



**Finance**

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

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

August 15, 2024

**RE: Request for Proposals –Lobbying Services-WMPO, RFP No. S5-0824.1**

To whom it may concern:

This Request for Proposals (RFP) will provide your firm with sufficient information to enable you to prepare and submit a proposal for services relating to managing and providing Consulting Recommendations for Lobbying Services.

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

Questions should be sent via email to Mike Kozlosky at [Mike.kozlosky@wilmingtonnc.gov](mailto:Mike.kozlosky@wilmingtonnc.gov) no later than 5pm, Friday, August 21, 2024. Answers to questions will be posted as an Addendum to the City website at [www.wilmingtonnc.gov](http://www.wilmingtonnc.gov), no later than Friday, August 23, 2024.

In order for your RFP to be considered responsive, it must adhere to the submittal requirements that follow. This is a criteria-based project. The successful Consultant will be selected based on the quality, quantity and best value of services provided for the available budget.

After the most qualified firm is determined by the City, the staff will enter into negotiations with the firm to better define the final scope of work. If for any reason the City and the selected firm cannot agree on a scope for the fee available, the City will enter into negotiations with the next most qualified firm.

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 Contractor 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: Mike Kozlosky, Executive Director of WMPO  
Abby Lorenzo, Deputy Director of WMPO  
Regina Hopkins, Senior Accountant -WMPO  
Alissa Guarascio, Buyer

WILMINGTON URBAN AREA  
METROPOLITAN PLANNING ORGANIZATION



**REQUEST FOR PROPOSALS (RFP)**

Lobbying Services

RFP Issue Date: August 15, 2024

RFP Submission Deadline: September 6, 2024



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# Introduction

## About the Wilmington Urban Area Metropolitan Planning Organization (WMPO)

The Wilmington Urban Area Metropolitan Planning Organization (WMPO) was created in 1973 based on the 1970 Decennial Census in which the Wilmington Urban Area's population exceeded 50,000. Federally mandated in all urban areas of 50,000 or more, Metropolitan Planning Organizations (MPOs) are responsible for conducting regional transportation planning which serves as the basis for the expenditure of federal transportation funds. The WMPO is the MPO recognized by the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) for the Wilmington Urban Area. With the Wilmington Urban Area's population reaching 200,000 in the 2010 Decennial Census, the WMPO was designated as a Transportation Management Area (TMA) in 2012.

The WMPO includes representatives from the following jurisdictions and organizations: the City of Wilmington; the Town of Carolina Beach; the Town of Kure Beach; the Town of Wrightsville Beach; New Hanover County; the Town of Belville; the Town of Leland; the Town of Navassa; Brunswick County; Pender County; the Cape Fear Public Transportation Authority; and the North Carolina Board of Transportation

The WMPO planning area boundary contains approximately 494 square miles and encompasses all New Hanover County and portions of Brunswick and Pender counties. The current population of the WMPO planning area is estimated at over 300,000.

## About this Request for Proposal

The WMPO adopts a Legislative Agenda on an annual basis that outlines the WMPO Board's state and federal transportation priorities. The currently adopted WMPO Legislative Agenda outlines the WMPO Board's 2024 priorities as Transportation Funding, Transportation Priority Project: Cape Fear Memorial Bridge, Opposition to Transfer of State Road Maintenance, Limitations on City Requirements for Street Improvements related to Schools, and Moped, Electric Scooter, and Electric Assist Bicycle legislation. The primary focus of this effort will be advocating for the necessary funding to replace the Cape Fear Memorial Bridge. The consultant(s) awarded this contract will have the primary responsibility of advocating for the WMPO's position on these and other legislative issues at the federal and state levels.

Although the WMPO is a federally designated and federally funded organization, no federal grant funding will be used for this effort. The funding used for these services has been programmed in the WMPO's adopted FY 24 Unified Planning Work Program as Local Only Participation. The funding provided for this effort will be local only and directly provided by the WMPO's members.



## Scope of Work

### Scope of Services

The selected consultant will actively and continuously lobby the North Carolina General Assembly, Congress, and federal Executive Branch regarding the WMPO Board's positions related to their adopted Legislative Agenda as well as other legislation that may impact the WMPO.

The successful consultant will also:

- Be the liaison with leaders of the North Carolina General Assembly, U.S Congress, and federal Executive Branch
- Review legislation under consideration and coordinate with the WMPO on the WMPO Board's position related to this draft legislation that would potentially impact WMPO
- Confer with WMPO Executive Director and the WMPO Board regarding the organization's position related to draft legislation
- Draft legislative proposals for submission to the NC General Assembly and Congressional Delegation
- Track the WMPO's adopted Legislative Agenda and provide progress reports/status updates
- Prepare presentation materials for meetings with the NC General Assembly and Congressional Delegation
- Contact appropriate state/federal officials to advance the WMPO Board's legislative priorities



# Submission Details

## Required Information

The RFP should be addressed to Alissa Guarascio, Buyer and must include the name, address, telephone number, and e-mail address of the firm's contact person for this RFP. The RFP must also include the information outlined below:

### 1. **Chapter 1 - Introduction**

The Introduction should demonstrate the consultant's overall qualifications to fulfill the requirements of the scope of work and should contain the following elements of information:

- A. Expression of firm's interest in the work.
- B. Firms Commitment to provide Lobbying Services for WMPO.
- C. Statement regarding firm's possible conflict of interest for the work.
- D. Summation of information contained in the letter of interest.

### 2. **Chapter 2 - Team Qualifications**

This chapter should elaborate on the general information presented in the introduction, to establish the credentials and experience of the consultant to undertake this type of effort. The following must be included:

- A. Identify the Individual(s) that will be the main point of contact for this effort.
- B. Identify recent, similar experience that the individual(s) and firm has related to this effort, which demonstrates its ability to conduct and manage these legislative efforts. Provide a synopsis of project team and public sector clients. Please provide a list of the public sector clients for which the company has provided lobbying services for over the past 5 years.

### 3. **Chapter 3 - Team Experience**

This chapter must provide the names, classifications, and location of the firm's employees and resources to be assigned to the work; and the professional credentials and experience of the persons assigned to the project, along with any unique qualifications of key personnel. Although standard personnel resumes may be included, identify pertinent team experience to be applied to this project, specifically:

- A. The experience, expertise, and total quality of the consultant's proposed lobbying team. If principals of the firm will not be actively involved in the effort, do not list them. The submittal shall clearly indicate the direct contact, other key team members and his/her qualifications for the proposed work
- B. The team's organizational chart should be included. Any other pertinent information should also be listed in this section.
- C. Please provide three (3) professional references for the firm. Include with each reference the name, address, work telephone number, and e-mail address. It is



preferred that the individuals have experience in working with the team members assigned to the effort.

## Final Proposal Document

### 1. Page Limit

All RFPs are limited to FIFTEEN (15) pages or less inclusive of the cover sheet and shall be typed on 8-1/2" x 11" sheets, single-spaced, one-sided. Fold out pages are not allowed. To reduce costs and to facilitate recycling, binders, dividers, tabs, etc. are prohibited. One staple in the upper left-hand corner is preferred. RFPs containing more than FIFTEEN (15) pages will not be considered.

### 2. Proposal Copies

FIVE (5) total hard copies of the RFP should be submitted along with one electronic copy on a flash drive, in pdf format. Firms submitting RFPs are encouraged to carefully check them for conformance to the requirements stated above. If RFPs do not meet ALL these requirements they will be disqualified. No exception will be granted.

### 3. RFP Delivery

**RFPs SHALL be received BY MAIL OR HAND-DELIVERY no later than 5pm on Friday, September 6, 2024.** RFPs received after this deadline will not be considered. The address for mailings and hand deliveries is:

Alissa Guarascio, Buyer-Purchasing Division at City of Wilmington  
929 Front Street 10th Floor  
Wilmington NC 28402

The WMPO reserves the right to accept or reject any or all responses with or without cause. Issuance of this RFP does not commit the WMPO to award a contract, to pay any costs incurred in preparation of a proposal, or to procure or contract for related services or supplies.

## Submission Schedule and Key Dates

RFP Schedule	Date	Time
RFP Release	August 15, 2024	
Deadline for written questions and clarifications on the RFP	August 21, 2024	5pm
Issue Final Addendum	August 23, 2024	
Deadline for RFP Submission	September 6, 2024	5pm
Shortlist Announced *	TBD	
Interviews	TBD	
Firm Selection and Notification **	TBD	



**\* Notification (by email) will ONLY be sent to shortlisted firms.**

**\*\* Notification (by email) will ONLY be sent to selected firm.**

## Submission Questions

Questions concerning this RFP should be directed, in writing, via email, to Mike Kozlosky, Executive Director of the WMPO at [mike.kozlosky@wilmingtonnc.gov](mailto:mike.kozlosky@wilmingtonnc.gov).

Responses to questions will be issued in the form of an RFP addendum, available to all interested parties. Interested parties should also send a request, by email only, to the person listed above to be placed on a public correspondence list to ensure future updates regarding the RFP or other project information can be conveyed.

Questions must be submitted to the person listed above no later than 5pm on Wednesday, August 21, 2024. The last addendum will be issued no later than Friday, August 23 2024.





# Selection Process

## Review Committee

The WMPO will establish a review committee to evaluate all eligible proposals and select the most qualified firm(s) for in-person interviews. Once completed, the committee will select a final firm based on the submitted document and interview performance.

## Selection Criteria

All firms who submit proposals will be considered. In selecting a firm/team, proposals will be evaluated based on, but not necessarily limited to, the following criteria:

Criteria	Weight
<b>Firm experience and expertise in the service areas described</b>	35%
<b>Demonstrated experience in performing similar work for other North Carolina municipalities/counties/MPOs</b>	30%
<b>Professional qualifications of the project individual(s) and team</b>	25%
<b>Demonstrated ability to adequately staff the projects to meet varying time schedules and demands</b>	10%

## Interviews

Based on the evaluation of all eligible and received proposals, the most qualified firm(s) will be invited for an interview. The exact number of interviews will be determined based on the quality, diversity, and responsiveness of the proposals received.

## Right to Reject Any or All RFPs

The WMPO reserves the right to reject any or all RFPs and to make the award as deemed in the best interest of the WMPO. If for any reason, the WMPO and the selected firm cannot agree on a scope, term of service or any other matter, the WMPO will enter into negotiations with the next most qualified firm.

**PROPOSAL CERTIFICATION**

**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.**

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

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

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

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

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

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

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

1. Please indicate type of business organization:

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

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

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

\_\_\_\_\_

Firm is incorporated in what state?

\_\_\_\_\_

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

North Carolina Secretary of State? \_\_\_\_\_

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

Name in full or all general partners and addresses:

\_\_\_\_\_  
\_\_\_\_\_

Is this a limited or general partnership? \_\_\_\_\_

If a limited partnership, what is state of registration? \_\_\_\_\_

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

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

Name of owner: \_\_\_\_\_

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

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

What is state of organization? \_\_\_\_\_

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

6. For all bidders:

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

\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_

If so, please provide the recording information:

Deed Book \_\_\_\_\_ at Page \_\_\_\_\_.

**NON-COLLUSION AFFIDAVIT  
CITY OF WILMINGTON**

**RFP NO. S5-0724**

State of North Carolina

County of New Hanover

\_\_\_\_\_, being first duly sworn, deposes and says that: \_\_\_\_\_

1. He/She is the \_\_\_\_\_ (title) of \_\_\_\_\_ (firm's name), the responder that has submitted the attached response;
2. He/She is fully informed respecting the preparation and contents of the attached response and of all pertinent circumstances respecting such response;
3. Such response is genuine and is not a collusive or sham response.
4. Neither the said responder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other responder firm or Person to submit a collusive or sham response in connection with the contract for which the attached response has been submitted or to refrain from responding in connection with such contract, or has in any manner, directly or indirectly sought by agreement or collusion of communication or conference with any other responder, firm or person to fix the price or prices in the attached response, if applicable, or of any other responders, or to fix any overhead, profit or cost element of the response price of the response, if applicable, of any other responder or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Wilmington or any person interested in the proposed contract.

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**NOTARIZE**

Subscribed and sworn to before me,

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

(NOTARY SEAL)

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

My Commission Expires: \_\_\_\_\_

## **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. 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.

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. Ensure that competitive and equitable bidding opportunities are followed to afford minority business enterprises participation. Strive to obtain contract and subcontract awards to minority business enterprises.
3. Identify and communicate to the minority business enterprises community procedures and contract requirements necessary for procurement of goods and services for construction projects and subcontracts.
4. Provide technical assistance as needed.
5. Promulgate and enforce contractual requirements that the general CONTRACTOR or all construction projects shall exercise all necessary and reasonable steps to ensure that minority business enterprises participate in the work required in such construction contracts.

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