



**REQUEST FOR PROPOSALS
DEBT COLLECTION SERVICES
NOTICE OF REQUEST FOR PROPOSALS
19-S1009**

NOTICE IS HEREBY GIVEN that the Cape Fear Public Utility Authority (hereinafter referred to as "CFPUA" or "the Authority") and The City of Wilmington (hereinafter referred to as "CITY") are requesting proposals from qualified agencies to provide Debt Collection Services. CFPUA will receive such proposals in the office of and addressed to or emailed to:

Cape Fear Public Utility Authority
Finance Department
235 Government Center Drive, Suite 201
Wilmington, N.C. 28403
ATTENTION: Julia Faircloth, Procurement Manager
Or

Emailed to Julia.Faircloth@cfpua.org (must confirm receipt)
If submitting a hard copy, an electronic version must also be submitted.

PROPOSALS ARE DUE BY 2:00 P.M., WEDNESDAY MAY 1, 2019

Copies of the Debt Collection Services Request for Proposal Document are available from the CFPUA website at www.cfpua.org on the open bids page. To receive any addendum you must be registered with Julia Faircloth, Procurement Manager at Julia.Faircloth@cfpua.org

All proposals forms must be properly executed and submitted as part of the proposal. The CFPUA reserves the right to reject any or all proposals.

Cape Fear Public Utility Authority has adopted a Local Preference Policy. Please refer to our website for details. Visit www.cfpua.org, click on the Vendor Tab and then click on Purchasing.

Julia Faircloth
Procurement Manager

**REQUEST FOR PROPOSAL
DEBT COLLECTION SERVICES
SCOPE OF SERVICES
19-S1009**

1. Purpose

The Cape Fear Public Utility Authority (Authority) and the City of Wilmington (City) are requesting proposals from qualified debt collection agencies (hereinafter referred to as Service Provider) to determine which Service Provider and proposed solution will best meet the Authority's and City's needs for a Collection Agency Service Provider

2. Background

The Cape Fear Public Utility Authority (Authority) was created from the consolidation of the water and sewer services of the City of Wilmington and New Hanover County, NC on July 1, 2008.

In FY18 the Authority served approximately 70,000 residential, commercial, and industrial customers. The Authority's service area includes the incorporated areas of the City of Wilmington and the majority of New Hanover County. The Authority also provides wholesale wastewater treatment to the Town of Wrightsville Beach and Pender County.

The Authority bills stormwater and solid waste charges on behalf of the City of Wilmington to customers who benefit from those services. All payments received by the Authority are remitted weekly to the City of Wilmington. The CFPUA does not have the authority to act as a Collection Agent for the City. The contract will be between the Authority, City of Wilmington and the selected Service Provider. A sample contract is included as part of this RFP.

On average, the Authority has sent approximately \$705,000 annually to NC Debt Setoff and \$1.42 million to a third party collections provider.

3. Scope of Work

The Authority and City require the services of a consumer collection agency to collect certain delinquent customer accounts for the Authority and City. The Service Provider shall provide all supervision, tools, materials, equipment, supplies and expertise to perform Collection Agency Services for the Authority and the City.

1.1 Accounts for Collection. Types of accounts to be collected by the Service Provider will include first and second placements for the following:

- a. **Active and Terminated Water / Sewer Accounts and Active and Terminated Stormwater and Solid Waste (non-water) Accounts-** Collection activities will include calls, letters, and credit reporting. Residential accounts will also be submitted to the North Carolina Debt Set off Program.
 - i. The Authority will only send accounts with bad debt balances of \$50 or more.
 - ii. The chosen Service Provider must be capable of providing legal services, to pursue in a court of law, for any account that has a bad debt balance in excess of \$3,000.
 - iii. The Authority will refer accounts that are 120 days or greater past the delinquency bill due date and may include active and/or terminated accounts.
 - iv. The majority of the accounts will have Social Security numbers provided.
 - v. The Authority anticipates retaining the right to recall, without financial penalty, accounts which were submitted to the agency in error or otherwise qualify for writing off.
 - vi. The Authority anticipates retaining the right to adjust, without financial penalty, any amounts submitted to the agency which are determined to be in error or for which a customer is entitled to relief under the Authority ordinance such as for a water leak or for billing errors/discrepancies.

2.1 N.C. Debt Setoff Program

- a. The Authority participates in the NC Debt Setoff Program which recovers amounts owed to local governments from income tax refunds or lottery winnings.
- b. Any amounts so collected through the NC Debt Setoff Program would not be deemed to be collected by the Service Provider and would not be subject to financial penalty or compensation by the Service Provider.
- c. Currently the Authority only submits residential accounts to NCDS. This may change and in case of such a change, the Authority expects the Service Provider to update its processes without charging the Authority.

3.1 **Required Services.** The Service Provider shall provide the Services listed in this Section. If a Service Provider is incapable of providing any aspect of these Services, the Service Provider must explain that lack of capability in its Proposal. For certain requirements (denoted below), the Service Provider is required to provide in Required Form A detailed descriptions of the manner in which the Service Provider satisfies the requirement.

- a. Provide a secure FTP site for file placements. **Please describe in Form A your company's FTP site functionality.**
- b. Receive, process, and update the Service Provider's system(s) with data from the Authority's billing system.
- c. Prepare/Submit files to the Authority using the specified file formats necessary for the Authority to update its billing system.

- d. Offer a variety of payment methods to the Customers such as check/mail, bank draft, ACH, debit, and credit options. Customers should be able to make payments using the Service Provider's web portal and IVR systems. **Please describe in Required Form A the payment options available to Customers.**
- e. Service Provider will need to be able to validate placements when they are transmitted by the Authority. **Please describe your process for validating Customer information in Form A.**
- f. Call Customers to collect on delinquent or bad debt accounts.
- g. Mail letters to the Customer's current address. **The Service Provider must state in Required Form A how it validates and updates the Customers' mailing addresses.** The Authority (with City copied) may require the Service Provider to send address updates. Technical specifications will be determined after the contract has been awarded.
- h. Report accounts to the three major credit reporting agencies after 90 days of assignment (Equifax, Experian, and TransUnion).
- i. Submit, update, and withdraw qualifying accounts to/from the NC Debt Setoff program. **The Service Provider must describe in Required Form A any previous experience with Debt Setoff, and provide a list of references for whom your company has provided Debt Setoff.**
- j. Send the Authority and City copies of bankruptcy documents, certificate of death notices, police reports (fraud), and written disputes from Customers.
- k. Make settlement agreements following the parameters set by the Authority and the City.
- l. Notify the Authority and the City of settlements.
- m. Respond to Authority's and City's questions and requests in a timely manner.
- n. Produce copies of letters mailed and recordings of calls with Customers as needed by the Authority and the City.
- o. Allow access to the Service Provider's system for review and/or updating of Customer account information. The Authority and the City prefer to have a system in place that would allow the Authority and the City to have access to the Service Provider's system to enter updates or, at a minimum, query level access.
- p. Provide disaster recovery/failover functionality. Describe your back-up facilities and/or disaster recovery plans, including the location of your backup facility.
- q. Provide the Authority and the City reports as described:
 - i. Daily and weekly files and reports.
 - ii. Weekly/monthly status reports of activity.
 - iii. Monthly status report (e.g. active, skip, mail returned, disputed, legal, and closed)
 - iv. Service Provider should have ability to create ad hoc reports for the Authority and the City as needed.
 - v. Service Provider must be able to litigate collection matters if required.

The Service Provider must confirm in Required Form A that it can create custom reports, and the Service Provider is to provide examples of existing reports.

4.1 Revenue sharing logistics and percentages.

- a. As payments are received by the Service Provider, the Authority and the City are to receive notice of payment immediately so that Customer account information and Debt Setoff can be updated to reflect the receipt of payment.
- b. A collections file will be sent to the Service Provider indicating the customer name, address, CFPUA customer-account number and the total outstanding balance that is delinquent. If the Service Provider is successful in obtaining payment for delinquent charges, a Statement of Collections will be submitted to CFPUA showing the full amount(s) collected on the account(s).
- c. The Service Provider is required to remit the full amount collected on accounts on a monthly basis. Receipt of funds by an automatic bank draft or other electronic method is preferred.

5.1 Transition of Services. – Please provide responses to questions below in Form A.

- a. **Implementation Time.** The Service Provider is required to provide a time estimate to complete implementation and begin performing all services.
- b. **Customer Support.** Describe the support provided during implementation, including technical assistance, user manuals, instructional and/or educational materials, on-site visits and/or other assistance.
- c. **Training.** Please state whether training will be provided to Authority and City employees that will be managing the project. If so, please describe the training.

6.1 Additional Information. Please provide responses to questions below in Form A.

- a. CFPUA currently requires deposits for non-owner occupied residences and for Commercial accounts. Deposits are also required for owner occupied residences that have had services disconnected more than twice in a calendar year or have tampered with a meter once disconnected for nonpayment. In an effort to reduce lost revenue, the Authority is analyzing prequalifying new customers to determine their credit risk. Please describe in detail any screening tools the Service Provider offers that the Authority and the City could utilize.
- b. Please describe in detail the collection process used by the Service Provider. Is this same process followed for each account despite age or dollar amount? If not, please provide the details for each process.
- c. Please indicate if there are any limitations on accounts which would be accepted such as minimum balance or maximum aging.
- d. Please provide average collection rates as a percentage of total bad debt received for customers similar to CFPUA in size and complexity.
 - i. Average Recovery Rate - Total \$ Collected / Total \$ Placed
 - ii. Recovery Rate by Age Past Due
 - iii. Average Collectors' Experience
 - iv. Active Accounts per Collector (# & \$)

4. Vendor Qualifications

- 1.1 All Service Providers must comply with the federal Fair Credit Reporting Act, all North Carolina General Statutes and with all requirements of the three major credit reporting agencies Experian, TransUnion, and Equifax.
- 2.1 The Service Provider must have provided similar services to at least three organizations in North Carolina in the past three years. Experience with Public Utilities, Municipalities or Counties is preferred. Please provide three references on page P-6.
- 3.1 Service Provider must be able to provide insurance as per the attached contract.
- 4.1 Service Provider must be able to demonstrate adequate internal accounting controls. Please submit with the proposal an unqualified opinion letter from the previous year's audit and a SAS 70 report.
- 5.1 Service Provider must have access to an attorney authorized to practice law in North Carolina to assist with collection if necessary.

5. Contract Time:

The contract shall be for a three (3) year period from award with the option to renew for up to 2 additional one year periods under the same terms and conditions.

This agreement may be terminated without cause by the Authority and the City with thirty (30) days written notice to Service Provider.

6. Bid Tab:

Regardless of exceptions taken, Service Providers shall provide pricing based on the requirements and terms set forth in this RFP. This shall be stated as a percentage of the gross amount of the funds collected. For example: The Service Provider proposes that it will charge XX % of the funds collected as a service fee. Pricing must be all-inclusive and cover every aspect of the services to be provided. Cost must be in United States dollars rounded to the nearest dollar. These prices (percentages) shall hold firm for the entire length of the Contract including any extensions or amendments.

Any travel associated with interviews during the selection process will be the responsibility of the service provider

7. Proposal Submittal Requirements

The following sections should be completed in full on the Proposal Sheet (P-1 thru P-7):

- Section 1 Bid Tab (P-1)
- Section 2 **Required Form A – Service Provider's Background Response** (P-2 thru P-6)

- Section 3 Three references from clients of similar size who you currently provide similar services (P-7)
- Section 4 Attachments – Unqualified Opinion Letter and SAS 70
- Section 5 Acknowledgment of Receipt of Addendum (P-8)
- Section 6 Vendor Signature (P-8)

8. Evaluation Criteria

The evaluation of the proposals will be based on the items listed above as well as compliance to applicable laws and regulations and overall clarity and completeness of response to the proposal. The Authority and City will evaluate the proposals.

9. Terms and Conditions

- a) Submission of a proposal indicates acceptance by the agency of the conditions contained in this request for proposal unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the Authority, the City and the agency selected.
- b) The Authority and the City reserve the right without prejudice to reject any or all proposals, to waive any non-material irregularities or informalities in any RFP, to accept or reject any item or combination of items, and to request additional clarification of proposals.
- c) All proposals received become the property of the Authority and information included therein or attached thereto, shall become public record upon their delivery to the Authority and the City. Any information deemed by the bidding agency to be protected as a trade secret shall be submitted separately in a sealed envelope along with a statement supporting this assertion.
- d) Any and all costs associated with the preparation of a response to this request are the responsibility of the proposer, and are not to be passed on to the Authority or City.
- e) The Proposals shall be valid for 90 days.
- f) Please see draft service agreement for additional Terms & Conditions

10. **Inquiries.** All questions and requests for clarification concerning this RFP shall be made to Julia Faircloth, Procurement Manager, Julia.Faircloth@cfpua.org. Questions will be answered until April 24, 2019 at 5:00pm.

**REQUEST FOR PROPOSAL
DEBT COLLECTION SERVICES
PROPOSAL SHEET
19-S1004**

Section 1 Bid Tab:

Regardless of exceptions taken, Service Providers shall provide pricing based on the requirements and terms set forth in this RFP. Pricing must be all-inclusive and cover every aspect of the services to be provided. Cost must be in United States dollars rounded to the nearest dollar. These prices (percentages) shall hold firm for the entire length of the Contract including any extensions or amendments.

Fee for Debt Collection Services as stated in the RFP:

_____ **% of funds collected using standard collection methods**

_____ **% of funds collected on accounts over \$3,000 requiring legal action**

Section 2
Required Form A – Service Provider’s Background Response
(If additional attach additional sheets as necessary)

Service Provider Background	
Question	Response
Service Provider Identification	
Service Provider Name (Official Name)	
Service Provider Location (Corporate headquarters)	
Service Provider Experience	
Years of Experience:	
<i>Number of years in business</i>	
<i>Number of years providing public sector Collection Agency Services</i>	
Customer Base:	
<i>Number of public sector clients</i>	
<i>Number of public sector clients using the Services being proposed</i>	
<i>Number of clients that are Water Utilities, Stormwater and/or Solid Waste</i>	

<i>(Authority/Municipality/County/District)</i>	
<i>Provide names of customers similar to the Authority and the City (i.e., size, location, organization).</i>	
Terminated Projects:	
<i>List any projects in which your company has been terminated prior to contract completion and disclose the jurisdiction and reason for termination.</i>	
Litigation:	
<i>List any litigation that you have been involved in during the past two years.</i>	
Personnel Management:	
<i>Describe the key individuals, along with their qualifications, that would comprise the team that would be providing services for the Authority and the City. Please attach Resumes as needed.</i>	
<i>Explain how your organization ensures that personnel performing technical support services are qualified and proficient.</i>	
<i>Please provide information regarding the level of staffing at your organization.</i>	
Responses to Questions in Section 3.1	

<p><i>Per Section 3.1.a, please describe your company's FTP site functionality that would be used for file placements.</i></p>	
<p><i>Per Section 3.1.d, please describe the payment options available to Customers and whether payments can be made using your company's web portal and IVR systems.</i></p>	
<p><i>Per Section 3.1.e, Service Provider will need to be able to validate placements when they are transmitted by the Authority. Please describe your process for validating Customer information.</i></p>	
<p><i>Per Section 3.1.g, please state how your company validates and updates Customer addresses for purposes of mailing.</i></p>	
<p><i>Per Section 3.1.i, please describe any previous experience with debt setoff and provide a list of references for whom your company has provided debt setoff.</i></p>	
<p><i>Per Section 3.1.q, please provide examples of the types of custom reports that can be prepared.</i></p>	
<p>Responses to Questions in Section 5.1</p>	
<p><i>Per section 5.1a, please provide a time estimate to complete implementation and begin performing services.</i></p>	

<p><i>Per section 5.1b, please describe the support provided during implementation, including technical assistance, user manuals, instructional and/or educational materials, on-site visits and/or other assistance.</i></p>	
<p><i>Per section 5.1c, please state whether training will be provided to Authority employees that will be managing the project. If so please describe the training.</i></p>	
<p>Responses to Questions in Section 6.1</p>	
<p><i>As per section 6.1a, please describe in detail any screening tools the Service Provider offers that the Authority and City could utilize.</i></p>	
<p><i>As per section 6.1b, please describe in detail the collection process used by the Service Provider. Is this same process followed for each account despite age or dollar amount? If not, please provide the details for each process.</i></p>	
<p><i>As per section 6.1c, please indicate if there are any limitations on accounts which would be accepted such as minimum balance or maximum aging.</i></p>	
<p><i>As per section 6.1d, please provide average collection rates as a percentage of total bad debt received for customers similar to the Authority and</i></p>	

<i>City in size and complexity.</i>	
<i>As per section 6.1d, please provide average collection rates as a percentage of total Balances placed (\$ Collected/Total \$ Placed) for customers similar to the Authority and City in size and complexity.</i>	
<i>As per section 6.1d, please provide Recovery Rate by Age Past Due (Average collection rate per aging: 60-90, 91-120, 121-150, 151-180, 181-365, >1 year for customers similar to the Authority and City in size and complexity.</i>	
<i>As per section 6.1d, please provide average Collectors' experience for customers similar to the Authority and City in size and complexity.</i>	

Section 3 Vendor References:

Please provide three references from clients of similar size who you currently provide similar services.

1. **Company Name** _____

Contact Name and Title _____

Phone Number _____ **Email Address** _____

Brief Description of Services Provided:

2. **Company Name** _____

Contact Name and Title _____

Phone Number _____ **Email Address** _____

Brief Description of Services Provided:

3. **Company Name** _____

Contact Name and Title _____

Phone Number _____ **Email Address** _____

Brief Description of Services Provided:

Section 4: Attachments

Unqualified Opinion Letter Attached ___ Yes ___ No

SAS 70 Attached ___ Yes ___ No

Section 5: Acknowledgment of Receipt of Addendum

No. _____ Dated _____

No. _____ Dated _____

Section 6 Vendor Signature:

By Signing below, I Certify that I have carefully read and fully understand the information contained in this Request for Bid; and that I have the capability to successfully undertake and complete the responsibilities and obligations of the Bid being submitted.

BY (Signed): _____

BY (Printed): _____

TITLE: _____

NORTH CAROLINA
COUNTY OF NEW HANOVER

CONTRACT NO 19-S1009

This **CONTRACT** is being entered into as of _____, 20____ between

(hereinafter referred to as **SERVICE PROVIDER**), and **Cape Fear Public Utility Authority** (hereinafter referred to as **the Authority**) and the **CITY of Wilmington** (herein known as **CITY**). **SERVICE PROVIDER, AUTHORITY, and CITY** therefore agree that the following shall constitute the service conditions between **SERVICE PROVIDER, AUTHORITY, and CITY** applicable to this engagement:

WITNESSETH:

1. Relationship of Parties

It is clearly understood that each party to this Contract will act in its individual capacity and not as an employee, partner, joint venture, or associate of the other party. An employee of one party shall not be an employee or agency of the other party for any reason whatsoever.

2. Scope of Services

Service Provider is to provide service as per the scope of services outlined in Section 3 of the proposal document.

3. Term of Contract

The contract shall be for a three (3) year period from award with the option to renew for up to 2 additional one year periods under the same terms and conditions.

This Contract may be terminated by any of the parties, irrespective of performance. Under such circumstances, the terminating party shall provide the other party thirty (30) days written notice, unless the parties shall mutually agree to terminate the Contract, at which time the Contract may be terminated immediately. Termination for failing to perform however may occur at any time during the term of this Contract, subject to the provisions of Paragraph 13 herein.

4. Contingency Commission Fee:

The contingency commission fee for amounts collected pursuant to this Contract shall be paid as follows:

A. Standard Collection Methods _____%

B. Legal action _____%

5. Agent Relations

The AUTHORITY and the CITY agree to employ SERVICE PROVIDER to investigate, communicate, and to take any and all reasonable and legal collection steps including litigation if required. All collection steps taken by SERVICE PROVIDER in the settlement and collection of assigned accounts will be in accordance with federal and state consumer protection laws, including the terms of the Fair Debt Collection Practices Act and procedures of ACA International, of which SERVICE PROVIDER shall remain a member in good standing.

- a. The AUTHORITY has an agreement with the City of Wilmington to act as agent for billing and collecting stormwater and trash fees. AUTHORITY will transmit stormwater and trash accounts receivable to SERVICE PROVIDER under the terms of this contract as given explicit authority from the City of Wilmington and will transmit the net amount of any receipts after the applicable commission to the City in accordance with its prior agreements with the City, including the Billing and Collection Agreement dated July 1, 2008.

6. Right of Endorsement

The AUTHORITY and the City grant and convey to SERVICE PROVIDER the right of endorsement in clearing drafts, checks and notes for collection applicable to this Contract.

7. Releases and Return of Accounts

SERVICE PROVIDER agrees to release and return specified accounts assigned and in process of collection within thirty (30) days of the receipt of a written request from the AUTHORITY or the CITY or by any other date specified herein. Those accounts on which payment has been made within ninety (90) days prior to the written notice or is anticipated to have additional payments within one hundred eighty (180) days will remain with SERVICE PROVIDER for collection. All accounts returned will be listed in alphabetical order along with the current balance of each account.

8. Payment to Client (Member Payments)

The AUTHORITY and the City agree to promptly report all payments, bankruptcy notices, and any and all communications from the debtor and/or third party corresponding to all accounts placed.

9. Accountings/Records

SERVICE PROVIDER agrees to report and pay to the AUTHORITY and CITY, net proceeds of all collections after the commission fee has been subtracted on a monthly basis; and the AUTHORITY and CITY will remit to SERVICE PROVIDER any proceeds due based on its collection efforts within thirty (30) days of billing. The AUTHORITY and the CITY will be charged full commissions on any payments received by either SERVICE PROVIDER or AUTHORITY on/after the date accounts are placed with SERVICE PROVIDER. Said payment and reports will be submitted by SERVICE PROVIDER to AUTHORITY and the CITY no later than the 20th day following the end of the calendar month. AUTHORITY will supply these reports to the CITY.

SERVICE PROVIDER shall maintain records of all transactions in a form, subject to the approval of the AUTHORITY and the CITY, and shall make such records available for examination or inspection upon the request of the AUTHORITY and the CITY. All records supplied to SERVICE PROVIDER by the AUTHORITY and the CITY shall remain the property of said parties, and shall be returned upon to the AUTHORITY or the CITY upon request of either said party.

10. Confidential Information

All Parties (“Discloser”) will be supplying to the other (the “Recipient”), directly and/or indirectly, confidential information as relates to the method of its operations, which is proprietary to and solely owned by the respective party. All parties agree during the term of the Contract and thereafter for the indefinite future, that the Recipient will not, without the express written consent of discloser, utilize or disclose any such information to any third party, except as necessary to fulfill the terms of this Contract, provided all parties agree that they will comply with all applicable federal or State law, including the North Carolina Public Records Act as set forth in Chapter 132 of the North Carolina General Statutes, to the extent such laws may be in conflict with this section.

11. FTC Red Flag Rules

SERVICE PROVIDER shall maintain an Identity Theft Prevention Program in accordance with 16 C.F.R. Part 681 FTC Red Flag Rules throughout the life of the contract.

12. Indemnification.

A. The AUTHORITY and the CITY shall defend, hold harmless and indemnify SERVICE PROVIDER, its shareholders, officers and employees against any and all liabilities, claims, damages, costs, judgments and expenses, including attorney fees, sought or asserted against SERVICE PROVIDER, its shareholders, officers and employees of SERVICE PROVIDER arising out of the collection activities of SERVICE PROVIDER if such liabilities, claims, damages, costs, judgments or expenses are based or alleged to be based, in whole or in part, upon and only for any of the following:

- i. Any negligent actions by the AUTHORITY or the CITY, their officers, employees or SERVICE PROVIDERS, including any other collection agency; or
- ii. Inaccuracy in any Account Information supplied by the AUTHORITY or the CITY to SERVICE PROVIDER, or failure by AUTHORITY or the CITY to supply Account Information to SERVICE PROVIDER, including the failure to provide updated Account Information as it becomes available.

B. SERVICE PROVIDER shall defend, hold harmless and indemnify AUTHORITY and the CITY, their affiliates, shareholders, officers and employees against any and all liabilities, claims, damages, costs, judgments and expenses, including attorney fees, sought or asserted against AUTHORITY or the CITY, their affiliates, shareholders, officers and employees of AUTHORITY or the CITY arising out of the collection activities of SERVICE PROVIDER if such liabilities, claims, damages, costs, judgments or expenses are based or alleged to be based, in whole or in part, upon and only for any of the following:

- i. Any negligent actions by SERVICE PROVIDER, its officers, employees or SERVICE PROVIDERS; or
- ii. Failure by SERVICE PROVIDER to relay Account Information supplied by AUTHORITY or the CITY to SERVICE PROVIDER to Credit Bureau.

C. The obligations of AUTHORITY, the CITY, and SERVICE PROVIDER under this Section 10 shall be continuing obligations of AUTHORITY, the CITY, and SERVICE PROVIDER, as the case may be, and shall specifically survive the termination of this Contract or any other Contract between AUTHORITY and SERVICE PROVIDER.

13. Failure to Perform

The obligations and responsibilities of SERVICE PROVIDER and AUTHORITY and the CITY are described in this Contract. Any deemed failure to perform under this Contract shall be documented in writing by the aggrieved party and sent to the attention of the authorized representative of the alleged violating party. The alleged violating party will then have either thirty (30) calendar days to satisfactorily respond to such allegations and/or cure such alleged failure to perform. If at the end of this thirty (30) day period, the alleged failure to perform remains uncorrected, the aggrieved party shall have the right to terminate the Contract.

In the event this project is terminated prior to completion of the services by the SERVICE PROVIDER, the SERVICE PROVIDER shall only receive commission for collections made prior to the date of termination.

14. Assignment and Subleasing

SERVICE PROVIDER shall not have the right to assign this Contract or sell, transfer or sublet any portion thereof without the express written consent of AUTHORITY and the CITY; said consent of AUTHORITY and the CITY however shall not release or discharge SERVICE PROVIDER from any obligations hereunder.

15. Effect of Partial Invalidity

The invalidity of any part of this Contract will not and shall not be deemed to affect the validity of any other part. In the event that any provision of this is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

16. Waiver

Waiver by AUTHORITY or the CITY of any breach of any covenant or duty of SERVICE PROVIDER under this Contract is not a waiver of a breach of any other covenant or duty of SERVICE PROVIDER, or of any subsequent breach of the same covenant or duty. Any waiver by AUTHORITY or the CITY must be in writing to constitute a waiver.

17. Jurisdiction

This Contract shall be governed by the laws of the State of North Carolina, and the sole and exclusive venue for any disputes arising out of this Contract shall be any state court located within New Hanover County, North Carolina, or federal court located within the same venue.

18. Insurance Provisions

Before commencing any work, SERVICE PROVIDER shall procure insurance in SERVICE PROVIDER's name and maintain all insurance policies for the duration of the contract of the types and in the amounts listed in Section I. Minimum Scope and Limits of Insurance. The insurance shall provide coverage against claims for injuries to persons or damages to property which may arise from operations or in connection with the performance of the work hereunder by SERVICE PROVIDER, his agents, representatives, employees, or subSERVICE PROVIDERS, whether such operations by himself/herself or anyone directly or indirectly employed by him/her.

I. Minimum Scope and Limits of Insurance

A. Commercial General Liability

1. SERVICE PROVIDER shall maintain Commercial General Liability and if necessary, Commercial Umbrella Liability insurance with a total limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location or the general aggregate shall be twice the required limit.

2. CGL insurance shall be written on Insurance Services Office (ISO) "occurrence" form CG 00 01 covering Commercial General Liability or its equivalent and shall cover the liability arising from premises, operations, independent SERVICE PROVIDER, 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. Cape Fear Public Utility Authority, the City of Wilmington, their officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 26 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of the SERVICE PROVIDER; premises owned, leased or used by SERVICE PROVIDER; and under the commercial umbrella, if any. The coverage shall contain no special limitations on the scope of protection afforded to Cape Fear Public Utility Authority, the City, their officers, officials, agents, and employees.

4. SERVICE PROVIDER's Commercial General Liability insurance shall be primary as respects Cape Fear Public Utility Authority, the City, their officers, officials, agents, and employees. Any other insurance or self-insurance maintained by Cape Fear Public Utility Authority, the City, their officers, officials, and employees shall be excess of and not contribute with SERVICE PROVIDER's insurance.

B. Professional Liability Insurance

1. SERVICE PROVIDER shall maintain in force for the duration of this contract professional liability or errors and omissions liability insurance appropriate to SERVICE PROVIDER's professional coverage as required in this paragraph shall apply to liability for a professional error, act, or omission arising out of the scope of SERVICE PROVIDER's services as defined in this contract. Coverage shall be written subject to limits of not less than \$1,000,000 per loss.

2. If coverage required in paragraph 1 above is written on a claims-made basis, SERVICE PROVIDER warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning from the time that work under the contract is complete.

C. Fidelity Coverage

1. SERVICE PROVIDER shall maintain Fidelity Coverage providing employee dishonesty, forgery or alteration, theft, disappearance, destruction, and computer fraud coverage covering SERVICE PROVIDERS, employees, officials, and agents for Fidelity in the amount of \$50,000. This requirement may be met with Commercial Crime insurance or a Fidelity Bond.

D. Deductibles and Self-Insured Retentions

1. Any deductibles or self-insured retentions must be declared to and approved by Cape Fear Public Utility Authority and the City. At the option of Cape Fear Public Utility Authority and the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Cape Fear Public Utility Authority, the City, their officers, officials, agents, or employees; or SERVICE PROVIDER shall procure a bond guaranteeing payment of deductibles or self-insured retentions.

2. SERVICE PROVIDER shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not Cape Fear Public Utility Authority and the City are insured under the policy.

E. Miscellaneous Insurance Provisions

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

1. Any failure to comply with reporting provisions of the policies listed in Section I. shall not affect coverage provided to Cape Fear Public Utility Authority, the City, their officers, officials, and employees.
2. 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 Cape Fear Public Utility Authority, 235 Government Center Drive, Wilmington, NC 28403.
3. If SERVICE PROVIDER's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

F. 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 Cape Fear Public Utility Authority and the City.

G. Evidence of Insurance

1. SERVICE PROVIDER shall furnish Cape Fear Public Utility Authority and the 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 I.
3. With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to Cape Fear Public Utility Authority and the 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.

H. Conditions

1. The insurance required for this contract must be on forms acceptable to Cape Fear Public Utility Authority and the City.
2. SERVICE PROVIDER shall provide that the insurance contributing to satisfaction of insurance requirements in Section I. Minimum Scope and Insurance Requirements shall not be canceled, terminated or modified by

SERVICE PROVIDER without prior written approval of Cape Fear Public Utility Authority and the City.

3. SERVICE PROVIDER shall promptly notify the Director of Customer Service at 910-332-6663 and the Risk Management Office at (910) 798-7497 of any accidents arising in the course of operations under the contract causing bodily injury or property damage.

4. Cape Fear Public Utility Authority or the City reserves the right to obtain complete, certified copies of all required insurance policies, at any time.

5. Failure of Cape Fear Public Utility Authority or the City to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of Cape Fear Public Utility Authority and the City to identify a deficiency from evidence that is provided shall not be construed as a waiver of SERVICE PROVIDER's obligation to maintain such insurance.

6. By requiring insurance herein, Cape Fear Public Utility Authority and the City do not represent that coverage and limits will necessarily be adequate to protect SERVICE PROVIDER and such coverage and limits shall not be deemed as a limitation of SERVICE PROVIDER's liability under the indemnities granted to Cape Fear Public Utility Authority and the City in this contract.

7. If SERVICE PROVIDER fails to maintain the insurance as set forth herein, Cape Fear Public Utility Authority and the City shall have the right, but not the obligation, to purchase said insurance at SERVICE PROVIDER's expense.

J. Workers' Compensation and Employer's Liability

1. The SERVICE PROVIDER shall maintain Workers' Compensation as required by the general statutes of the State of North Carolina and Employer's Liability Insurance.

2. The Employer's Liability, and if necessary, Commercial Umbrella Liability insurance shall not be less than \$100,000 each accident for bodily injury by accident, \$100,000 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 Cape Fear Public Utility Authority, the City, their officers, officials, and employees for losses arising from work performed by SERVICE PROVIDER for Cape Fear Public Utility Authority and the City.

19. Warranty

The SERVICE PROVIDER by acceptance of this Agreement warrants full compliance with all applicable local, state or federal laws and regulations and agrees to indemnify and defend the Authority against any loss, cost, liability or damage by reason of SERVICE PROVIDER's violation of this paragraph. The SERVICE PROVIDER expressly warrants that all items specified are fit and sufficient for their intended purpose. If the specifications contain a statement of the particular purpose for which the goods will be used, the goods offered by SERVICE PROVIDER shall be fit for this purpose.

20. Miscellaneous:

- a. This Contract and each and every one of the terms and provisions thereof shall be for the benefit of and be binding upon the parties hereto and each of them and their respective heirs, executors, administrators, grantees, successors and assigns.
- b. This Contract contains the entire understanding between the parties hereto and supersedes any and all prior contracts, undertakings and arrangements between the parties relating to the subject matter hereof. All amendments, changes, modifications or alterations of the terms and conditions hereof shall be in writing and signed by all parties hereto.
- c. No paid employee of AUTHORITY or 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.
- d. The SERVICE PROVIDER shall utilize no subcontracts for carrying out the services to be performed under this agreement without the written approval of AUTHORITY and the CITY.
- e. The parties will make and execute all further instruments and documents required to carry out the purposes and intent of the agreement.
- f. This agreement shall not be modified or otherwise amended except in writing signed by the parties.
- g. The captions of the Contract are used for convenience of reference only and shall have no significance in construing the text of the Contract.
- h. SERVICE PROVIDER shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if SERVICE PROVIDER utilizes a subcontractor, SERVICE PROVIDER shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes.
- i. No advertising, sales promotion, or other materials of the SERVICE PROVIDER will identify or reference this contract, or the Cape Fear Public Utility Authority's name

without the written consent of the Authority. Exception may be taken to the above with regard to listing the Authority as a job history reference in responses to requests for proposals.

- j. It is mutually agreed that SERVICE PROVIDER is an independent vendor and not an agent or employee of the Authority nor does this create any type of joint employment relationship with any of the employees of the VENDOR. As such the VENDOR, or any employees thereof, or sub-contractors, or any employees thereof, shall not be entitled to any Authority employment benefits, such as, but not limited to, wages or salary, vacation, sick leave, insurance, workers' compensation, or pension and retirement benefits.
- k. E-VERIFY

SERVICE PROVIDER shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if SERVICE PROVIDER utilizes a subcontractor, SERVICE PROVIDER shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

l. Iran Divestment Act

The SERVICE PROVIDER named in this agreement is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. Article 6E, §147. SERVICE PROVIDER shall not utilize any subcontractor found on the State Treasurer's Final Divestment List located on the State Treasurer's website at the address www.nctreasurer.com/Iran

M. Environmental Policy

The AUTHORITY has developed and implemented an ISO 14001 Environmental Management System (EMS), and is third party certified. Per the certification the Authority must ensure all persons doing work on their behalf is made aware of our Environmental Policy. The Environmental Policy can be found on the CFPUA website www.cfpua.org, click on the Departments tab, Environmental Management, and then choose Environmental Management. Contractor/VENDOR certifies by signing this agreement that they have reviewed the Environmental Policy and understand their work contributes to the effectiveness of the EMS and may have a positive or negative impact on the Environment.

21. Notices

All notices provided for in this Contract shall be made in writing and shall be transmitted to the proper Authorized Representative and address shown below, unless advance written notice is provided to the other party notifying them that either the name of their designated Authorized Representative and/or his/her address has been changed. Proper notice shall be deemed given when it is either:

- a. Hand delivered to the Authorized Representative to whom the notice is addressed and a signed receipt is given, or
- b. Mailed by United States Post Office Registered Mail, Return Receipt Requested, with postage prepaid to the Authorized Representative at the address shown below:

SERVICE PROVIDER

AUTHORITY:

CITY

Name	Kristi Irick	Name
Title	Customer Service Director	Title
Company Name	Cape Fear Public Utility Authority	City of Wilmington
Address	235 Government Center Dr.	305 Chestnut St.
City, State Zip	Wilmington, NC 28403	1 st Floor
		P. O. Box 1810
		Wilmington, NC 28402

Cape Fear Public Utility Authority Contract # 19-S1009

IN WITNESS WHEREOF, the OWNER has caused this Agreement to be duly executed in its name and behalf and the VENDOR has caused this Agreement to be duly executed in its name and behalf and its corporate seal to be hereunto affixed, and attested to.

This Agreement will be effective on ____ day of _____, 20____.

VENDOR

SEAL:

ADDRESS:

ATTEST:

BY: _____

BY: _____

PRINTED: _____

PRINTED: _____

TITLE: _____

TITLE: _____

I, _____, a Notary Public, certify that the corporation's Secretary, Assistant Secretary, or Trust Officer, Mr./Mrs./Ms. _____ personally came before me this day and acknowledged that s/he is the _____ of _____, a corporation, and that by authority duly given and as act of the corporation, the foregoing instrument was signed in its name by its President, Vice President, or Assistant Vice President, Mr./Mrs./Ms. _____, sealed with its Corporate Seal, and attested by him/herself as its Secretary, Assistant Secretary, or Trust Officer.

WITNESS my hand and official seal this the ____ day of _____, 20 ____.

Notary Public

My commission expires: _____

Cape Fear Public Utility Authority Contract # 19-S1009

CAPE FEAR PUBLIC UTILITY AUTHORITY SEAL:

235 Government Center Drive
Wilmington, North Carolina 28403

BY: _____

Jim Flechtner
Executive Director

ATTEST: _____

Donna S. Pope
Clerk to the Board

NORTH CAROLINA

I, _____ the undersigned Notary Public do hereby certify that Donna S. Pope personally came before me this date and acknowledged that she is the Clerk to the Board of Cape Fear Public Utility Authority, Wilmington, North Carolina, and that, by authority duly given and the act of the Board, the foregoing document was signed in its name by its Chief Executive Officer, sealed with its corporate seal, and attested by herself as its Clerk.

WITNESS my hand and official seal this the ____ day of _____, 20 ____.

Notary Public

My commission expires: _____

AUTHORITY ATTORNEY'S CERTIFICATION

This instrument has been reviewed and is approved as to form this the ____ day of _____, 20____.

Linda Miles
Consulting Attorney to the Board

AUTHORITY ACCOUNTANT'S CERTIFICATION

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act this the _____ day of _____, 20 ____.

John McLean
Chief Financial Officer

Cape Fear Public Utility Authority Contract # 19-S1009

City of Wilmington
PO Box 1810
Wilmington, North Carolina 28402

BY: _____
Sterling Cheatham, *City Manager*

Witness:

Daryle Parker, Purchasing Manager

CITY ATTORNEY'S CERTIFICATION

This instrument has been reviewed and is approved as to form this the ____ day of _____, 20____.

John Joye, *City Attorney*

Finance Officer's Certification Statement

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act this the _____ day of _____, 20____.

Jennifer R Maready, *Finance Director*

Project Number: _____

Account Number: Amount of Contract:

Account Number: Amount of Contract:

Requisition/PO Number _____

Federal ID Number: