



**Request for Proposals (RFP No. S6-0824)**

**Title: Pavement Condition Survey 2024**

**Issue Date: July 29, 2024**

**Due Date: August 27, 2024**

**By 3:00PM ET**

**LATE PROPOSALS WILL NOT BE ACCEPTED**

**Issuing Department: Public Works**

**Direct all inquiries concerning this RFP to:**

**Aaron Beckner: [aaron.beckner@wilmingtonnc.gov](mailto:aaron.beckner@wilmingtonnc.gov)**

July 29, 2024

**RE: Request for Proposals – Pavement Condition Survey 2024**

**RFP No.: S6-0824**

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 a Pavement Condition Survey for 2024.

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 contractor. 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 [raquel.perez@wilmingtonnc.gov](mailto:raquel.perez@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 Contractor 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.

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

Enclosure

cc: Dave Mayes, Director of Public Works  
Aaron Beckner, Senior Project Engineer

## Request for Proposals (RFP) for Pavement Condition Survey 2024

### INTRODUCTION

The City of Wilmington invites written proposals to provide pavement & sidewalk inspection for collecting surface condition data, and processing and analysis of recorded data. This RFP intends to evaluate each interested Company's specific qualifications, experiences, and select the best qualified. In addition, all interested companies shall have sufficient, readily available resources in the form of trained personnel, support services, specialized street and sidewalk data collection and software, and financial resources to carry out the work without delay or shortcomings. The City intends to award a contract to a successful Company for the services proposed by that Company.

Proposals should distinctly comment on these three areas: 1) the data collection procedures for developing a City-wide numerical equivalent Pavement Condition Index (PCI), where each roadway segment will receive a distinct PCI equivalent rating; 2) The data collection procedures for developing a City wide Sidewalk Condition Assessment; and 3) Develop a new Pavement Restoration Fee to accurately capture costs associated degradation due to pavement cuts.

### SCOPE OF SERVICES

Proposals should address all labor, materials, supplies, equipment, and services necessary to complete the project.

- **Project Initiation (Incidental Cost)** – Selected Vendor shall meet with City Staff and review data and street network segmentation provided by the City. They will also review integration with GIS and existing software products.
- **Network segmentation (Incidental Cost)** – Selected Vendor shall confirm the quality of the GIS road network provided by the City for the approximately 400 centerline miles to be included in this project. The survey will be conducted for each street segment which is typically a block and tagged with a Powell-ID on in GIS. A shapefile will be provided by the City.

The vendor will work with City staff to confirm the linkage of the sidewalk segmentation to the City database and GIS file for the approximately 377 miles of sidewalk to be included in this project. The ideal way for sidewalk segmentation is intersection to intersection.

The City road network does not include NCDOT streets or private streets. See "Who Maintains my Street?" map on City website. Some of the sidewalk network may exist on NCDOT streets.

- **Pavement Condition Data Collection** – Lump Sum Cost: \$ \_\_\_\_\_  
Utilize an image-based data collection platform to automatically collect continuous road surface data. At a minimum, system should utilize the following technologies:
  - Surface imaging technology
  - 360° Degree HD Imagery

- All systems and data streams should be GPS geotagged.
- All survey work shall be performed on dry pavement and in lighting conditions that assure usable data.
- The protocol for the survey will be based on the specifications and methodologies described by ASTM Standard D6433-11 “Standard Practice for Road and Parking Lots Pavement Condition Index (PCI) Surveys”.
- **Additional Data to be collected by the Pavement Condition Survey**– The additional data to be collected as described below will consist of photographs, measurements, and notes to be attached to the data collected and stored in database for each street segment.
  - Pavement Distress Analysis – Lump Sum Cost: \$ \_\_\_\_\_
    - Fatigue Cracking
    - Transverse Cracking
    - Block Cracking
    - Defective Patching and Potholes
    - Surface Defects
    - Rutting & Roughness
    - Reflective Cracking
    - Ride Quality data: identify features (i.e. needed utility adjustments, potholes, etc.) that may impact ride quality of City streets.
  - Pavement Width – Lump Sum Cost: \$ \_\_\_\_\_
    - The width of the asphalt pavement will be measured and recorded.
    - If the pavement width varies, the street will be stationing and the pavement width at each transition (25’ intervals) shall be measured and reported. This shall include all turn lanes and on-street parking.
  - Type of curb and gutter and dimensions. – Lump Sum Cost: \$ \_\_\_\_\_  
 Dimensions to include height of curb, width of curb, and width of gutter if applicable.
    - Granite Curb
    - Concrete Curb
    - Asphalt Curb
  - Crosswalk slope – Lump Sum Cost \$ \_\_\_\_\_
    - The longitudinal and cross slopes for the crosswalk will be measured in both directions.
- **Sidewalk Condition Data Collection – Lump Sum Cost: \$ \_\_\_\_\_**  
 Company shall utilize a mobile survey platform to collect sidewalk and curb ramp surface data. The system utilizes the following technologies:
  - High-precision GPS enabled system for geo-locating of sidewalk and asset information.
  - Geo-tagged optical camera systems providing high resolution full color imagery.
  - All data streams are geotagged.
  - Distresses such as uplift, surface distortions and cracking as well as any non-ADA compliant features will be collected for sidewalks and ramps.

- All survey work shall be performed on dry sidewalk and in lighting conditions that assure usable data.
- Sidewalk width shall be calculated based on satellite imagery.
- **Data Processing and QA/QC (Incidental Cost)** – perform analysis and QA/QC of collected data.

**PAVEMENT RESTORATION FEE – Lump Sum Cost: \$ \_\_\_\_\_**

- Applicant will assist City in reviewing their current utility cut program in relation to the pavement restoration fee. Applicant will assist the City in updating the pavement restoration fee to accurately capture costs associated degradation due to pavement cuts. Please reference the links below for information on the current utility cut program.

<https://www.wilmingtonnc.gov/departments/public-services/streets-sidewalks/utility-cuts>

<https://www.wilmingtonnc.gov/departments/engineering/right-of-way-permits>

**PAVEMENT SURVEY DELIVERABLES (Incidental Cost)**

ESRI Geodatabase which includes (at a minimum)

- PCI ratings
- The following attributes:
  - City’s Street Segment ID numbering system (provided by City)
  - Cross reference Street Name, From and To designation (provided by City)
  - Functional Classification (Provided by the City)
  - Surface Type
  - Length, Width, Area
- Georeferenced imagery
- Georeferenced distresses
- The City currently uses the StreetLogix software for asset management. All data provided shall be compatible with StreetLogix software.
- Technical Report on Pavement Restoration Fee with recommendations for new fee
- The City DOES NOT require any work plans, funding scenarios, or identified maintenance needs. The City will create their own work plans using the StreetLogix program.

**SIDEWALK SURVEY DELIVERABLES (Incidental Cost)**

ESRI Geodatabase which includes (at a minimum)

- Use Municipality’s Street Segment ID numbering system (Provided by the City)
- Cross reference StreetName, FromStreetName and ToStreetName designations (Provided by the City)
- Functional Road Classification (Provided by the City)
- Length, Width, Area (sidewalk)
- Distresses and non-ADA Compliant features (sidewalks and ramps).
- Geo-tagged media

## **DESIRED PROJECT SCHEDULE (Incidental Cost)**

The City hopes to have the data-collection portion of the work completed by or earlier than the early fall season of 2024. Any deviation from this goal should be clearly stated. Key targets are:

Release of RFP Document: **July 29, 2024**

Submit proposals: **August 27, 2024, by 3:00 PM**

Selection of Contractor & Notice of Award: **TBD**

Tentative Completion of Data Collection (vehicle driving): **TBD**

Contract Completion Date: **TBD**

## **PROPOSAL CONTENT & FORMAT & EVALUATION (Incidental Cost)**

Proposals shall include the following which will be used by the City for evaluating and selecting a firm:

1. Introduction: introductory letter including firm name, address, telephone number, contact person, table of contents. **(5%)**
2. Firm experience – a detailed description of 3 similar projects successfully completed by the firm; name, telephone number, and email address of a contact person for each client who can verify the information provided. Provide number of miles surveyed, type of data collected, and overall cost. **(20%)**
3. Team experience – a listing of team personnel who will actually be assigned to perform substantial amounts of the work on this project; provide org-chart, experience record, anticipated amount of time each person will actually work on this project, and location of each person. **(15%)**
4. Project Approach – a detailed description of how the firm proposes to approach this project; include sufficient discussion of proposed methodologies, techniques, and procedures for each work item; provide a breakdown and description of tasks assigned per project team member. **(20%)**
5. Project Schedule – a proposed time schedule. **(5%)**
6. Cost Quotation – Per the instructions provided a cost quotation must be included as part of the overall submittal package. **(35 %)**

The submittal package is required to contain the following information with an emphasis on conciseness, clarity, and completeness. Firms interested must submit the proposal on 8 1/2" x 11" size paper, minimum font size 11, Proposal shall contain a Table of Contents and be organized into sections according to the content requirements. The package shall not exceed 30 numbered pages (front and back counts as 2 pages). Cover letter, Table of Contents and resumes are excluded from the page count total.

The evaluations of the proposals will be based on the qualified proposal that will best serve the City. After review of the proposals by the City, selection of the top firm will be made, and fee negotiations will commence. The City may conduct consultant interviews or make other contact for clarification of issues that may arise during proposal review.

**COST QUOTATION:**

The cost proposal shall provide all costs for which compensation is expected. The City will negotiate a final contract with the selected vendor. The purpose of the cost proposal is to understand the order of magnitude of the scope of services. The Lump sum proposal is based on the assumed centerline miles of road and sidewalk network provided, which includes data collection, analysis and deliverables.

Total Cost \$	
COMPANY NAME:	
CONTACT PERSON:	
ADDRESS:	
TELEPHONE#	
E-MAIL:	
SIGNATURE:	

**RFP NO. S6-0824**

**PROPOSER'S CERTIFICATION**

**Proposer's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

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

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

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

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

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

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

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

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

1. Please indicate type of business organization:
  - (a) Proprietorship \_\_\_\_\_
  - (b) Partnership \_\_\_\_\_
  - (c) Corporation \_\_\_\_\_
  - (d) Limited Liability Co. \_\_\_\_\_



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

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

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Firm is incorporated in what state?

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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:

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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 titles of managers or member-managers who will execute the contract on behalf of the company? \_\_\_\_\_

What is the 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**

**RFP NO. S6-0824**

**CITY OF WILMINGTON**

State of North Carolina

County of New Hanover

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

1. They are the \_\_\_\_\_ (title) of \_\_\_\_\_ (firm's name),  
the responder that has submitted the attached response;
2. They are 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 Harbor Workers' 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 situation. (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 damages are covered by the business auto liability or commercial umbrella liability insurance obtained by CONTRACTOR pursuant to Section 11.C.1 of this agreement.
6. The CONTRACTOR's Business Auto Liability insurance shall be primary as respects the City of Wilmington, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of Wilmington, its officers, officials, and employees shall be excess of and not contribute with the CONTRACTOR's insurance.

D. Professional Liability Insurance

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

E. Deductibles and Self-Insured Retentions

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

F. Miscellaneous Insurance Provisions

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

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

G. Acceptability of Insurers

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

H. Evidence of Insurance

1. The CONTRACTOR shall furnish the City of Wilmington with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the work, and

thereafter upon renewal or replacement of each certified coverage until all operations under this contract are deemed complete.

2. Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in Section 11.
3. With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to the City of Wilmington with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the period for which such insurance must be maintained.

#### I. Subcontractors

CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates for each 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 ensure that minority business enterprises have the maximum opportunity to compete for and perform portions of the work included in this contract and shall not discriminate on the basis of race, color, national origin or sex. The CONTRACTOR shall include this special provision, Minority Business Enterprise (MBE), in all subcontracts for this contract. Failure on the part of the CONTRACTOR to carry out the requirements set forth in this special provision may constitute a breach of contract and after proper notification may result in termination of the contract or other appropriate remedy.

A minority business enterprise is defined as a business, with at least fifty-one (51%) percent owned and controlled by minority group members. The minority ownership must exercise actual

day-to-day management. Minority group members may consist of Black Americans (an individual of the Black race of African origin), Hispanic Americans (an individual of a Spanish speaking culture and origin at parentage), Asian Americans (an individual of a culture, origin or parentage traceable to the areas of the Far East, Southeast Asia, the Indian subcontinent and the Pacific Islands), Indian Americans (an individual who is an enrolled member of a Federally recognized Indian tribe, or recognized by the tribe as being an Indian, as evidenced by a certification of a tribal leader), American Aleuts or any recognized minority group approved by the CITY.

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

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