



**Finance**  
**Purchasing Division**  
 305 Chestnut, 5<sup>th</sup> Floor  
 PO Box 1810  
 Wilmington, NC 28402-1810

910 341-7830  
 910 341-7842 fax

October 8, 2018.

**RE: Request for Proposals**  
**On Call Parking Consulting Services**  
**RFP No.: S1-1018.1**

Dear Sir or Madame:

This Request for Proposals (RFP) will provide your firm with sufficient information to enable you to prepare and submit a proposal for providing comprehensive studies and reports that will assist the City of Wilmington in managing a diverse public parking program.

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 of the Service Provider. The general terms and conditions are part of any submitted proposal and will be incorporated into any subsequent contract. Submission of a proposal shall constitute acceptance of these terms and conditions. Conditional responses may be rejected.

Potential respondents should email [Caroline.Wine@wilmingtonnc.gov](mailto:Caroline.Wine@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 website at [www.wilmingtonnc.gov](http://www.wilmingtonnc.gov).

In order for your RFP to be considered responsive, it must adhere to the submittal requirements that follow. The successful Service Provider will be selected based on the quality, quantity and best value of services provided for the available budget. 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.

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 Service Provider 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.

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

cc: Chance Dunbar, Parking Manager

**REQUEST FOR PROPSALS**  
**ON CALL PARKING CONSULTING SERVICES**  
**RFP No.: S1-1018.1**

**INTRODUCTION**

The City of Wilmington's Parking Management Division is seeking proposals from qualified firms to provide On Call Parking Consulting Services for its current and growing parking program.

Currently, the Parking Enterprise Fund manages 3 parking decks with **1,537** spaces, 6 surface lots with **237** spaces, **1,300** on-street metered, time limited and residential parking spaces, with an additional parking deck planned within the River Place project, adding an additional **400** parking spaces to its inventory. With a growing city center experiencing significant new development, the City of Wilmington is anticipating the need to provide additional structured off-street parking with expansion of its on-street metered and residential parking programs.

**BACKGROUND**

The City of Wilmington, North Carolina is a coastal community of approximately 115,000 citizens. It is the regional hub for economic activity along the Southeastern North Carolina coast. The downtown area is a thriving business/office center with multiple types of business including large and small employers. The area is experiencing tremendous growth in new residential units, infield rehabilitation, new hotels, a growing convention center and newly revitalized neighborhoods in the Brooklyn arts District and South Front. This is an addition to the planned 6.6 acre Northern Riverfront Park which will host 20+ events annually, bringing 7,000+ event patrons downtown, as well as serving as a daily activity center and greenspace.

**SCOPE OF WORK**

The firm shall have expertise in performing area parking studies and analysis of current and future supply and demand, including on-street and off-street parking components and be able to use this and the following areas of expertise to provide comprehensive studies and reports that will assist the City of Wilmington in managing a diverse public parking program.

The firm should be able to develop and utilize ArcGIS mapping platforms to allow for more dynamic data management and robust evaluations of parking scenarios, allowing the City of Wilmington the ability to evaluate existing parking supply and demands, identify and test new development and parking facilities, and apply parking management strategies.

The firm shall have the expertise to analyze and advise the City of Wilmington on the financial feasibility of potential or proposed parking structures and to offer general design assistance in modeling potential structures in terms of floor plans, ingress/egress, ramp design, etc.

The firm shall have expertise in performing operations analysis, due diligence, compliance audits, parking access and revenue control testing and training, and operator selection and negotiation.

It is intended that the City of Wilmington will provide a scope of services for each specific task for each parking consulting related services under this agreement. A request for services may include, but not necessarily limited to, the following:

- A. Assist parking management on questions and issues related to parking systems, revenue control, revenue management, industry trends, revenue and expenditures
- B. Provide written analysis on various projects/proposals received by the City of Wilmington to construct (build), expand, rehabilitate, or operate new or existing multi-use (i.e. retail, residential and parking) or single-use parking garage(s) and lot(s)
- C. Provide, on an as needed basis, report of studies based on site visits giving a comprehensive overall analysis of the City of Wilmington's Parking System, including, but not limited to
  - a. parking space capacity versus utilization forecasts
  - b. supply / demand analysis
  - c. shared parking analysis
  - d. parking demand, current and future
  - e. residential parking program, current and future
  - f. parking rate analysis
  - g. revenue trends
  - h. development of annual maintenance plans for various facilities
  - i. new facility of parking garage and lot feasibility analysis
  - j. implementation of new technologies
  - k. on-street parking occupancy and inventory
- D. Provide parking consulting services as requested, including, but not limited to:
  - a. functional design (level of service, flow capacity and circulation systems)
  - b. lighting
  - c. parking and revenue control equipment
  - d. signage and way finding
  - e. security
  - f. occupancy evaluations, both on-street and off-street
  - g. evaluation of current ticket/revenue collection methods
  - h. evaluation of current and future parking needs
  - i. evaluation of current conditions of parking facilities
  - j. recommend garage preventive maintenance schedules
  - k. project management and full engineering design of new facilities
  - l. evaluation of parking enforcement
  - m. evaluation of residential parking program
  - n. recommend industry guidelines for parking debt policy
  - o. development of parking related RFPs
  - p. surveys of other city systems for parking comparison benchmarks
- E. Perform additional studies, on an "as needed basis."

## **RFP RESPONSE TIMELINE**

The RFP process shall adhere to the following schedule.

<b>Schedule of Events</b>	<b>Date</b>
Advertise RFP	October 8, 2018
Deadline for Written Questions	October 23, 2018 3:00 PM
City Responses & Addenda (if any) issued	October 25, 2018
Proposals Due	November 8, 2018 3:00 PM
RFP Vendor Selection and City Council Award	January 22, 2019 (subject to change)

## **PRE-PROPOSAL QUESTIONS**

Questions concerning the specifications in this Request for Proposals (RFP) should be directed to the Project Manager. Questions may be submitted in writing according to the deadline in the RFP Response Timeline. All questions and answers regarding the RFP will be shared with all prospective respondents known to be interested in submitting a proposal.

Project Manager for the City of Wilmington  
Chance Dunbar  
Email: [chance.dunbar@wilmingtonnc.gov](mailto:chance.dunbar@wilmingtonnc.gov)  
Phone: 910-342-2786

## **PROPOSAL SUBMITTAL REQUIREMENTS**

Proposals must follow the format as defined in the section marked “Proposal Format.”

Respondents must submit one (1) signed original and eight (6) copies plus one (1) electronic version, of the “**On Call Parking Consulting Services**” proposal. The electronic version of the proposal must be submitted as a viewable and printable Adobe Portable Document File (PDF) on a USB flash drive attached to the proposal. Proposals must be enclosed in a sealed envelope or package and clearly marked: “**On Call Parking Consulting Services.**” Both hard copy and electronic version must be received by the City on or before **3:00 PM, Thursday, November 8, 2018**. Deliver proposals to the following mailing / physical address:

City of Wilmington  
Attention: Daryle L. Parker, Purchasing Manager  
305 Chestnut St. 5<sup>th</sup> Floor  
Wilmington, NC 28401

Proposals received after the “RFP Due” deadline above will not be considered and will be returned unopened to the return address on the submission envelope. The outside of the submittal package and the USB flash drive must be clearly marked. The City reserves the right to reject any or all proposals for any reason and to waive any informality it deems in its best interest. Any requirements in the RFP that cannot be met must be indicated in the proposal. Proposers must respond to the entire Request for Proposals.

## **PROPOSAL FORMAT**

Proposals must be clear, succinct, and not exceed 20 pages or 10 sheets of 8 1/2” x 11” paper of no less than 12 point font. The Responder’s Proposal Form, any section tab dividers and/or back cover, do not count towards the page limit. Responses must follow the format outlined herein. The City may reject as non-responsive, at its sole discretion, any proposal or any part thereof that is incomplete, inadequate in its response, or departs in any substantive way from the required format. Proposal responses shall be organized in the following manner. Sections should be tabbed to identify the location of the required information.

- A. Cover Letter/Letter of Intent
- B. Executive Summary
- C. Project Understanding and Approach
- D. Team Organization, Experience and Certifications/Qualifications
- E. Service Providers and/or Subcontractors
- F. References
- G. Cost Proposal
- H. Additional Requirements

### **A. Cover Letter/Letter of Intent**

The cover letter shall be addressed to Mr. Daryle L. Parker, Purchasing Manager. It must contain the following:

- Identification of organization, including name, address and telephone number.
- Name, title, address, and telephone number and email address of contact person during period of proposal evaluation.
- A statement to the effect that the proposal shall remain valid for a period of not less than 90 calendar days from the date of submittal.
- Signature of a person authorized to bind the Firm to the terms of the proposal.

### **B. Executive Summary**

In a brief narrative, describe the overall approach and plans to meet the requirements of the RFP. The intent of this narrative is to convey to the City that the Proposer understands the nature of the work and the level of effort necessary to successfully provide the defined services.

Include an overview of Proposer's organization, brief summary of your vision for this project, unique attributes that Proposer's organization has to contribute to this project and a summary of previous experience with similar projects in scope.

### **C. Project Approach and Schedule**

This section shall include the Proposer's approach to accomplishing the tasks outlined in the Scope of Services section of this RFP.

- Include a detailed description of each task and deliverable and schedule/timeline for accomplishing each task.
- Describe the analytical tools, technology, resources, or methodologies commonly used by your firm that may be applicable to the project.
- Describe technologies utilized to develop dynamic data management and robust evaluations of parking scenarios.
- Describe how you will ensure the submission of timely and complete required reports to the Program Manager for the COW.

### **D. Team Organization, Experience and Certifications/Qualifications**

The information requested in this section should describe the qualifications/credentials of the firm and key staff. Service Provider must be licensed by the State of North Carolina to perform scope of services described herein.

- Include resumes of key staff, a detailed organizational chart and management approach.
- Staffing Plan: Describe your plan to manage staffing based on the expectations outlined in this RFP.
- Describe your firm's knowledge of the City of Wilmington's downtown growth and expected future growth and how your firm's experience can help provide solutions as it relates to parking strategies.

### **E. Subcontractor Qualifications**

The City desires to enter a contract with one Service Provider that will be responsible for all defined services. If the Respondent plans on using Service Providers and/or subcontractors as part of its implementation plan, then provide the company profile, name, address, telephone number and email address for all Service Providers and/or subcontractors providing support. Define the responsibilities and give a description of services to be provided by Service Providers and/or subcontractors. Describe the Firm's business and reporting relationship with any Service Providers and/or subcontractors. Identify certified Minority Business Enterprises (MBE) or Women Business Enterprises (WBE) agencies if any. Include references and resumes for all third party Service Providers and/or subcontractors in the proposal. The City has the right to accept or reject any changes made to the proposed project team members, including the use of Service Providers and/or subcontractors.

## F. References

Provide a list of at least three (5) references which your firm has partnered with within the last five (5) years from clients with similar projects in scope. Any reference from the submitted list may be randomly selected and contacted as part of the Respondent's evaluation process. Each reference listed should include the following information:

- Name of Organization and Contact
- Title of Contact
- Address
- Telephone Number and email
- Scope of Work
- Status of Project

## G. Cost Proposal

It is intended that the City of Wilmington will provide a scope of services for each specific task for each parking consulting related services under this agreement. Please provide your firm's hourly pricing and examples of project pricing based on the potential services in the Scope of Work

Respondent must submit a proposal setting forth the defined costs for services on Appendix A-Cost Proposal Sheet. Discuss ways that costs can be reduced by streamlining and/or taking a different approach. Include costs for the various components of the project and examples of project pricing based on the potential services in the Scope of Work. Respondent must provide a copy of firm's hourly rate sheet.

## H. Additional Requirements

Respondent must submit AFFIDAVIT B - AFFIDAVIT AND CERTIFICATE OF NON-COLLUSION, NON-SUSPENSION AND NON-CONVICTION.

Respondents shall be required to sign a contract for services developed and approved by the City. A copy of the general terms and conditions contained in the standard City contract for services is attached as Appendix C. Any proposed exceptions, deletions or additions should be noted at the time of submission of proposal.

**RIGHTS TO SUBMITTED MATERIAL** All proposals, responses, inquiries, or correspondence relating to or in reference to this RFP, and all reports, charts, and other documentation submitted by Respondents (other than materials submitted as and qualifying as trade secrets under North Carolina Law) shall become the property of the City when received and the entire proposal shall be subject to the public records laws of the State of North Carolina except where a proper trade secrets exception has been made by the Respondent in accordance with the procedures allowed by North Carolina Law and marked in bold "**Confidential.**"

The City reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the Respondent of the conditions contained in this Request for Proposal.

All costs incurred by the Respondent in preparing the proposal, or costs incurred in any other manner in responding to this proposal will be solely the responsibility of the Respondent.

**EVALUATION CRITERIA**

This is not a bid. There will not be a public bid opening. Proposals will be evaluated based on, but not necessarily limited to, the following criteria:

<b>Criteria</b>	<b>Weights</b>
Qualifications and experience of the proposed firm for the requested services.	15%
Qualifications and experience of the proposed team members for the requested services.	15%
Demonstration of prior successes with similar services.	20%
Approach to presenting services.	40%
Proposed Cost.	10%

**FINAL SELECTION**

A team, comprised of City Staff, will be responsible for the proposal evaluations. This team, in accordance with the criteria listed above, will evaluate all proposals received as specified. The team members, in applying the major criteria to the proposals, may consider additional sub-criteria beyond those listed, as may come to light through the review of the various proposals. During the evaluation period, the City of Wilmington reserves the right to interview the top selected agencies or all the responding agencies. These proposers should have all staff present to be able to answer any questions or clarify issues relating to the proposal. All costs of preparation or appearance for these interviews will be the responsibility of the proposer.

The successful Service Provider will be selected based on the quality, quantity and best value of services provided for the available budget, meets the City’s requirements in providing this service, and is in the City’s best overall interest. The City maintains the sole and exclusive right to evaluate the merits of the proposals received.

Firms will be objectively evaluated based on their responses to the project scope outlined in the RFP. The written proposal should clearly demonstrate how the firm could best satisfy the requirements of City.

Proposed costs quoted must be held by the firm for 90 days after the RFP is due. The City reserves the right to make an award without further discussion of the proposal submitted. The City shall not be bound



or in any way obligated until both parties have executed a contract. The City also reserves the right to delay the award of a contract or to not award a contract. The RFP may be awarded by individual task or total proposal, whichever is most advantageous to the City of Wilmington.

The general conditions and specifications of the RFP and the selected proposal, as amended by agreement between the City and the Service Provider including e-mail or written correspondence relative to the RFP, may become part of the contract documents. Failure of the Service Provider to perform as represented may result in elimination of the Service Provider from competition or in contract cancellation or termination.

THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

**APPENDIX A**  
**COST PROPOSAL FORM**  
**On Call Parking Consulting Services**  
**RFP No.: S1-1018.1**

**Project Budget Detail**

	Year 1
<b>Personnel Costs</b>	
Firm's Per Hour Pricing	
Annual Escalator Percentage for Outlying Contract Years	
Total Personnel Costs:	
<b>Project Example Pricing</b>	
Residential Parking Program Analysis	
Parking Space Utilization Study	
RFP Design and Consulting	
Parking and Revenue Control Analysis	
Comprehensive Parking Study	
GIS Database and Parking Model Development	
Parking Study Stakeholder Meetings	
Parking Study Final Project Presentations	
Benchmark City Comparison Surveys	
New Parking Facility Feasibility Analysis	
<b>Additional Pricing</b>	

**A. Total Not to Exceed Fee:**

The fee below must include all professional services, supplies and travel to complete the scope of work as per the RFP. Travel will be billed to the CITY at the current State of North Carolina government mileage and per diem rates without mark-up. No additional out of pocket expenses shall be paid including but not limited to fuel and other associated travel costs. All non-labor related project costs will be billed to the CITY at cost without mark-up. Do not include cost of "Additional Services" outside the scope of work in this not to exceed fee.

Total Fee: \$ \_\_\_\_\_

**B. Additional Services (Optional):**

Any other related and recommended products or services not specified in this RFP which may be considered essential or beneficial by the firm. These services should be priced separate from Not to Exceed Fee Above.

\$ \_\_\_\_\_

**Respondents 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 assure that all addenda have been reviewed prior to proposal submission.**

BY (Printed): \_\_\_\_\_

TITLE: \_\_\_\_\_

COMPANY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

The respondent 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/respondents:

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 \_\_\_\_\_.

**APPENDIX B**

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 \_\_\_\_\_, 2018.

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 \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_ (NOTARY SEAL)

## APPENDIX C

### CONTRACTUAL REQUIREMENTS & TERMS AND CONDITIONS

The following general terms and conditions apply to this *Request for Proposal* solicitation process, and will be incorporated into the resulting contract as applicable. Please note that any exceptions to the following requirements, as well as other sections of this *Request for Proposal* should be addressed in a separate section of the Respondent's proposal.

### INSURANCE

#### A. Commercial General Liability

1. SERVICE PROVIDER 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 SERVICE PROVIDERS, 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 SERVICE PROVIDER; products and completed operations of the SERVICE PROVIDER; premises owned, leased or used by the SERVICE PROVIDER; 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 SERVICE PROVIDER'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 SERVICE PROVIDER'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 SERVICE PROVIDER for the City of Wilmington.

#### B. Workers' Compensation and Employer's Liability

1. SERVICE PROVIDER 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 SERVICE PROVIDER 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. SERVICE PROVIDER 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. SERVICE PROVIDER 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 SERVICE PROVIDER pursuant to Section 11.C.1 of this agreement.
6. The SERVICE PROVIDER'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 SERVICE PROVIDER's insurance.

#### D. Professional Liability Insurance

1. SERVICE PROVIDER shall maintain in force for the duration of this contract professional liability or errors and omissions liability insurance appropriate to the SERVICE PROVIDER'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 SERVICE PROVIDER'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 SERVICE PROVIDER 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 SERVICE PROVIDER 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 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 SERVICE PROVIDER'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 SERVICE PROVIDER 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

SERVICE PROVIDER shall include all subcontractors as insureds under its policies or shall furnish separate certificates for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein. Commercial General Liability coverage shall include independent SERVICE PROVIDER's coverage, and the SERVICE PROVIDER 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 SERVICE PROVIDER 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 SERVICE PROVIDER without prior written approval of the City of Wilmington.
3. The SERVICE PROVIDER 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 SERVICE PROVIDER'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 SERVICE PROVIDER and such coverage and limits shall not be deemed as a limitation of SERVICE PROVIDER'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 SERVICE PROVIDER or any subcontractor from entering the project site or withhold payment until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City of Wilmington.

**INDEMNIFICATION/LIMITATION OF LIABILITY**

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

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

CITY Not Liable for Special or Consequential Damages. The CITY shall not be liable to the SERVICE PROVIDER, 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.

### **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.

### **COMPLIANCE WITH LAWS**

SERVICE PROVIDER 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. SERVICE PROVIDER 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 insure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder. SERVICE PROVIDER specifically acknowledges and agrees that SERVICE PROVIDER, 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. SERVICE PROVIDER 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.

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

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

HIPAA Compliance. SERVICE PROVIDER shall not use or disclose protected health information unless permitted by Federal and State law or under the provisions of this Agreement. SERVICE PROVIDER shall use appropriate safeguards with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement or permitted by law. SERVICE PROVIDER shall report to CITY any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410.

## **SERVICE PROVIDER REPRESENTATIONS AND WARRANTIES**

Independent SERVICE PROVIDER. This Agreement does not create an employee/employer relationship between the parties. It is the intention of the parties that the SERVICE PROVIDER will be an independent SERVICE PROVIDER 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 SERVICE PROVIDER will retain sole and absolute discretion in the judgment of the manner and means of carrying out the SERVICE PROVIDER's activities and responsibilities hereunder. The SERVICE PROVIDER 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 SERVICE PROVIDER and the CITY, and the CITY will not be liable for any obligation incurred by the SERVICE PROVIDER, including but not limited to unpaid minimum wages and/or overtime premiums.

Non-Discrimination. SERVICE PROVIDER 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, SERVICE PROVIDER 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.

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.

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 SERVICE PROVIDER shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials produced by SERVICE PROVIDER in connection with services rendered pursuant to this Agreement. If compensation for expenses shall be provided to SERVICE PROVIDER, the SERVICE PROVIDER 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.

Ownership of Documents. The SERVICE PROVIDER agrees that all materials and documents developed pursuant to this Agreement shall be the exclusive property of the CITY, and the SERVICE PROVIDER shall retain no property or copyright interest therein. Further, upon termination of this Agreement, the SERVICE PROVIDER 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.

No Publicity. No advertising, sales promotion or other materials of the SERVICE PROVIDER 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 SERVICE PROVIDER 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.

## **ACKNOWLEDGEMENTS**

Authority to Act/IDA Certification. Each of the persons executing this Agreement on behalf of SERVICE PROVIDER does hereby covenant, warrant and represent that the SERVICE PROVIDER is a duly organized and validly existing legal entity authorized to transact business within the State of North Carolina, that the SERVICE PROVIDER has full right and authority to enter into this Agreement, and that each and all persons signing on behalf of the SERVICE PROVIDER were authorized to do so. The undersigned certifies that SERVICE PROVIDER is not listed on the Final Divestment List created by the N.C. State Treasurer pursuant to Chapter 147 (the Iran Divestment Act) of the North Carolina General Statutes. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 147, SERVICE PROVIDER shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.

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.

Immunity Not Waived. This Agreement is governmental in nature, for the benefit of the public. SERVICE PROVIDER 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.

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.

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.

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.

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 SERVICE PROVIDER 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.

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. Insure 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 SERVICE PROVIDER or all construction projects shall exercise all necessary and reasonable steps to insure that minority business enterprises participate in the work required in such construction contracts.

The SERVICE PROVIDER shall insure 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 SERVICE PROVIDER shall include this special provision, Minority Business Enterprise (MBE), in all subcontracts for this contract. Failure on the part of the SERVICE PROVIDER 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 (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 (51%) percent owned and controlled by women who exercise actual day-to-day management.

The SERVICE PROVIDER shall exercise all necessary and reasonable steps to insure that Minority Business Enterprises and Woman Business Enterprises participate in the work required in this contract. The SERVICE PROVIDER agrees by executing this contract that he will exercise all necessary and reasonable steps to insure that this special provision contained herein on Minority Business Enterprise is complied with.