

**REQUEST FOR PROPOSAL  
INSURANCE BROKER  
SCOPE OF SERVICES & PROPOSAL**

1. Purpose

The City of Wilmington is requesting proposals from qualified insurance brokers that are familiar with Public Entities to assist in managing its Property and Casualty Insurance Program.

2. Background

The City of Wilmington last contracted for Broker services in 2018. The City was incorporated in 1739, is located approximately at the midpoint of the eastern seaboard of the United States, in the southeastern coastal section of North Carolina. The City is an active business, service and industrial center for the surrounding five-county area. With a land area of approximately 52.76 square miles, the City is on the Cape Fear River approximately 30 miles from the Atlantic Ocean, the County seat of New Hanover County and home to the State's largest port. The City has a population of 126,000, making it the eighth largest city in North Carolina.

The City has a Council-Manager form of government. The Council is comprised of the Mayor and six Council members. The Mayor is elected at large every two years and the Council members are elected at large every four years with staggered terms. The Council is the legislative body of city government with the Mayor as a voting member and the presiding officer. The City Manager is appointed by the Council and administers the daily operations of the City through appointed department heads.

The City provides the full range of services contemplated by statute. This includes police, fire, sanitation, streets, public improvements, planning and zoning, and general administrative services. The City also operates parking facilities, a golf course, and provides solid waste and storm water management services.

The City owns the Wilmington Convention Center Complex and Riverfront Park which are both managed by a third-party administrator.

Additional information:

POLICE PROTECTION

Number of Sworn Officers, Auth. FY 2020-2021 ....275,  
Number of Approx. Calls for Service Annually FY 2020-2021 (actual).....185,576  
  
Number of Stations.....1 headquarters, 1 substation

FIRE PROTECTION

Number of Full-time Firefighters, Authorized FY 2020-2021.....210  
Number of Fire Stations.....10  
ISO Rating. ....2  
Number of Fire Responses, est. FY 2020-2021.....13,727

SOLID WASTE COLLECTION

Number of Customers – Total Serviced by City Crews.....29,914

**STREET SYSTEM**

Miles of City Streets:

.....7.50 – soil, stone, or gravel surface  
.....391.41 – hard surface

Number of Street Lights:

.....8,127 leased from Progress Energy Co.  
.....846 City-owned  
.....469 reimbursed to HOA’s

Number of Traffic Signals – Total City Maintained.....229

**MUNICIPAL GOLF COURSE**

Number of Holes (par 71). .....18

Total Distance.....6,784 yards

# Of Rounds played annually, est. FY 2020-2021.....48,180 (18) hole rounds

**PARKS AND RECREATION**

Total Acreage City-Wide Parks, Recreation and Athletic Facilities.....801 acres

Number of City Parks.....40 parks

Number of Athletic & Recreational Facilities.....21 facilities

**EMPLOYEES**

The City has 1,106 approved positions and currently employs 1,020 people. There are 8 Departments: Human Resources, Finance, Community Services, Development Services, Fire, Police, Information Technology, and Public Services. The estimated payroll for FY23 is \$60,345,000.

**FACILITIES AND ASSETS**

The CITY insures 226 properties, 674 licensed vehicles & trailers, 82 Fire Services vehicles & trailers, and a variety of generators, and heavy equipment.

The FY 22 insured values are as follows:

Inland Marine: \$10,957,413

Property: \$184,943,642 & 27,570,582 for Fire Services

3. **Broker Qualifications:**

CITY requires a North Carolina licensed Broker that is independent and is not affiliated with any insurance company, third party administrative agency, or provider network. The brokerage firm must have at least 5 years of experience in providing brokerage service in the public sector arena.

4. **Scope of Service**

The CITY reserves the right to reject any and all proposals. The Broker shall at a minimum provide the following services:

**Property & Casualty Program:**

- With the exception of 2022, Broker shall market Bonds, Auto Liability & Physical Damage, Employment Practices Liability, Fine Arts Inland Marine, General Liability, Liquor Liability, Inland

Marine, Law Enforcement Legal Liability, Public Officials Liability, Umbrella Liability, Property, Crime, Ocean Marine (P&I, Hull & Pollution), Volunteer Accident, and Excess Workers' Compensation.

- Broker shall provide pre-marketing, marketing, and claims related services. Please include in proposal a detailed list of services covered under each and any other service included in the fee for services.
- Insurance proposals should be submitted by May 1st of each year for the CITY'S review.
- Proposals should only be submitted from insurance providers with at least a 5-year history of providing municipal/public entity insurance coverage. The insurance company's A.M. Best rating should be a factor. The CITY has no desire to serve as a test market for new companies.
- Make recommendations as to which carrier(s) provide insurance which is in the best interest of the CITY.
- Negotiate with insurance providers.
- Perform claims control function upon request.
- Notify CITY promptly of any changes in the status of the insuring company, changes in the financial condition, changes in policy working, and premiums.
- Be available to meet with CITY management as needed.

##### 5. Broker Compensation

The Broker's only compensation will be derived from the CITY. The Broker shall not take commissions or other methods of payments from insurance companies. Please provide a flat fee with the services it covers and how it is derived. Please also include any additional services that would be an additional cost over the flat fee.

The following chart of policies may be useful in calculating your proposed fee:

<b>Coverage</b>	<b>2021-2022 Actual Premiums</b>
Bonds	\$1,523.00
Aviation Liability	\$7,400.00
Aviation Inland Marine	\$1,900.00
Commercial Package Policy:	
Automobile Liability/Physical Damage	\$401,621.00
Employment Practices Liability	\$31,737.00
General Liability/Liquor	\$127,850.00
Law Enforcement Liability	\$183,175.00
Public Officials Liability	\$32,536.00
Umbrella (Excess) Liability	\$99,386.00
Cyber Liability	\$31,900.00
Crime	\$5,924.00
Commercial Property	\$1,172,775.00
Flood-Primary (Convention Center)	\$1,594.00
Flood-Excess (Convention Center)	\$71,498.00
Ocean Marine:	
Hull/Protection & Indemnity	\$42,089.00
Pollution	\$1,302.00
Protection & Indemnity Excess	\$13,900.00
Volunteer Accident	\$1,746.00
Workers Compensation Excess	\$314,018.00
Drone Liability	\$2,016.00
VFIS (Fire Services)	
Property Insurance	\$97,842.00
Portable Equipment	\$2,048.00
Automobile	\$55,123.00
Garagekeepers	\$1,201.00
General Liability	\$4,475.00
Excess Liability	\$4,910.00
<b>Totals</b>	<b>\$2,711,489</b>

## 6. Projected Timetable

December 20, 2021	RFP Issued and advertised
January 5, 2022	Deadline for questions. All questions must be submitted in writing by 5:00 pm on Wednesday, January 5, 2022
January 12, 2022	Questions will be answered in writing by 5:00 pm on Wednesday, January 12, 2022
January 19, 2022	Due Date for Proposal. Proposal must be received by 3:00 pm on Wednesday, January 19, 2022
February 15, 2022	Selection committee recommendation to City Council
March 1, 2022	City Council approval of recommended broker
May 18, 2022	Insurance Quotes Submitted
July 1, 2022	Contract finalized and signed

## 7. Proposal Submittal Requirements

The following should be included in your Proposal. 1 original and 3 copies for a total of 4 proposals shall be submitted along with a USB flash drive.

- Complete Appendix A – Broker Questionnaire with signed declaration.
- Compensation Fee

## 8. Evaluation Criteria

The evaluation of the proposals will be based on:

- Completeness and quality of proposal
- Past performance with similar projects for public entity
- Specialized municipal experience
- Ability of the Broker and its staff and its accessibility, experience, and flexibility
- Broker's stated method of providing the necessary services and understanding of the range of services being requested.
- Total Cost

- Client references, financial viability and demonstrated success
- Training Capabilities

A committee comprised of the New Hanover County Risk Management and a selection of CITY staff employees will make the selection.

The selection committee, at its option, may require a presentation from up to three Brokers. This presentation would encompass an overview of the broker services proposed and a question and answer period to clarify any questions by the committee. At least three (3) days' notice will be provided to each Broker if requested. Brokers are cautioned that the CITY is not required to request clarifications; therefore, all proposals should be complete and reflect the most favorable terms available from the Broker.

#### 9. Form of Submission

The CITY will receive proposals in the office of and addressed to:

New Hanover County Risk Management  
230 Government Center Drive, Suite 125-A  
Wilmington, N.C. 28403  
ATTENTION: Jennifer Stancil, Risk Manager  
FOUR (4) COPIES OF THE PROPOSAL WILL BE RECEIVED  
UP TO THE HOUR OF 3:00 P.M., WEDNESDAY, FEBRUARY 9, 2022

The proposal can be delivered via U.S. Postal Service, Commercial Carrier or by Hand.

Late proposals will not be accepted. Proposals shall be valid for 120 days.

#### 10. Terms and Conditions

- No Broker may approach any market without the CITY's expressed authority.**
- Submission of a proposal indicates acceptance by the agency of the conditions contained in this request for proposal unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the CITY and the agency selected.
- The CITY reserves the right without prejudice to reject any or all proposals, to waive any non-material irregularities or informalities in any RFP, to accept or reject any item or combination of items, and to request additional clarification of proposals.
- All proposals received become the property of the CITY and information included therein or attached thereto, shall become public record upon their delivery to the CITY. Any information deemed by the bidding agency to be protected as a trade secret shall be submitted separately in a sealed envelope along with a statement supporting this assertion.
- Any and all costs associated with the preparation of a response to this request are the responsibility of the proposer and are not to be passed on to the CITY.
- Any information, data, instruments, documents, studies, or reports given to or prepared or assembled for the broker under this agreement shall be kept confidential and not divulged, made available, sold,

or used for advertisement to any individual, organization, or company without prior written approval of the CITY.

- g. By submitting an executed proposal, the signer certifies that this proposal is submitted competitively and without collusion, that none of the officers, directors, or owners of an unincorporated business entity has been convicted of any violations of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934.
- h. This RFP can only be changed by written addendums. Any oral comments by anyone shall have no effect on these instructions and specifications. If a bidder knows of or should have known of an error in the RFP, but fails to notify the CITY of the error, the bidder shall bid at its own risk and if awarded the contract, shall not be entitled to additional compensation or time by reason of the error or its later correction.
- i. Broker understands and acknowledges that the CITY is a political subdivision of the State of North Carolina. The CITY prohibits any of its officials or employees from accepting any personal gift, favor, or thing of value that may tend to influence that employee in the discharge of duties. With this understanding, Broker agrees not to take any action which creates a situation, which would, or which could appear, to result in a conflict of interest and violation of this prohibition.
- j. Please see draft Appendix B for additional Terms & Conditions

11. **Inquiries**. All questions and requests for clarification concerning this RFP shall be made in writing to Jennifer Stancil, Risk Manager [jstancil@nhcgov.com](mailto:jstancil@nhcgov.com) no later than January 12, 2022. An addendum will be posted to the City of Wilmington's website by January 19, 2022.

**APPENDIX A- QUESTIONNAIRE & REQUIRED DOCUMENTS**

**THE FOLLOWING FORMS SHOULD BE COMPLETED AND RETURNED WITH PROPOSAL. ATTACH ADDITIONAL SHEETS AS REQUESTED.**

**A. Business Information**

1. Name of Firm (exactly as it is to appear on the agreement):

\_\_\_\_\_

2. Servicing Office Address:

\_\_\_\_\_

3. Telephone Number: \_\_\_\_\_

4. Email Address \_\_\_\_\_

5. Contact Person/Title: \_\_\_\_\_

6. Insurance Broker License Date: \_\_\_\_\_

7. Tax ID #: \_\_\_\_\_

8. Form of Business Entity (circle one):

Corporation

Partnership

Joint Venture

Individual

9. Total Staff \_\_\_\_\_

10. Professionals \_\_\_\_\_

11. Total Annual Premiums Written (\$000's) \_\_\_\_\_ Year \_\_\_\_\_

12. Total Annual Premiums Written (\$000's) for Public Entity \_\_\_\_\_ Year \_\_\_\_\_

13. Is your organization, functionally or practically, tied to any insurer or in any manner precluded from using a particular insurer? (briefly describe)

\_\_\_\_\_

14. Describe your contractual relationships, if any, with organizations necessary to your proposal's implementation (i.e. actuarial services, data information services).

\_\_\_\_\_

15. What is your median client size? \_\_\_\_\_

**B. Experience**

1. Provide the number of years engaged in the insurance brokerage business: \_\_\_\_\_

2. Provide the number of years engaged in the public sector insurance brokerage business: \_\_\_\_\_

3. Number of years individual assigned to this proposed contract engaged in the public sector insurance Brokerage business: \_\_\_\_\_

4. How many public sector clients do you have? \_\_\_\_\_



5. What is the population of your largest county government client? \_\_\_\_\_
6. How many overall clients do you have? \_\_\_\_\_
7. Describe your firm's experience with public entities on a nation-wide basis.

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**C. Specific Experience**

1. List current public entity clients and services provided/types of coverage's specifically Public Entity, Bonds, Automobile, Employment Practices Liability, General Liability, Inland Marine, Law Enforcement Legal Liability, Public Officials Liability, Umbrella Liability, Property, Flood, Crime, Volunteer Accident, Cyber Liability and Excess Workers' Compensation, placed by the servicing office that will service the CITY's account, if successful (do not list clients that are not direct clients of the proposed servicing office):

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2. List current City government clients and services provided for Ocean Marine (Protection & Indemnity and Hull), placed by the servicing office that will service the CITY's account, if successful (do not list clients that are not direct clients of the proposed servicing office):

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3. Who will manage/service this account? Please list all municipalities and public entities this person (s) has directly serviced:

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4. References – Please provide these on a separate attachment

Please provide a list of four verifiable client references of similar scope and industry for the property and casualty program, all of whom are able to comment on your organization's relevant experience. This list

should include at least three active client references that are similar in nature and size to CITY, and one reference from a former client. Please include company name, contact name, telephone number and size of company's workforce as well as services provided. It is the vendor's responsibility to provide valid reference information and CITY reserves the right to use reference check in its evaluations of proposals.

**D. Qualifications**

1. Confirm that you are a licensed broker in North Carolina and provide documentation. Confirm that you serve as a broker, independently, and are not affiliated with any insurance company, third party administrative agency or provider network.

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2. Please provide the most recent year's annual reports, or comparable document, including detailed current profit and loss, assets and liabilities, and other relevant financial data.

3. Describe the account set up you would use to service the CITY's account. Provide a brief resume of qualifications and experience for the personnel and their backup who will be servicing the CITY's account. Include professional qualifications, educational background (also indicating current and historical account responsibilities), and specific county government experience. If your servicing plans include the use of personnel other than the identified servicing location, describe the method or internal set-up that assures your servicing office clients are well serviced.

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4. Describe your firm's servicing and technical capabilities. Provide a general background of your company as it relates to the line of coverage for which the CITY is seeking a proposal. Describe any special expertise your firm has in providing insurance to county government.

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5. Describe any impending changes in your organization that could impact the delivery of services.

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6. What is your average response time to questions posed from your clients? How do you handle follow up to outstanding items?

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7. How does your firm develop your insurance/risk management professionals (i.e., do you have any in-house training program, on-the-job training, etc.)?

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8. Provide your suggestions for developing a reliable, viable, working relationship with the CITY. What do you view as the role of each of the following parties: your organization, New Hanover County Risk Management, the CITY and the carrier? Please be brief and concise.

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9. What techniques will you use to assist us in developing current risk exposure information? Can your staff conduct or arrange facility inspections? What services do you expect to be provided by the insurance carriers and how do you plan to monitor these services?

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10. In what way do you insure that each policy is being properly serviced, and how would follow up and control the service standard on the CITY's account?

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11. Describe in schematic form your "ideal" method of handling yearly renewals/selection of new vendors. Please start at the data collection phase and continue through the entire process, key on the role of each party, timing of events, and the necessary coordination of the parties.

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12. How will you assist with the management of insurance, including preparation of claims activity reports from carriers; executive summary reports; underwriting analysis for annual renewals; annual financial projections for budgeting purposes analysis?

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13. Describe your organization's method of keeping abreast of insurance market changes including coverage, rates, business philosophy, availability, legal constraints, and solvency (security of company). Describe your organization's method of apprising clients of these same changes.

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14. Specifically address what you have done to reduce insurance costs for clients.

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15. Provide details of seminars, presentations, webinars and/or training programs you have provided to your public entity clients in the last three years. Please also include your role in the presentations (instructor, organizer, etc.).

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16. Provide details of seminars or presentations you have taught at any conferences in the last three years.

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17. State any other facts and information you feel are pertinent to the selection process as they relate to your firm.

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18. List any additional service options your company can provide, not already requested, along with the fee required for these services.

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**E. Carrier Information**

1. Provide the following carrier information:

a) List the three P&C carriers with whom you have placed the greatest percent of your public entity P&C business during the previous 24 months.

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b) List three P&C carriers that you have accepted proposals from, but have not placed any public entity P&C business with during the previous 24 months.

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c) List three P&C carriers admitted in North Carolina that you most desire to solicit large DED / SIR insurance proposals for those insurance coverages previously outlined. The CITY appreciates the fact one carrier may not offer all lines of coverage being desired. Please include your plan as to how you would recommend the coverages be marketed.

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d) List three TPAs you would recommend to administer claims services if the CITY were to move to a large SIR program.

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e) Describe your access to excess and surplus line markets.

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**F. Broker Insurance**

1. Do you carry professional liability insurance to protect against errors and omissions?

Yes No Limits: \_\_\_\_\_

2. Will you provide a certificate of insurance for the CITY if successful in obtaining this account?

Yes No

**5. PROPOSER’S DECLARATION**

**PROPOSER UNDERSTANDS, AGREES AND WARRANTS:**

That Proposer has carefully read and fully understands the information contained in this Request for Proposal;

That Proposer has the capability to successfully undertake and complete the responsibilities and obligations of the proposal being submitted;

That this Proposal may be withdrawn by requesting such withdrawal in writing at any time prior to the time and date set for acceptance of proposals by CITY;

Any proposal received after the time and date specified as deadline for submission of proposals will not be considered;

That all information contained in the Proposal is true and correct to the best of Proposer’s knowledge;

That Proposer did not, in any way, collude, conspire, or agree, directly or indirectly, with any person, firm, corporation or other Proposer in regard to the amount, terms or conditions of this proposal;

That the CITY reserves the right to reject any and all Proposals and to accept that Proposal which will, in its opinion, provide the best level of service to the CITY;

That by submission of this Proposal, the Proposer acknowledges that the CITY has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Proposer and Proposer hereby grants the CITY approval to make said inquiries;

Signature of Authorized Representative: \_\_\_\_\_

Title of Authorized Representative: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_  
Notary

My Commission expires: \_\_\_\_\_

## **APPENDIX B- CONTRACTUAL REQUIREMENTS & TERMS AND CONDITIONS**

The following 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. 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 \$2,000,000 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 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 subcontractor. 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 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**

To the fullest extent permitted by law, CONTRACTOR shall release, indemnify, keep and save harmless the CITY, its agents, officials and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the CITY or third persons, and to all property proximately caused by, directly or indirectly, the performance or nonperformance by CONTRACTOR (or by any person acting for CONTRACTOR or for whom CONTRACTOR is or is alleged to be in any way responsible), whether such claim may be based in whole or in part upon contract, tort (including alleged active or passive negligence or participation in the wrong), or upon any alleged breach of any duty or obligation on the part of CONTRACTOR, its agents, officials and employees or otherwise. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the CITY, its agents, officials, and employees including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include without limitation the costs incurred by the CITY, its agents, officials and employees, in connection with investigating any claim or defending any action, and shall also include reasonable attorneys' fees by reason of the assertion of any such claim against the CITY, its agents, officials or employees. CONTRACTOR expressly understands and agrees that any performance bond or insurance protection required by this agreement, or otherwise provided by the CONTRACTOR, shall in no way limit CONTRACTOR's responsibility to release, indemnify, keep and save harmless and defend the CITY as herein provided. The intention of the parties is to apply and construe broadly in favor of the CITY the foregoing provisions subject to the limitations, if any, set forth in N.C.G.S. 22B-1.

## **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**

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 Management, Health Departments, and any other federal, state or local agency having jurisdiction, to insure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or

conditions issued thereunder. CONTRACTOR specifically acknowledges and agrees that CONTRACTOR, and any subcontractors it uses, has complied with and shall continue to comply with the provisions of the federal E-Verify program in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes. CONTRACTOR shall maintain adequate safeguards with respect to sensitive customer information in conformance with and pursuant to 16 C.F.R. §681.1 and in accordance with N.C. Gen. Stat. §132-1.10 and §75-65.

## **CONTRACTOR REPRESENTATIONS AND WARRANTIES**

*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.

*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.

*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 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.

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.

## **ACKNOWLEDGEMENTS**

Authority to Act/IDA Certification. 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. The undersigned certifies that CONTRACTOR 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, CONTRACTOR 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. 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.

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 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.

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 North Carolina General Statute 143-129, together with all other applicable laws, statutes and constitutional provisions, the procurement of goods, services in connection with construction projects for minority owned business enterprises.
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 CONTRACTOR 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 CONTRACTOR 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 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 (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 CONTRACTOR 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 CONTRACTOR 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.