



## TOWN OF SURF CITY

### Finance

201 Community Center Dr  
Surf City, NC 28445

910 328-4131  
910 328-4132 fax  
[www.surfcitync.gov](http://www.surfcitync.gov)

November 21, 2019

**RE: Request for Qualification – Construction Manager At-Risk  
(CMR) RFQ No.: S13-0517**

Dear Sir or Madame:

This Request for Qualification (RFQ) will provide your firm with sufficient information to enable you to prepare and submit a qualification statement for Construction Manager At-Risk (CMR).

It is the Town of Surf City's intention to acquire the services of a Construction Manager At-Risk (CMR) to provide overall project management, cost control, time control, value analysis, cost benefit studies, information management, construction contract management, claims management, technical inspection, and other services during the design, bid and award, construction and post-construction phases for the development of our Municipal Complex which includes Town Hall and Police Department.

The RFQ 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 [aloftis@townofsurfcity.com](mailto:aloftis@townofsurfcity.com) to acknowledge receipt of the RFQ and to inform the Town of its intent to respond. Provide the name, title, address, telephone and email address of the contact person. Addenda will be posted to the Town website at [www.surfcitync.gov](http://www.surfcitync.gov).

In order for your RFQ to be considered responsive, it must adhere to the submittal requirements that follow. 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.

After the most qualified firm is determined by the Town, staff will enter into negotiations with the firm to better define the final scope of work. If for any reason the Town and the selected firm cannot

agree on a scope for the fee available, the Town will enter into negotiations with the next most qualified firm.

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

Questions concerning the scope of work for this request should be addressed to Ashley Loftis, (910) 328-4131 or email [aloftis@townofsurfcity.com](mailto:aloftis@townofsurfcity.com). Questions concerning the proposed contract terms and conditions should be addressed to my office. I hope to receive your statement of qualification for this work.

Sincerely,

Ashley Loftis  
Town Manager

## **REQUEST FOR QUALIFICATION**

### **Introduction**

The Town of Surf City (“Owner”) is soliciting Statements of Qualification (“SOQ”) from interested parties qualified as a Construction Manager at Risk (“Proposer”) for services of the Municipal Complex project in conjunction with North Carolina General Statute 143-128.1.

After Hurricane Florence, Town Council voted to move forward with building a new Municipal Complex after our old Town Hall building was damaged by Hurricane Florence. The complex is located on approximately 3 acres in a rapidly developing area of Surf City. The parcel was a donation to the Town by a local resident. The complex will consist of Town Hall and Police Department. Both will be approximately 10,000 square feet with the total facility being just under 20,000 square feet. The complex will also serve as the Town's Emergency Operations Center during an emergency situation. The Surf City Municipal Complex Plan has been developed and identifies a schematic design and stormwater design. The Plan was developed through a significant staff planning process along with the assistance of Formitas PLLC and Dogwood Architecture.

A copy of the plan can be found here: <http://nc-surfcity.civicplus.com/2264/Request-for-Bids-Request-for-Proposals> .

This project will be funded in part by grant monies received from the Golden Leaf Foundation and FEMA. Time is of the essence with this project and we are on a very tight time table.

The Proposer will work as part of a team with our project engineer and architect on project delivery.

The Proposer must clearly demonstrate the ability and expertise to provide the required services, staffing and resources to complete the project.

The Proposer must comply with all applicable ordinances, state, local and federal laws and the terms and conditions of the contract agreement. The Town of Surf City encourages participation by Disadvantaged Business Enterprises.

### **Objective and Scope of Work**

The scope of work awarded under this qualification process includes project management, construction management, construction administration, and logistics management of the assigned project during the full term of the Surf City Municipal Complex construction project. The Surf City Municipal Complex will be a approximately 20,000 square foot building housing the Surf City Town Hall and Surf City Police Department. The Surf City Town Hall will be approximately 10,000 square feet and consist of office spaces, restrooms, laundry facility, warming kitchen. The Surf City Police Department consists of approximately 10,000 square feet and consist of office space, restrooms, laundry facility, locker rooms, and specialized rooms for evidence holding, armory, intake area, and sally port. The plan also includes all site work to include clearing and grading of lot, utility work and stormwater management.

### **RFQ Response Timeline**

The RFQ process shall adhere to the following schedule.

<b>RFQ Process</b>	<b>Date</b>	<b>Time</b>
<b>Advertise RFQ</b>	12/2/2019	9:00 AM
<b>RFQ Written Questions Due</b>	12/9/2019	5:00 PM
<b>RFQ Due Date</b>	12/20/2019	3:00 PM
<b>Interviews</b>	1/6/20-1/10/2019	TBA
<b>Town Council Award</b>	1/17/2020	

Note: All times shown as Eastern Standard Time (EST).

### **Pre-Proposal Questions**

Questions concerning the specifications in this Request for Qualification should be directed to the Town Manager. Questions will be received until Friday, 12/9/2019, at 5:00 pm. An addendum summarizing all questions and answers will be posted to the Town's website.

Town Manager for the Town of Surf City  
Ashley Loftis  
Email: [aloftis@townofsurfcity.com](mailto:aloftis@townofsurfcity.com)  
Phone: 910-328-4131

### **Statement of Qualification Submittal Requirements**

Statements of Qualifications must follow the format as defined in the section marked "SOQ".

Statement of Qualification should be limited to 25 pages or less, inclusive of cover page. Please use 8 ½" x 11" sheets, single spaced, one sided with no less than 12 point font. Respondents must submit one (1) signed original and five (5) copies plus one (1) electronic version, of the "Construction Manager at Risk (CMR)" SOQ. The electronic version of the SOQ must be submitted as a viewable and printable Adobe Portable Document File (PDF) on a Compact Disc-Read Only Memory (CD-ROM) disc or USB drive attached to the SOQ. Proposals must be enclosed in a sealed envelope or package and clearly marked: "RFQ No. S13-0517 Construction Manager at Risk (CMR)". Both hard copy and electronic version must be received by the Town on or before **3:00 PM, Friday, December 20, 2019**. Deliver SOQs to the following mailing / physical address:

Town of Surf City  
Attention: Ashley Loftis, Town Manager  
201 Community Center Dr  
Surf City, NC 28445

SOQs received after the “RFQ Due” deadline above will not be considered and will be returned unopened to the return address on the submission envelope. The outside of the submittal package and the CD-ROM/USB must be clearly marked. The Town reserves the right to reject any or all proposals for any reason and to waive any informality it deems in its best interest. Any requirements in the RFQ that cannot be met must be indicated in the statement of qualification. CONTRACTORS must respond to the entire Request for Qualification (RFQ). Any SOQs received by the City that are incomplete in their responses will be immediately disqualified.

### **Rights to Submitted Material**

All statements, responses, inquiries, or correspondence relating to or in reference to this RFQ, and all reports, charts, and other documentation submitted by Proposers (other than materials submitted as and qualifying as trade secrets under North Carolina Law) shall become the property of the City when received and the entire statement of qualification shall be subject to the public records laws of the State of North Carolina except where a proper trade secrets exception has been made by the Proposer in accordance with the procedures allowed by North Carolina Law and marked in bold “**Confidential**”.

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

### **I. REQUIREMENTS FOR STATEMENT OF QUALIFICATIONS**

Please submit a complete Statement of Qualifications responding to all the required information requested. Incomplete Qualifications will be considered non-responsive and subject to rejection.

#### **Introduction:**

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

The cover letter shall be addressed to Mrs. Ashley Loftis, Town Manager. It may be up to two pages (which do not count toward the 25-page maximum) and, at a minimum, must contain the following:

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

**B. Section One: Respondent's Statement of Qualifications and Availability to Undertake the Project**

1. Provide a statement of interest for the Project including a narrative describing the respondent's unique qualifications as they pertain to this particular Project.
2. Provide a statement on the availability and commitment of the respondent, its principal(s) and assigned professionals to undertake the Project.

**C. Section Two: Respondent's Ability to Provide Construction Management Services**

1. Provide the following information on your firm for the past five (5) fiscal years:
  - a) Volume: Annual number, value and percent change of contracts per year;
  - b) Revenues: Annual revenue totals and percent change per year;
  - c) Bonding: Total bonding capacity, available bonding capacity, and current backlog;
2. Attach a letter of intent from a surety company licensed to do business in North Carolina indicating your firm's ability to bond for the entire construction cost of the project. The surety shall acknowledge that the firm may be bonded for each stage/phase of the project, with a potential maximum construction cost of \$6 million dollars.

**D. Section Three: Qualifications of Construction Manager at Risk Team**

1. Describe your management philosophy for the Construction Manager at Risk construction delivery method.
2. Provide a list of staff members and resumes of the Construction Manager at Risk team that will be directly involved in the Project, including their experience with similar projects, the number of years with the firm, and their city(s) of residence. Also provide an Organizational Chart but do not include resumes or list of personnel who will not be assigned to this project.
3. Describe, in graphic and written form, the proposed Project assignments and lines of authority and communication for each team member to be directly involved in the Project. Indicate the

estimated percent of time these team members will be involved in the Project for Pre-construction and Construction Services.

4. Identify the proposed team members who worked on the Projects listed in Section E.1 of this RFQ, and describe their responsibility in those projects compared to this project. CM will be required to notify Owner in writing any change to this team prior to start date and Owner shall have the option to approve/disapprove newly proposed team member or void the contract altogether.

#### **E. Section Four: Respondent's Past Performance on Representative CM-R Projects**

1. Identify and describe the proposed Team's past experience for providing Construction Manager at Risk Services for building projects that are most related in scope and complexity to this project within the last five (5) years. For each such project, state whether you acted as the general contractor or subcontractor. List the projects in order of priority, with the most relevant project listed first. Provide the following information for each project listed:
  - a) Project name, location and description
  - b) Color images (photographic or machine reproductions)
  - c) Construction costs at time of GMP and final construction costs
  - d) Final project size in gross square feet; for the performance venue projects, state the seating capacity, square footage, technical capabilities and project costs.
  - e) Type of construction (new, renovation, or expansion)
  - f) Specific details on the extent to which the pre-construction and construction phase services were provided
  - g) Indicate the number of calendar days in the original schedule and the number of calendar days added by any change orders.
  - h) Name of Project Manager (individual responsible to the Owner for the overall success of the project)
  - i) Name of Project Superintendent (individual responsible for coordinating the day to day work)
  - j) Names of Mechanical, Plumbing and Electrical subcontractors
  - k) References (for each project listed above, identify the following):
    - The Owner's name and representative who served as the day-to-day liaison during the design and construction phases of the project, including telephone number

- Architect/Engineer's name and representative who served as the day-to-day liaison during the construction phase of the project, including telephone number
  - Length of business relationship with the Owner.
- 1) Describe your approach to encouraging minority participation on these projects. Indicate the percentage achieved and if the MWBE goal was met or exceeded. Describe what strategies were used to make these projects successful.

References shall be considered relevant based on specific project participation and experience with the Respondent. The Owner may contact references during any part of this process. The Owner reserves the right to contact any other references at any time during the RFQ process.

**F. Section Five: Respondent's ability to establish Budgets and control costs on past projects**

1. Describe your fiduciary responsibility as a Construction Manager at Risk using Guaranteed Maximum Price contracts for publically funded projects.
2. Describe your cost estimating methods. From any of three (3) projects listed in response to Section E.1 of this RFQ, describe how the estimates were developed, how often they were updated and the degree of accuracy achieved.
3. Describe your cost control methods during construction and how you procure subcontracts, confirm scope, amount, and ensure proper payment.
4. Describe your methodology for working with the Project Architect/Engineer and their CONTRACTORS to deliver a Guaranteed Maximum Price and to maintain the GMP throughout the design and construction process.
5. The Owner intends to accept a Guaranteed Maximum Price prior to completion of Construction Documents. Describe 1) Your process for ensuring that the Design Documents provide the information necessary to arrive at a complete GMP, including all Owner requirements with reasonable contingencies, and 2) Your process for subsequently ensuring that the 100% Construction Documents align with the project scope in the previously accepted GMP proposal documents.

**G. Section Six: Respondent's ability to meet schedules on past projects**

1. Describe how you will develop, maintain and update the project schedule during design and construction.
2. Describe your approach to assuring timely completion of this project, including methods for schedule recovery, if necessary.
3. Describe how you develop and maintain work schedules during design and construction to coordinate with the Owner's project schedule.

**H. Section Seven: Respondent's knowledge of current construction methodologies, technologies, and best practices**

1. Describe your quality assurance program. Explain the methods used to ensure quality control during the Construction phase of a project.
2. Describe your procedures for implementing industry's "best practices" as defined by the Construction Industry Institute and similar organizations.
3. Provide an example of a successful constructability program used to maintain project budgets without sacrificing quality.
4. Describe your company's approach to safety and insuring safety while working on the site.

**I. Section Eight: Respondent's scope of preconstruction services**

1. Describe proposed scope for preconstruction services.

**J. Section Nine: Capabilities: Financial and Legal**

**Financial:**

1. Provide a current financial rating of your company and any documentation, including a Dunn and Bradstreet analysis, which indicates the financial stability of the company. This requirement shall be submitted in a separate sealed envelope marked "**Financial Rating - Confidential**".

2. Is your company currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, specify date(s), details, circumstances, and prospects for resolution.

**Legal:**

1. Provide details of any current litigation, in connection with your company’s performance under a contract for construction management and/or construction services. Describe the status of each suit or claim.
2. Does any relationship exist between your company and any of the Owner’s officers, employees or the Architect whether by relative, business associate, capital funding agreement or any other such kinship? If yes, please explain.

**Evaluation Criteria**

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

<b>Criteria</b>	<b>Weights</b>
Qualifications and experience of the proposed team members for the requested services.	30%
Overall quality and detail of submittal; demonstrated understanding of the scope of services.	20%
Ability and resources to meet contractual obligations and project schedule.	20%
Demonstration of prior successes with similar services and projects.	15%
Financial Strength.	10%
Past success with and plan for maximizing local and minority participation.	5%

**Final Selection**

Procurement of the CMR services will be made in accordance with the provisions of G.S. 143-64.31 which requires that firms be selected on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee. A team, comprised of Town staff, will be responsible for the proposal evaluations. This team, in accordance with the criteria listed above, will evaluate all proposals received as specified. The Town team members, in applying the major criteria to the proposals, may consider additional sub-criteria beyond those listed, as may come to light through the

review of the various proposals. During the evaluation period, the Town of Surf City reserves the right to interview the top selected firms or all the proposing firms. The Town's final selection will be the firm which, in the Town's opinion, is the most responsive and responsible firm, that meets the Town's requirements in providing this service, and is in the Town's best interest. The Town maintains the sole and exclusive right to evaluate the merits of the proposals received.

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

The Town reserves the right to make an award without further discussion of the proposal submitted. The Town shall not be bound or in any way obligated until both parties have executed a contract. The Town also reserves the right to delay the award of a contract or to not award a contract.

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

**RESPONDER'S CERTIFICATION**

**Proposers Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

By Signing above I Certify that I have carefully read and fully understand the information contained in this RFQ; and that I have the capability to successfully undertake and complete the responsibilities and obligations of the Request for Qualifications being submitted and have the authority to sign Statement of Qualification on behalf of my organization. **It is the offeror's responsibility to assure that all addenda have been reviewed prior to proposal submission.**

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

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

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

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

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

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

N.C.G.S. 143-128.1 specifically requires that construction managers at risk be licensed as a general CONTRACTOR;

\*\* NC General CONTRACTOR's License Number \_\_\_\_\_

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 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?

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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 \_\_\_\_\_.

## **CONTRACTUAL REQUIREMENTS & TERMS AND CONDITIONS**

The following terms and conditions apply to this *Request for Qualification* 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 Qualification* should be addressed in a separate section of the vendor'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 Town of Surf City, 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 Town of Surf City, 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 Town of Surf City, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the Town of Surf City, 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 Town of Surf City, its officers, officials, agents and employees for losses arising from work performed by the CONTRACTOR for the Town of Surf City.

#### **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 Town of Surf City, its officers, officials, agents and employees for losses arising from work performed by the CONTRACTOR for the Town of Surf City.
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 Town of Surf City, 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.

#### CI. 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 Town of Surf City 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 Town of Surf City, PO Box 2475, Surf City, NC 28445.
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 Town of Surf City.

H. Evidence of Insurance

1. The CONTRACTOR shall furnish the Town of Surf City 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 Town of Surf City 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 Town of Surf City.
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 Town of Surf City.
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 Town of Surf City reserves the right to obtain complete, certified copies of all required insurance policies, at any time.
5. Failure of the Town of Surf City to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of the Town of Surf City 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 Town of Surf City 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 Town of Surf City in this contract.
7. The Town of Surf City 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 Town of Surf City.

K. BUILDERS RISK INSURANCE:

1. CONTRACTOR shall purchase and maintain in force builders risk insurance on the entire work. Such insurance shall be written on a completed value form and in an amount equal to the initial contract sum, subject to subsequent modifications of the contract sum. The insurance shall apply on a replacement cost basis.
2. Builders Risk Insurance shall, at a minimum, cover the perils insured under the ISO special causes of loss form (CP 10 30) and shall be endorsed as needed to provide full coverage for loss or damage from collapse including collapse resulting from design error. Builders Risk Insurance shall include coverage for flood, when that exposure exists.
3. CONTRACTOR shall purchase and maintain boiler and machinery insurance required by the contract documents or by law, covering insured objects during installation and until final acceptance by the Town of Surf City. This insurance shall name as insureds the City of Wilmington, CONTRACTOR, and all subcontractors and sub-subcontractors in the work. In lieu of this separate policy, the CONTRACTOR may have the boiler and machinery exclusion removed from the builder's risk policy.

4. Builders Risk insurance shall name as insureds the Town of Surf City, CONTRACTOR, and all subcontractors and sub-subcontractors in the work. Builders Risk insurance shall cover the entire work at the site identified in this agreement and when applicable include reasonable compensation for architects' services and expenses made necessary by an insured loss. Insured property shall include portions of the work located away from the site but intended for use at the site, and shall also cover portions of the work in transit. The policy shall cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any law, ordinance, or regulation.
5. The insurance as required in this section shall be maintained in effect, unless otherwise provided for in the contract documents, until the earliest of the following dates:
  - a. The date on which all persons and organizations who are insureds under the policy agree that it shall be terminated;
  - b. The date on which final payment, has been made;
  - c. The date on which the insurable interests in the property of all insureds other than the Town of Surf City have ceased.
6. If the Town of Surf City is damaged by the failure of CONTRACTOR to maintain Builders Risk or Equipment Breakdown, then CONTRACTOR shall bear all reasonable costs properly attributable to that failure.
7. The Town of Surf City and CONTRACTOR waive all rights against each other and each of their subcontractors, sub-subcontractors, officers, officials, agents and employees for recovery of damages caused by fire and other perils to the extent covered by builders risk insurance purchased pursuant to this section, or any other property insurance applicable to the work.
8. If the builders risk insurance and other property insurance policies purchased as required above do not allow the insured to waive rights of recovery against others prior to loss, CONTRACTOR shall cause them to be endorsed with a waiver of subrogation as required above.
9. Partial occupancy or use of the work shall not commence until the insurance company or companies providing Builders Risk insurance have consented to such partial occupancy or use. The Town of Surf City and CONTRACTOR shall take reasonable steps to obtain consent of the insurance company or companies, and agree to take no action, other than upon mutual written consent, with respect to occupancy or use of the work that could lead to cancellation, lapse, or reduction of insurance.

## **INDEMNIFICATION**

To the fullest extent permitted by law, CONTRACTOR shall release, indemnify, keep and save harmless the TOWN, 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 TOWN 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 TOWN, 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 TOWN, 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 TOWN, 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 TOWN as herein provided. The intention of the parties is to apply and construe broadly in favor of the TOWN 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.

### **CONTRACT DISPUTES**

In accordance with G.S. 143-128.1(8) the parties agree to mediate contract disputes in excess of \$15,000.00. Within ten (10) days of such contract disputes, the parties shall select a mediator that is certified pursuant to all of the parties involved in the dispute. If the parties cannot agree on a mediator or do not timely select a mediator, the TOWN shall select the mediator. The parties and the mediator shall agree upon the mediator's rate of compensation. The parties to the dispute shall share in the payment of the mediator's compensation with the TOWN paying a minimum of one-third of the compensation if the TOWN is a party to the dispute.

## **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 TOWN'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 TOWN; 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 TOWN, and the TOWN 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 TOWN'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 TOWN 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 TOWN 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 TOWN 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 TOWN, and the CONTRACTOR shall retain no property or copyright interest therein. Further, upon termination of this Agreement, the CONTRACTOR shall deliver to the TOWN all records, notes, memorandum, data, documents or any other materials received or obtained from the TOWN 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 TOWN 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 TOWN reserves all immunities, defenses, rights or actions arising out of TOWN'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 TOWN'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 TOWN'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 TOWN funds or insufficient TOWN funds are appropriated or otherwise available by any means whatsoever in any fiscal year for any payment due under this Agreement, then the TOWN will immediately notify CONTRACTOR of such occurrence and this Agreement shall create no further obligation of the TOWN 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 TOWN of any kind whatsoever.

Minority Business Enterprise (MBE). The TOWN 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 TOWN.

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.

**NON-COLLUSION**

RFQ No. S13-0517

**AFFIDAVIT Town of Surf City**

State of North Carolina

County of Pender

\_\_\_\_\_, 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 Town of Surf City 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: \_\_\_\_\_