and shall comply in the future with all applicable provisions of Federal, State, and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to the Work to be performed under this Contract. Anything to the contrary herein notwithstanding, all Federal

awarding agency-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests, which would cause the City to be in violation of the Federal awarding agency's terms and conditions.

The Work performed under this Contract will be financed, in whole or in part, by funding provided by programs of the Federal Emergency Management Agency (FEMA). Contractor shall at all times comply with all applicable FEMA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

B. Civil Rights Requirements

The City is an Equal Opportunity Employer. As such, the City agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the City agrees to comply with the requirements of 49 USC 5323(h)(3) by not using any Federal assistance to support procurements using exclusionary or discriminatory specifications.

Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. Nondiscrimination

In accordance with 41 CFR 60-1.4, during the performance of this Contract, the Contractor agrees as follows: (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which Contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said

labor union or workers' representatives of the Contractor's commitments under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of, and of the rules, regulations, and relevant orders Executive Order 14173 of January 21, 2025 and of the rules, regulations and relevant orders of the Secretary of Labor.

(6) The Contractor will comply with Section 504 of the Rehabilitation Act of 1973, as amended.

(7) The Contractor will furnish all information and reports required by Executive Order 14173 of January 21, 2021, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(8) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 14173 of January 21, 2025, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 14173 of January 21, 2025, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(9) Contractor, and all subcontractors shall certify that they are in full compliance with all federal civil rights law, that they do not engage in any unlawful diversity, equity or inclusion practices or policies and shall acknowledge that that the certification is material to grant and contract payments for the purposes of potential liability under the Civil False Claims Act, 31 USC§ 3729 et seq.

The requisite "B Certificate of Compliance" is included as ATTACHMENT D.

(10) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (10) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Executive Order 14173 of January 21, 2025, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: provided, that if the applicant so participating is a State or local government, the above clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 14173 of January 21, 2025, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal

opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

2. Age

In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, and 29 USC 623 through 634 and the implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements the Federal awarding agency may issue.

3. Sex

The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 USC 1681 *et seq.*, and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Educational Programs or Activities Receiving Federal Financial Assistance," 49 CFR Part 25, that prohibit discrimination on the basis of sex.

4. Disabilities

In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities.

5. Access to Services for Persons with Limited English Proficiency

The Contractor agrees to comply with Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 USC 2000d-1 note, and U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005, except to the extent that the Federal Government determines otherwise in writing.

6. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections

To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 USC 1101 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 USC 4541 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 USC 290dd through 290dd-2, and any amendments thereto.

7. Other Nondiscrimination Laws

The Contractor agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable directives prohibiting discrimination, except to the extent that the Federal Government determines otherwise in writing.

8. Inclusion in Subcontracts

The Contractor also agrees to include the requirements of this Section in each subcontract financed in whole or in part with Federal assistance, modified only if necessary to identify the affected parties.

C. Davis-Bacon & Copeland Anti-Kickbacks Acts.

1. Applicability. The Davis-Bacon Act only applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It DOES NOT apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.

2. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 USC 3141- 3144, and 3146-3148) and the requirements of 29 CFR pt. 5 as may be applicable. The Contractor shall comply with 40 USC 3141-3144, and 3146-3148 and the requirements of 29 CFR pt. 5 as applicable. Contractor shall include the provisions of 29 CFR §5.5(a)(1)-(11) in full in all subcontracts if applicable.

3. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

4. Contractors are required to pay wages not less than once a week.

5. Compliance with the Copeland “Anti-Kickback” Act.

a. Contractor. The Contractor shall comply with 18 USC 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 CFR 5.12.

D. Contract Work Hours & Safety Standards Act

1. Overtime requirements.

No contractor or subcontractor contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages.

In the event of any violation of the clause set forth in paragraph above of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the U.S. for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in the paragraph above of this section, in the sum of twenty-seven dollars (\$27.00) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in the paragraph above of this section.

3. Withholding for unpaid wages and liquidated damages.

(i) The CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of Work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages, monetary relief including interest, and liquidated damages as provided in the clause set forth in the paragraph above of this section. The necessary funds may be withheld from the Contractor under this contract, any other federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds are withheld.

(ii) Priority to Withheld Funds. The Department has priority to funds withheld or to be withheld in accordance with the provisions herein, over claims to those funds by:

- (a) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (b) A contracting agency for its procurement costs;
- (c) A trustee(s) (either a court appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (d) A contractor's assignee(s);
- (e) A contractor's successor(s); or
- (f) A claim asserted under the Prompt Payment Act, 31USC 3901-3901.

4. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in the paragraphs above of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in the paragraphs above of this section. In the event of any violations of these clauses, the prime Contractor, and any subcontractor(s) responsible shall be liable for any unpaid wages and monetary relief, including interest, from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-Retaliation.

It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
- (ii) Filing any complaint, initiating, or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
- (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- (iv) Informing any other person about their rights under CWHSSA or this part.

E. Right to Inventions Made Under a Contract or Agreement—NOT APPLICABLE

F. Clean Air Act.

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401, et seq. The Contractor agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding one hundred and fifty thousand dollars (\$150,000.00) financed in whole or in part with Federal assistance.

G. Federal Water Pollution Control Act.

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq. The Contractor agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding one hundred fifty thousand dollars (\$150,000.00) financed in whole or in part with Federal assistance.

H. Energy Conservation

The Contractor agrees to comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. § 6321, et seq.

This requirement extends to all third-party contractors and their contracts at every tier and this clause shall be included in all such subcontracts.

I. Government-Wide Debarment & Suspension

1. This contract is a covered transaction for purposes of 2 CFR pt. 180 and 2 CFR pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 CFR 180.995) or its affiliates (defined at 2 CFR 180.905) are excluded (defined at 2 CFR 180.940) or disqualified (defined at 2 CFR 180.935).

2. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3. This certification is a material representation of fact relied upon by City. If it is later determined that the Contractor did not comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, in addition to remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

4. The bidder or proposer agrees to comply with the requirements of 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

This requirement extends to all third-party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.

The requisite Debarment and Suspension Certification is included as ATTACHMENT A and must be executed for contracts of \$25,000 or more and prior to the award of the contract.

J. Byrd Anti-Lobbying

The Contractor agrees to comply with the provisions of Title 31 USC 1352, The Byrd Anti-Lobbying Amendment, as in force or as it may hereafter be amended. The Contractor and all subcontractor tiers shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant, or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to the CITY.

The Contractor further agrees to secure like undertakings from all subcontractor tiers whose subcontracts are expected to be of a value of one hundred thousand dollars (\$100,000.00) or more.

The requisite "Lobbying Certification" is included as ATTACHMENT B and must be executed for contracts of \$100,000 or more and prior to the award of the contract.

K. Recovered Materials

The Contractor agrees to comply with all requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 USC 6962, including but not limited to the regulatory provisions of 40 CFR Part 247 and Executive Order 13101, as they apply to the procurement of the items designated in Part B of 40 CFR Part 247.

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- (a) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (b) Meeting contract performance requirements; or
- (c) At a reasonable price.

Information about this requirement, along with a list of EPA-designated items, is available at Comprehensive Procurement Guideline (CPG) Program / US EPA. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

This requirement extends to all third-party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.

L. Conflict of Interest

No employee, officer, board member, or agent of the CITY or the Contractor shall participate in the selection, award, or administration of a contract supported by FEMA funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, board member, or agent, any member of his or her immediate family, his or her partner, or an organization that employees or is about to employ any of the above, has a financial or other interest in the firm selected for the award.

M. Access to Records and Reports and Record Retention

The record keeping and access requirements extend to all third-party contractors and their contracts at every tier. Under 49 USC 5325(g) and 2 CFR 200.336, FEMA has the right to examine and inspect all records,

documents, and papers, including contracts, related to any FEMA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

1. Record Retention. The Contractor will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
2. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 CFR § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
3. Access to Records.
 - a. The Contractor agrees to provide sufficient access to FEMA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
 - b. The Contractor agrees to permit, and require its subcontractors to permit, the U.S. Secretary of Transportation, and the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, invoices, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project, as required by 49 USC 5325(g) and 2 CFR 200.336.
 - c. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FEMA Administrator or authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5303, 5307, 5309, 5339, 5310, 5311, 5316, or 5317.
 - d. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
4. Access to the Sites of Performance. The Contractor agrees to permit FEMA and its contractors access to the sites of performance under this contract as reasonably may be required.

N. Termination or Cancellation of Contract

1. Termination without Cause: City shall have the right to terminate this Agreement at any time and without cause upon thirty (30) days written notice to the other party. Upon receipt of Notice of Termination, the Contractor shall immediately discontinue all services directed (unless the Notice directs a date specific for services to terminate). As soon as practicable after receipt of a written Notice of Termination without cause, the Contractor shall submit a statement to the City showing in detail the Work performed under this Contract through the date of termination. The City shall pay the Contractor for Work rendered through the date of termination.

2. Termination for Cause: City shall have the right to terminate this Contract because of the failure of the Contractor to fulfill its obligations under the Contract by giving thirty (30) days' written notice to Contractor. The Notice of Termination shall specify the nature, extent, and effective date of the termination.

For all contracts in excess of \$10,000, this clause extends to all third party contractors, and their contracts at every tier, and subrecipients and their subcontracts at every tier, as referenced in 2 CFR 200.339 and 2 CFR Part 200, Appendix II (B).

O. Breach of Contract Rights and Remedies

All contracts in excess of \$250,000 shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate as provided in 2 CFR 200.326 and 2 CFR part 200, Appendix II (A). The Violations and Breach of Contracts clause flow down to all third-party contractors and their contracts at every tier. For purposes of this Contract, breach shall include the Contractor and any subsequent named subcontractor.

4. Rights and Remedies of the Owner - The City shall have the following rights in the event that the Owner deems the Contractor guilty of a breach of any term under the Contract.
 - e. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
 - f. The right to cancel this Contract as to any or all of the work yet to be performed;
 - g. The right to specific performance, an injunction or any other appropriate equitable remedy; and
 - h. The right to money damages.
5. Rights and Remedies of the Contractor - Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the City, the Contractor expressly agrees that no default, act or omission of the City shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the City directs Contractor to do so) or to suspend or abandon performance.
6. Remedies - Substantial failure of the Contractor to complete the Project in accordance with the terms of this Contract will be a default of this Contract. In the event of a default, the City will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Contract by the Contractor before the City takes action contemplated herein, the City will provide the Contractor with sixty (60) days written notice that the City considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.
7. If there is credible evidence that a Third-Party Participant (Contractor) has submitted a false claim under the False Claims Act, 31 USC 3729 *et seq.*, or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Federal funding, notification of the Federal awarding agency is required.

P. Copyrights and Rights in Data. NOT APPLICABLE

Q. Cost Principles. Any adjustment to the Contractor's compensation, including requested reimbursable expenses, shall include only costs and other compensation that are allowable, allocable, and reasonable as provided elsewhere herein, or otherwise by law, and that are allowable, allocable, and reasonable under 2 CFR 200 Subpart E—Cost Principles and any implementing guidelines or regulations issued by the Office of Management and Budget (OMB). Contractor further agrees to provide adequate documentation to support costs (direct and indirect) charged to the Federal award.

This requirement extends to all third party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.

R. DHS Seal, Logo, and Flags. The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.

S. Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 USC Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

T. F.A.R. Compliance. Any adjustment to the Contractor's compensation under the Contract shall include only costs and other compensation that are allowable, allocable, and reasonable as provided elsewhere herein, or otherwise by law, and that are allowable, allocable and reasonable under the Contract Cost Principles of the Federal Acquisition Regulations (F.A.R.) System, 48 CFR, Ch.1, Pt.31, and any implementing guidelines or regulations issued by the said Administration.

U. No Federal Government Obligations to Third Parties

The No Obligation clause extends to all third-party contractors and their contracts at every tier.

The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

V. Prohibition on Contracting for Covered Telecommunications Equipment or Services

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services.

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

- (1) This clause does not prohibit contractors from providing—
 - a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- (2) By necessary implication and regulation, the prohibitions also do not apply to:
 - a. Covered telecommunications equipment or services that:
 - i. Are not used as a substantial or essential component of any system; and
 - ii. Are not used as critical technology of any system.
 - b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

- (1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
- (2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:
 - (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

W. Build America, Buy America. This project is subject to the Build America, Buy America Act (BABAA). The Contractor and its subcontractors shall certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractor and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that does not ensure compliance with BABAA domestic preference requirement. Such disclosures shall be forwarded to the City, who in turn shall forward such disclosures to the federal agency.

The requisite “BABAA Certificate of Compliance” is included as ATTACHMENT C.

ATTACHMENT A

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY and VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTION

(To be submitted with all bids exceeding \$25,000.)

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

The lower tier participant (Bidder/Contractor), _____, certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

DATE _____

SIGNATURE _____

COMPANY _____

NAME _____

TITLE _____

State of _____

County of _____

Subscribed and sworn to before me this ___ day of _____, 20__.

Notary Public _____

My Appointment Expires _____

[SEAL]

ATTACHMENT B

CERTIFICATION REGARDING LOBBYING

(To be submitted with all offers exceeding \$100,000; must be executed prior to Award)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding to any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into these transactions imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 1352, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Date _____

Printed Name and Title of Contractor's Authorized Official

State of _____

County of _____

Subscribed and sworn to before me this ___ day of _____, 20__.

Notary Public _____

My Appointment Expires _____

[SEAL]

ATTACHMENT C

BABAA CERTIFICATION OF COMPLIANCE

The Build America, Buy America Act (BABAA) requires that no federal financial assistance for “infrastructure” projects is provided “unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” Section 70914 of Public Law No. 117-58 §§ 70901-52.

The undersigned certifies, to the best of their knowledge and belief, that:

All the iron, steel, manufactured products, and construction materials used in the contract are in full compliance with BABAA requirements including:

1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting state through the application of coatings, occurred in the United States.
2. All manufactured products purchased with FEMA financial assistance must be produced in the United States. For a manufactured product to be considered produced in the United States, the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55% of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
3. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

“The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.”

Signature of Contractor’s Authorized Official

Date _____

Printed Name and Title of Contractor’s Authorized Official

State of _____

County of _____

Subscribed and sworn to before me this ___ day of _____, 20__.

Notary Public _____

My Appointment Expires _____

[SEAL]

ATTACHMENT D

CERTIFICATION REGARDING COMPLIANCE WITH FEDERAL ANTI-DISCRIMINATION LAWS
(To be submitted with all bids.)

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently engaged in any unlawful diversity, equity or inclusion practices or policies that are in violation of federal anti-discrimination laws.
- (2) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not engaging in any practices or policies that promote unlawful diversity, equity or inclusion in a manner that is in violation of federal anti-discrimination laws.
- (3) The prospective Bidder/Contractor acknowledges that this certification is material to grant and contract payments for the purposes of potential liability under the Civil False Claims Act, 31 USC§ 3729 et seq.

The lower tier participant (Bidder/Contractor), _____, certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

DATE _____

SIGNATURE _____

COMPANY _____

NAME _____

TITLE _____

State of _____

County of _____

Subscribed and sworn to before me this ___ day of _____, 20__.

Notary Public _____

My Appointment Expires _____

[SEAL]

IN WITNESS WHEREOF, the CITY and the CONTRACTOR have each executed this Agreement in duplicate originals, one of which shall be retained by each of the parties.

CITY OF WILMINGTON, NORTH CAROLINA

By: _____
Becky Hawke, City Manager

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 _____, 20___.

Martha Wayne, Finance Director

Project String: _____

Org./Obj.: _____

Amount: N/A

Req. No. N/A

Federal ID # 56-6000239

NOTE: Fee and Scope will be developed per Task Order

Date: _____

WITNESS:

Secretary, Assist. Secretary, Trust Officer

(CORPORATE SEAL)

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public, certify that the corporation's Secretary, Assist. Secretary or Trust Officer, Mr./Mrs./Ms. _____ personally came before me this day and acknowledged that he (she) is the _____ of _____, a Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, Vice President, or Assist. Vice President, Mr./Mrs./Ms. _____, sealed with its Corporate Seal, and attested by himself (herself) as its Secretary, Assist. Secretary or Trust Officer.

WITNESS my hand and official seal this the _____ day of _____, 2026.

Notary Public

My Commission Expires: _____

[SEAL]

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

CONTRACT NO.: __ **EXHIBIT "B"**
MASTER AGREEMENT

TASK ORDER NO. ____

This Task Order ("Task Order"), made and entered into on the date executed by all parties, by and between the City of Wilmington, hereinafter referred to as the "CITY" and [Company], hereinafter referred to as the "CONTRACTOR".

WHEREAS, CITY and CONTRACTOR entered into a Master Agreement for On-Call Professional Services dated _____ ("Master Agreement"); and

WHEREAS, CITY has determined it is in need of professional services associated **NAME OF PROJECT** ("Project"), and CONTRACTOR desires to provide such Services.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed upon by the parties, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

SERVICES. The CONTRACTOR hereby agrees to perform, in a manner satisfactory to the CITY, professional and timely services and deliverables as set forth in Attachment A, attached hereto and incorporated herein by this reference.

SCHEDULE. The Estimated Schedule shall be set forth in Attachment A to this Task Order. Because of the uncertainties inherent in the SERVICES, Schedules are estimated and are subject to revision unless otherwise specifically described herein.

KEY PERSONNEL AND USE OF SUBCONTRACTORS.

A. CONTRACTOR's key personnel are provided in Attachment A.

B. If CONTRACTOR is to use subCONTRACTORS for a portion of its Services, then the following applies to such subCONTRACTOR(s): No changes in CONTRACTOR's key personnel or subCONTRACTORS designated in this Task Order as those who will provide Services shall be permitted except with the prior consent of CITY, which consent shall not be unreasonably withheld.

COMPENSATION. The CITY hereby agrees to pay to CONTRACTOR the amount not to exceed **DOLLAR AMOUNT (\$ 00,000.00)** for services as provided herein. In the event that CONTRACTOR should fail to provide the services as set forth above, CITY shall be entitled to a refund of its payment(s) to CONTRACTOR. Payment will be made within 30 days after receipt of an approved invoice.

COMMENCEMENT AND TERMINATION.

A. CONTRACTOR'S services on Project shall commence upon a Notice to Proceed issued by CITY or as otherwise provided in Attachment A.

B. If the Master Agreement terminates before the Services provided hereunder are completed, then and in that event the Master Agreement shall continue until such time as Project is satisfactorily completed.

TERMS AND CONDITIONS. The parties agree that only the terms and conditions outlined in the Master Agreement referenced above, not those described or referenced by “Attachment A” of this Task Order, shall apply except as expressly modified herein.

INSURANCE. CONTRACTOR represents and warrants that all insurance requirements set forth in Master Agreement continue to be met.

AMENDMENT. This Task Order may be amended only by written amendment of the parties.

IN WITNESS WHEREOF, the parties have executed this Task Order the day and year first above mentioned.

CITY OF WILMINGTON, NORTH CAROLINA

By:

Becky Hawke, City Manager

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 the _____ day of _____, 20__.

Martha Wayne, Finance Director

Project String: _____

Org./Obj. : _____

Amount of Task Order: _____

Requisition No. _____

Federal ID # 56-6000239

[Company].

By: _____

WITNESS:

Secretary, Assist. Secretary, Trust Officer

(CORPORATE SEAL)

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public, certify that the corporation's Secretary, Assist. Secretary or Trust Officer, Mr./Mrs./Ms. _____ personally came before me this day and acknowledged that he (she) is the _____ of _____, a Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, Vice President, or Assist. Vice President, Mr./Mrs./Ms. _____, sealed with its Corporate Seal, and attested by himself (herself) as its Secretary, Assist. Secretary or Trust Officer.

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

Notary Public

My Commission Expires: _____

(NOTARY SEAL)