

# CITY OF WILMINGTON

## INVITATION TO BID

QUOTE NAME: STORMWATER SERVICES TREE PLANTINGS FY22

QUOTE NUMBER: S10-1021

DUE DATE: THURSDAY, OCTOBER 28, 2021 at 3:00 p.m.

SUBMIT QUOTES TO: PURCHASING OFFICE  
P.O. BOX 1810  
305 CHESTNUT STREET,  
FIFTH FLOOR (28401)  
WILMINGTON, NC 28402

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

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

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

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

**GENERAL SPECIFICATIONS**  
**STORMWATER SERVICES TREE PLANTINGS FY22**  
**CONTRACT NUMBER: S10-1021**

**Introduction**

The Heal Our Waterways Program is a City of Wilmington initiative to improve water quality in Bradley and Hewletts Creeks through green infrastructure. One way to reduce the volume of Stormwater runoff that can transport pollutants to both creeks is to plant trees. Tree canopies help capture rainwater before it can reach the ground and tree roots help filter pollutants from urban runoff. These proposed tree plantings support the Wilmington Tree Initiative, the findings from the Green Infrastructure Center “Trees and Stormwater” study, and the “Bradley and Hewletts Creeks Watershed Restoration Plan”.

**Scope**

The Invitation to Bid is to supply labor and materials required to plant the 45 trees listed in the Technical Specifications. You are requested to submit your bid on the enclosed Proposal Sheet and return the signed Proposal section to the Purchasing Manager, City of Wilmington, Post Office Box 1810, Wilmington, North Carolina 28402 or by email to [jennifer.goley@wilmingtonnc.gov](mailto:jennifer.goley@wilmingtonnc.gov) no later than by October 28, 2021 at 3:00 pm as stated on the cover page.

**Contacts**

Contact Anna Reh-Gingerich, Interim Watershed Coordinator; [anna.reh-gingerich@wilmingtonnc.gov](mailto:anna.reh-gingerich@wilmingtonnc.gov) with any questions.

**Timeline**

All planting work must be completed between January 1, 2022 and April 1, 2022 and the 18-month watering services and warranty will begin immediately following planting.

**Quantities & Quote Prices**

The City of Wilmington reserves the right to add or delete quantities or specific locations. The quote shall be submitted on a unit price basis for purchase, planting and maintaining each type of tree for a period of eighteen (18) months following the planting. Prices shall be submitted on per unit basis by line item. In the event of a disparity between the unit price and the extended price, the unit price shall prevail.

**Compliance with Specifications**

The contract must be in strict compliance with the specifications. Any exceptions are listed separately in a letter as a part of the contract, otherwise it is fully understood that the equipment and materials offered are exactly as specified. The City of Wilmington reserves the right to allow or disallow minor deviations from the specifications in order to purchase what is best for the City from a standpoint of quality, price and service to be rendered.

**Shipping**

All prices are contracted F.O.B delivered, unless otherwise specified. Risk of loss and/or damage shall be upon the seller until such time as the goods have been physically delivered and accepted by the buyer.

**Guarantee**

Contractor shall guarantee trees survival eighteen (18) months after completion date following the planting. Replacement trees must be of the same size and species as initially selected and to the satisfaction of the Stormwater Services Department of the City of Wilmington. 20% of the total bid will be held by the City to ensure that the terms of this contract are met. Prior to the start date, a meeting will be scheduled between the Stormwater Services Department and the contractor to discuss the project.

## **Award**

Award will be made to the lowest responsive responsible bidder for all trees and labor to plant. All items must be bid in order to be considered for the award.

## **Delivery**

The contractor must begin services within thirty (30) days of a selected start date of this contract.

## **Taxes**

The City of Wilmington is exempt from and will not pay federal taxes. An exemption certificate will be furnished upon request. North Carolina and local sales tax shall be shown as a separate item. Sales tax will not be a consideration in the award.

## **Terms and Conditions**

Payment will be made by the City of Wilmington within 30 days after receipt of an approved invoice. The City of Wilmington will retain 20% of the total invoice to guarantee survival of trees as set forth in the guarantee section.

Terms and Conditions attached to the quote by the bidder and made a condition of purchase may render the quote non-responsive and may be rejected by the City of Wilmington.

Terms and Conditions included herein are an integral part of the contract document and shall prevail unless changes or attachment are agreed to and initialed by the City of Wilmington prior to the award of the contract.

## **Insurance**

Before commencing any work, the Contractor shall procure insurance in the contractor's name and maintain all insurance policies for the duration of the contract of the types and in the amounts listed in Section 10 of the contract. 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 the contractor, his agents, representatives, employees, or subcontractors, whether such operations by himself/herself or anyone directly or indirectly employed by him/he.

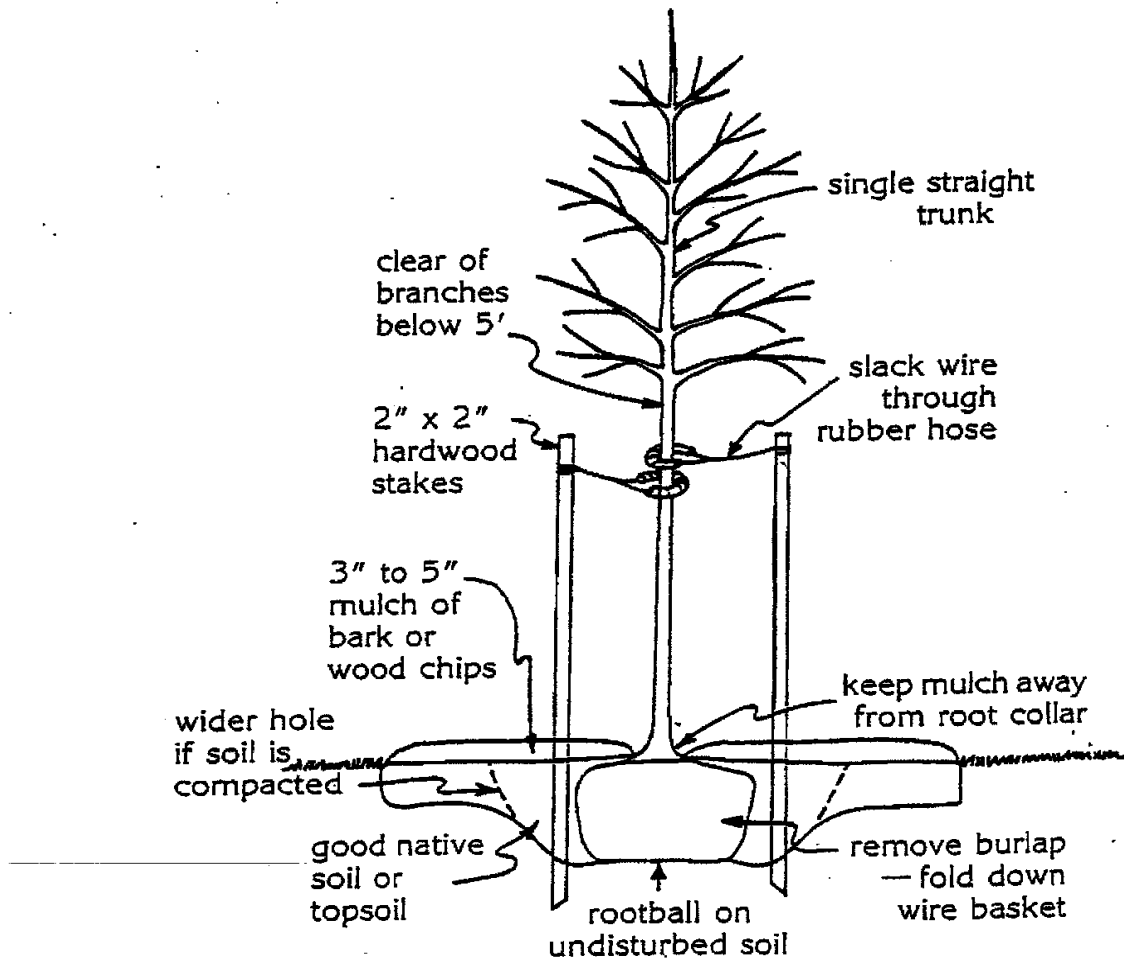
**TECHNICAL SPECIFICATIONS  
STORM WATER SERVICES TREE PLANTINGS FY22  
CONTRACT NUMBER: S10-1021**

**Intent**

It is the intent of these specifications to describe the Tree Plantings. You are contracted to supply labor and materials for planting of approximately 45 trees listed herein. Final bids shall include the costs of the trees, installation, installation materials, and watering.

**Tree Planting Specification**

- A. Tree will be planted with the top of the root ball or root flare 1” to 2” above existing grade and oriented in direction that the “best side” can be seen from the “best view”.
- B. Top half of wire basket and burlap will be cut back and removed along with all potential girdling twine.
- C. Add a 2” water trench with excess soil to each tree, mulch with 3” to 5” of aged mini chips keeping mulch away from root collar, and add a tree watering bag.
- D. Trees are to be watered at time of planting and throughout the term of this contract. Supplemental watering is required for tree survival – provide a minimum of 2” of water weekly and additional irrigation as needed to ensure tree survival.
- E. Pruning should be done to eliminate rubbing, remove dead or broken limbs, and improve the appearance or to remove a branch that is drooping or sticking out to far that may present an obstruction to passing pedestrians or vehicles.
- F. Stakes and support ties are required if tree needs support to remain upright or if protection is needed from vehicle or people. (See diagram)
- G. Stakes and strapping will be removed by contractor after the tree is established or at the request of the City.
- H. Work will not start before 7:00 am each morning Monday through Friday. Weekend work must be scheduled in advance with the General Supervisor.
- I. Contractor shall remove dead trees at time of replacement or at the request of the City.
- J. Replacement of tree constitutes the following: one half of tree does not leaf out, crown dies out, trunk splitting, dying or dead tree per City staff.
- K. Maintenance issues must be taken care of by the contractor (ie: tree falls during a storm or hit by a vehicle) during the warranty period for this contract.
- L. It is the Contractor’s responsibility to contact NC One Call for underground utilities at (800) 632-4949 prior to digging.
- M. Trees will be inspected by the appropriate staff prior to installation with right of refusal when trees do not meet the American Standard for Nursery Stock ANZI Z60.1-2005. The City may reject plant materials for poor condition upon arrival, damage in shipment, excessively dry or wounded trunks.
- N. Select tree watering bags with at least a 15-gallon capacity. Low-profile watering bags shall be installed for any trees with low branches. Remove bags prior to any freeze conditions.



### TREE PLANTING DETAILS

Figure 1: Tree planting details and specifications

**Contractor Requirements**

To qualify for this contract, the contractor must meet the following minimum requirements:

- Be able to provide examples of previous tree installations
- Must be, or have the ability to become, an approved vendor with the City of Wilmington
- Provide an 18-month guarantee on all tree plantings, including watering services
- Have the equipment to water trees in areas with no irrigation
- Have adequate materials and supplies to facilitate tree plantings (mulch, watering rings, bracing equipment)
- Have the ability to purchase and provide trees as part of this contract

Specific technical requirements for tree plantings are included above. The selected contractor will be required to meet all requirements or be found in breach of contract.

**Project Locations**

Below is a table of proposed tree planting locations:

<b>Address</b>	<b>Number of Trees</b>	<b>Size</b>	<b>Recommended Species</b>
2124 Lynwood Drive Infiltration Basin	10	2 1/2-3"	Dwarf Bald Cypress, <i>Taxodium distichum</i> Alternative option: River Birch, <i>Betula nigra</i>
598 Clearbrook Drive ROW/Infiltration Trench	5	2 1/2-3"	Longleaf pine, <i>Pinus palustris</i>
413 S College Rd, Wilmington, NC 28403 University Landing Bioswale	8	2 1/2-3"	Dwarf Bald Cypress, <i>Taxodium distichum</i> Alternative option: River Birch, <i>Betula nigra</i>
413 S College Rd, Wilmington, NC 28403 University Landing Constructed Wetland	2	2 1/2-3"	Bald Cypress, <i>Taxodium distichum</i> Alternative option: River Birch, <i>Betula nigra</i>
2000 Wrightsville Green Ave, Wrightsville Green HOA	20	2 ½-3"	Bald Cypress; <i>Taxodium distichum</i> Red maple; <i>Acer rubrum</i> Overcup Oak; <i>Quercus lyrata</i> Pin Oak; <i>Quercus palustris</i> River Birch; <i>Betula nigra</i>
<b>TOTAL TREES</b>	<b>45</b>		

# Maps

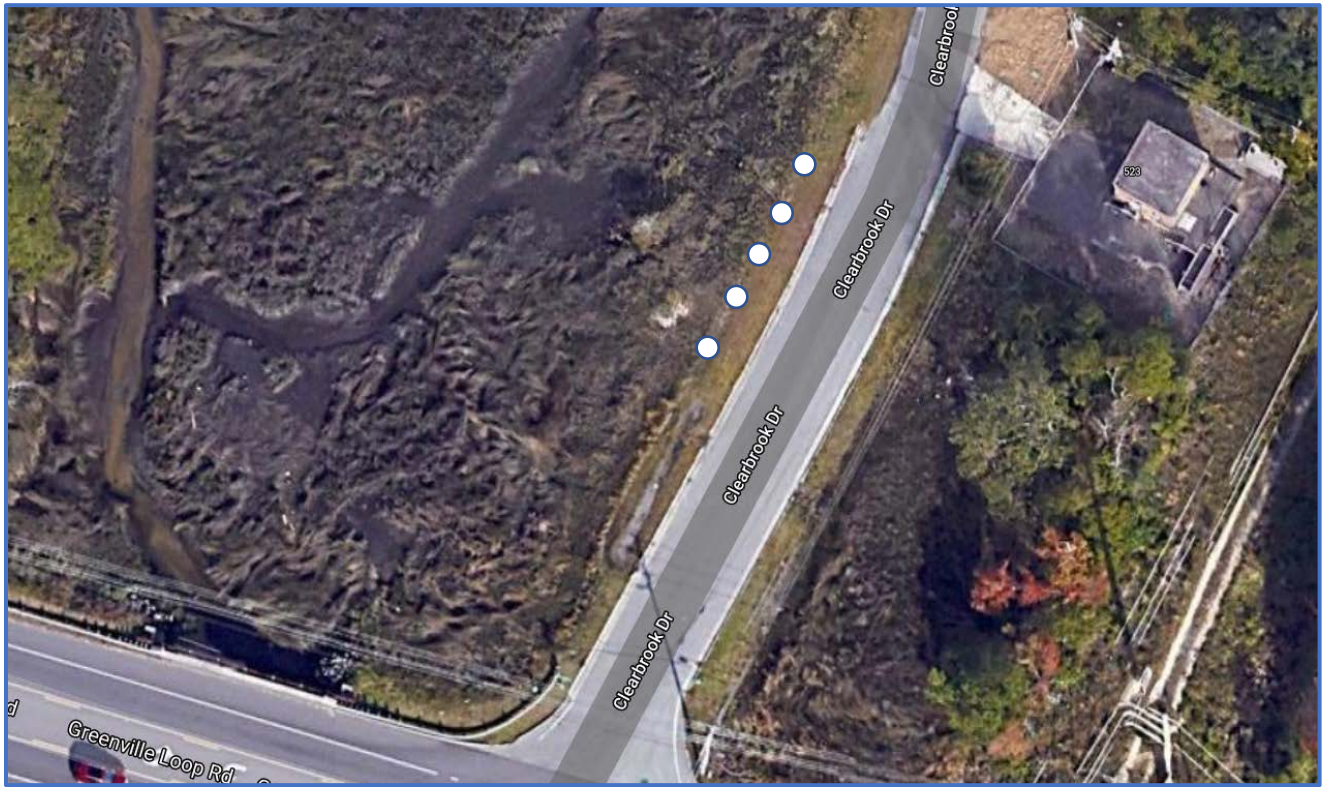


Figure 3: Proposed locations for tree plantings at 598 Clearbrook Drive.

Address	Number of Trees	Size	Recommended Species
598 Clearbrook Drive ROW/Infiltration Trench	5	2 1/2-3"	Long-leaf Pine; <i>Pinus palustris</i>

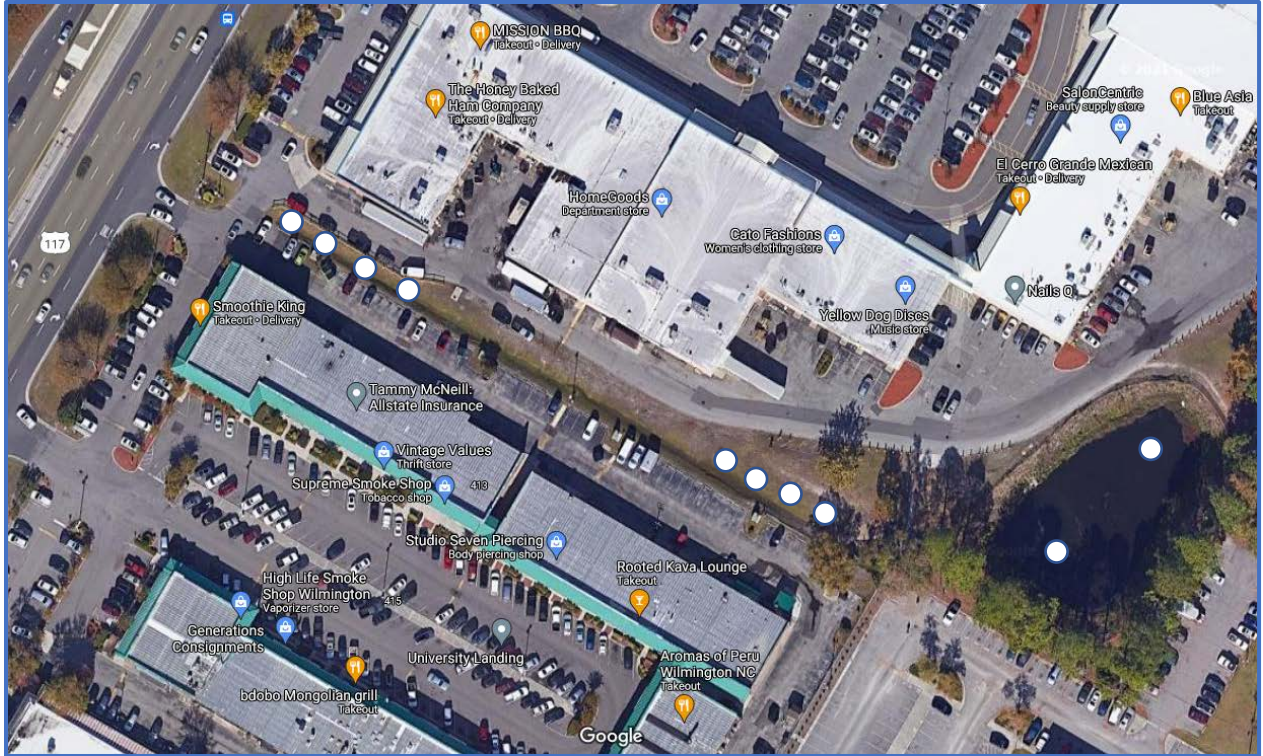


Figure 5: Approximate locations for tree plantings in University Landing infiltration trench/bioswale.

Address	Number of Trees	Size	Recommended Species
413 S College Rd, Wilmington, NC 28403 University Landing Bioswale	8	2 1/2-3"	Dwarf Bald Cypress, <i>Taxodium distinchum</i> Alternative option: River Birch, <i>Betula nigra</i>
413 S College Rd, Wilmington, NC 28403 University Landing Constructed Wetland	2	2 1/2-3"	Bald Cypress, <i>Taxodium distinchum</i> Alternative option: River Birch, <i>Betula nigra</i>



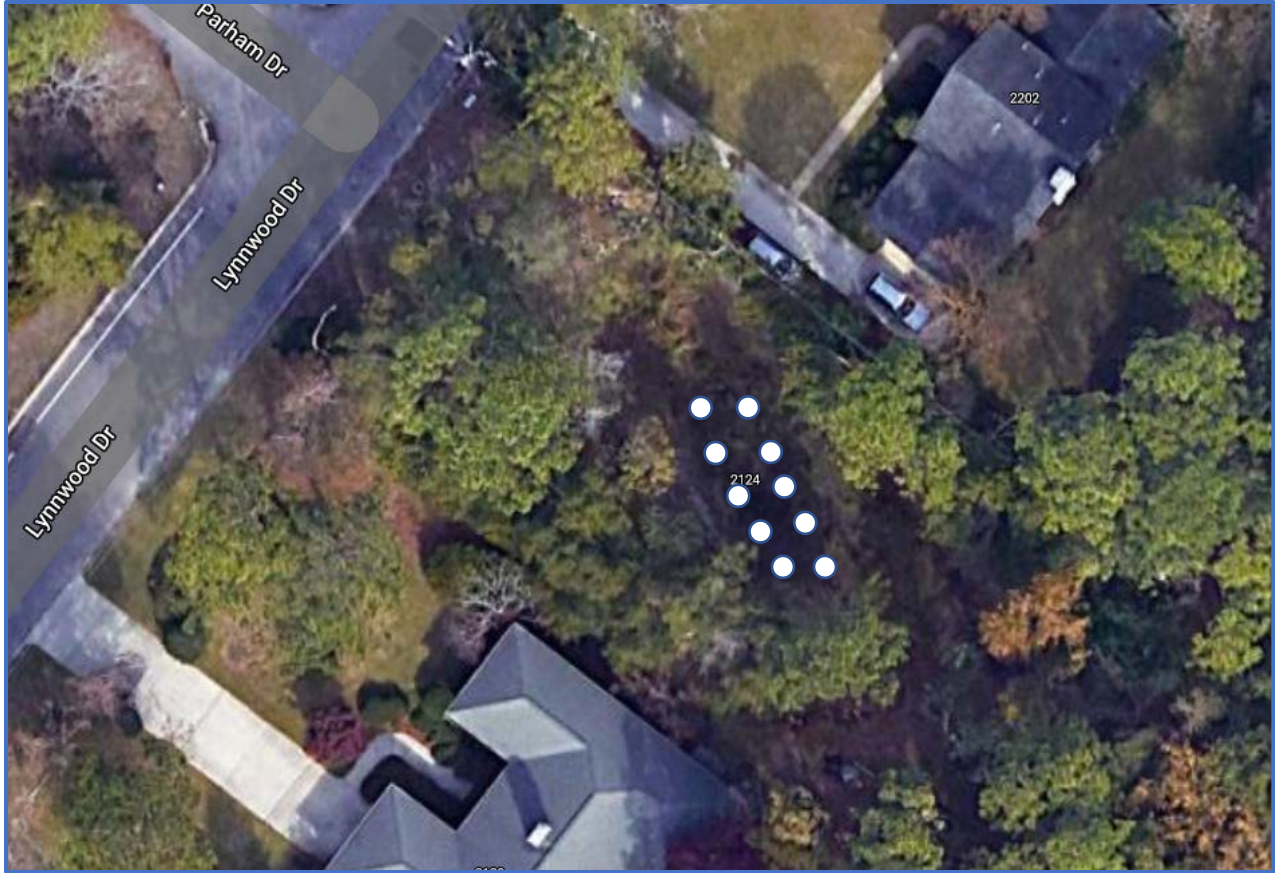


Figure 6: Approximate locations for proposed tree plantings at 2124 Lynnwood Drive.

Address	Number of Trees	Size	Recommended Species
2124 Lynnwood Drive Infiltration Basin	10	2 1/2-3"	Dwarf Bald Cypress, <i>Taxodium distichum</i> Alternative option: River Birch, <i>Betula nigra</i>

\*\*Due to the design of this location, the contractor will not be held liable for trees lost due to extreme flooding events. Planting locations are estimated and will need to be determined during an on-site meeting prior to planting.

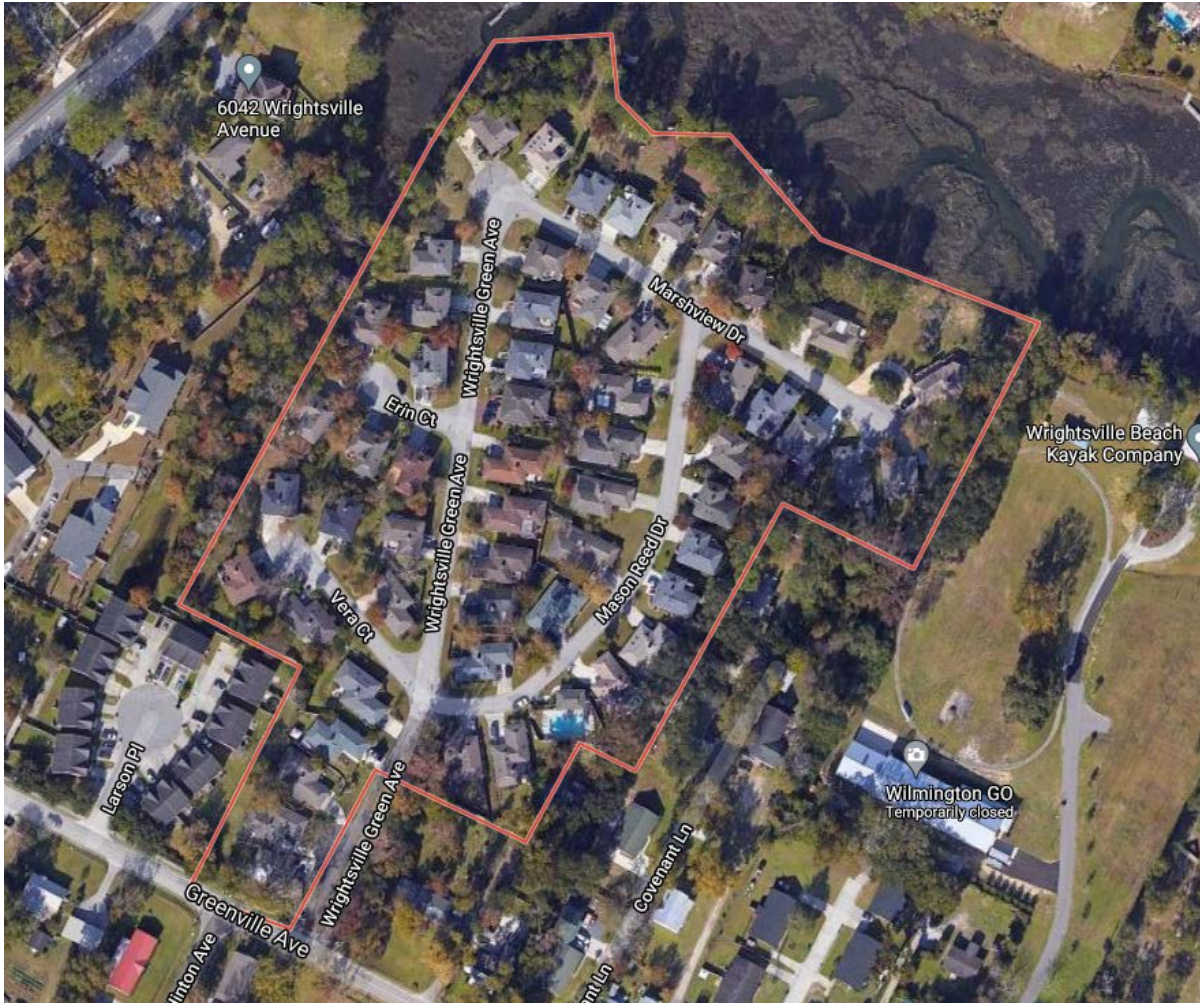


Figure 7: Wrightsville Green Neighborhood – Tree planting locations will be determined by the City

Address	Number of Trees	Size	Recommended Species
2000 Wrightsville Green Ave, Wrightsville Green HOA	4	2 ½-3"	Bald Cypress; <i>Taxodium distichum</i>
2000 Wrightsville Green Ave, Wrightsville Green HOA	4	2 ½-3"	Red maple; <i>Acer rubrum</i>
2000 Wrightsville Green Ave, Wrightsville Green HOA	4	2 ½-3"	Overcup Oak; <i>Quercus lyrata</i>
2000 Wrightsville Green Ave, Wrightsville Green HOA	4	2 ½-3"	Pin Oak; <i>Quercus palustris</i>
2000 Wrightsville Green Ave, Wrightsville Green HOA	4	2 ½-3"	River Birch; <i>Betula nigra</i>

COUNTY OF NEW HANOVER

AGREEMENT BETWEEN  
THE CITY OF WILMINGTON AND

THIS CONTRACT, (hereinafter the "Contract") is made and entered into on the date executed by all parties by and between the City of Wilmington, a North Carolina municipal corporation, hereinafter referred to as the "CITY," and \_\_\_\_\_ company, hereinafter referred to as the "CONTRACTOR."

WITNESSETH:

1. General  
The contract is for supplying labor and materials required for the planting of approximately 45 trees within the City of Wilmington.
2. Specifications  
The CONTRACTOR shall furnish all labor, materials and equipment, and shall perform all work in manner and form as provided by the attached Bid Invitation or Advertisement, General Specifications, Technical Specifications and Proposal for the Tree Plantings which are made a part hereof as if fully contained herein.
3. Release And Indemnity  
To the fullest extent permitted by law, CONTRACTOR shall release, indemnify, keep and save harmless the CITY, its agents, officials and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the CITY or third persons, and to all property proximately caused by, directly or indirectly, the performance or nonperformance by CONTRACTOR (or by any person acting for CONTRACTOR or for whom CONTRACTOR is or is alleged to be in any way responsible), whether such claim may be based in whole or in part upon contract, tort (including alleged active or passive negligence or participation in the wrong), or upon any alleged breach of any duty or obligation on the part of CONTRACTOR, its agents, officials and employees or otherwise. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the CITY, its agents, officials, and employees including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include without

limitation the costs incurred by the CITY, its agents, officials and employees, in connection with investigating any claim or defending any action, and shall also include reasonable attorneys' fees by reason of the assertion of any such claim against the CITY, its agents, officials or employees. CONTRACTOR expressly understands and agrees that any performance bond or insurance protection required by this agreement, or otherwise provided by the CONTRACTOR, shall in no way limit CONTRACTOR's responsibility to release, indemnify, keep and save harmless and defend the CITY as herein provided. The intention of the parties is to apply and construe broadly in favor of the CITY the foregoing provisions subject to the limitations, if any, set forth in N.C.G.S. 22B-1.

4. Payment

The City hereby agrees to pay the CONTRACTOR for the faithful performance of this agreement as set forth in the attached proposal for the total cost \_\_\_\_\_ (\$\_\_\_\_\_).

Payment will be made by the City of Wilmington within 30 days after receipt of an approved invoice. The City of Wilmington will retain 20% of the total invoice to guarantee survival of trees as set forth in the General Specifications Guarantee Section page G-1.

5. Personnel

It is mutually agreed that CONTRACTOR is an independent contractor and not an agent of the CITY, and as such the CONTRACTOR shall not be entitled to any CITY employment benefits, such as, but not limited to, vacation, sick leave, insurance, workmen's compensation, or pension and retirement benefits.

6. Conflict of Interest

No paid employee of the CITY shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this agreement.

7. Non-Waiver of Rights

It is agreed that the CITY'S failure to insist upon the strict performance of any provision of this agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this agreement.

8. Suspension or Termination of Agreement

1. In the event that review of the CONTRACTOR'S performance shows non-conformance to the work required by this contract, the Scope of Services or other terms or conditions contained herein as a result of the CONTRACTOR'S negligent errors, omissions or acts, the CONTRACTOR shall be in breach of this agreement and the CITY may take corrective action as it deems necessary including, but not limited to, termination, withholding or reduction of payment.

2. The CITY shall also have the right to suspend this agreement upon written notice to the CONTRACTOR. Such written notice shall state the reasons for suspension and allow for a review period of ten (10) days during which the CONTRACTOR shall be provided with an opportunity to respond with an explanation or justification, and/or shall undertake any reasonable remedial action required by the CITY. If, in the opinion of the CITY the CONTRACTOR remains in violation of this agreement at the completion of the ten (10) day suspension period, the CITY shall have the right to terminate this agreement whereupon all obligations of the CITY to the CONTRACTOR shall cease.

3. In the event this project is terminated prior to completion of the services by the CONTRACTOR, the CONTRACTOR shall be paid for services performed to the date of

termination. (In no event will the amount due CONTRACTOR in the event of termination exceed that amount set forth in page C3 of this agreement.)

4. This agreement may be terminated without cause by either party with thirty (30) days written notice.

5. Nothing contained herein shall prevent the CITY from pursuing any other remedy which it may have against CONTRACTOR including claims for damages.

9. Assignment of Agreement

It is mutually agreed by the parties hereto that this agreement is not transferable by either party without the written consent of the other party to this agreement.

10. Insurance Requirements

Before commencing any work, the Contractor shall procure insurance in the contractor'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 the contractor, his agents, representatives, employees, or subcontractors, 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. Contractor shall maintain Commercial General Liability (CGL) and if necessary, Commercial Umbrella Liability insurance with a total limit of not less than \$1,000,000.00 each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location or the general aggregate shall be twice the required limit.
2. CGL insurance shall be written on Insurance Services Office (ISO) "occurrence" form CG 00 01 covering Commercial General Liability or its equivalent and shall cover the liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
3. The City of Wilmington, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 10 or CG 20 33 AND CG 20 37 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of the contractor; products and completed operations of the contractor; premises owned, leased or used by the contractor; and under the commercial umbrella, if any. The coverage shall contain no special limitations on the scope of protection afforded to the City of Wilmington, its officers, officials, agents, and employees.
4. There shall be no endorsement or modification of the CGL or Umbrella Liability limiting the scope of coverage for liability arising from explosion, collapse, underground property damage, or damage to the named insured's work, when those exposures exist.
5. The contractor's Commercial General Liability insurance shall be primary as respects the City of Wilmington, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of Wilmington, its officers, officials, and employees shall be excess of and not contribute with the contractor's insurance.
6. The insurer shall agree to waive all rights of subrogation against the City of Wilmington, its officers, officials, agents and employees for losses arising from work performed by the contractor for the City of Wilmington.

- B. Workers' Compensation and Employer's Liability
1. Contractor shall maintain Workers' Compensation as required by the general statutes of the State of North Carolina and Employer's Liability Insurance.
  2. The Employer's Liability, and if necessary, Commercial Umbrella Liability insurance shall not be less than \$500,000.00 each accident for bodily injury by accident, \$500,000.00 each employee for bodily injury by disease, and \$500,000.00 policy limit.
  3. The insurer shall agree to waive all rights of subrogation against the City of Wilmington, its officers, officials, agents and employees for losses arising from work performed by the contractor for the City of Wilmington.
  4. The U.S. Longshore and Harborworkers Compensation Act endorsement shall be attached to the policy when the services will be on or in close proximity to navigable waterways.
  5. The Maritime Coverage endorsement (WC 00 02 01) shall be attached to the policy when the contracted services involve the use of watercraft.

NOTE: Additional requirements needed if you have a borrowed servant, offshore platforms or federal act situations. (Federal Acts such as the Defense Base Act, Migrant and Seasonal Agricultural Worker Protection Act, and the Federal Coal Mine Health and Safety Act, etc.)

- C. Business Auto Liability
1. Contractor shall maintain Business Auto Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$1,000,000.00 each accident.
  2. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos.
  3. Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01.
  4. Pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached when those exposures exist.
  5. Contractor waives all rights against the City of Wilmington, its officers, officials, agents and employees for recovery of damages to the extent these damage are covered by the business auto liability or commercial umbrella liability insurance obtained by Contractor pursuant to Section I C 1 of this agreement.
  6. The contractor's Business Auto Liability insurance shall be primary as respects the City of Wilmington, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of Wilmington, its officers, officials, and employees shall be excess of and not contribute with the contractor's insurance.

D. Deductibles and Self-Insured Retentions

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

E. Miscellaneous Insurance Provisions

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

1. Each insurance policy required by this contract shall be endorsed to state that coverage shall not canceled by either party except after 30 days prior written notice has been given to the City of Wilmington, PO Box 1810, Wilmington, NC 28402-1810.

2. If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

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 the City of Wilmington.

G. Evidence of Insurance

1. The Contractor shall furnish the City of Wilmington with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the work, and thereafter upon renewal or replacement of each certified coverage until all operations under this contract are deemed complete.
2. Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in Section 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 the City of Wilmington with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the period for which such insurance must be maintained.

H. 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 contractors' coverage, and the contractor shall be responsible for assuring that all subcontractors are properly insured.

I. Conditions

1. The insurance required for this contract must be on forms acceptable to the City of Wilmington.
2. The contractor shall provide that the insurance contributing to satisfaction of insurance requirements in Section I. Minimum Scope and Insurance Requirements shall not be canceled, terminated or modified by the contractor without prior written approval of the City of Wilmington.
3. The contractor shall promptly notify the Safety & Risk Manager at (910) 341-5864 of any accidents arising in the course of operations under the contract causing bodily injury or property damage.
4. The City of Wilmington reserves the right to obtain complete, certified copies of all required insurance policies, at any time.
5. Failure of the City of Wilmington to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of the City of Wilmington to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
6. By requiring insurance herein, the City of Wilmington does not represent that coverage and limits will necessarily be adequate to protect the Contractor and such coverage and limits shall not be deemed as a limitation of Contractor's liability under the indemnities granted to the City of Wilmington in this contract.
7. The City of Wilmington shall have the right, but not the obligation of prohibiting Contractor or any subcontractor from entering the project site or withhold payment until

such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City of Wilmington.

11. Findings Confidential  
All of the information, reports, cost estimates, plans, specifications and documents prepared or assembled by the CONTRACTOR under this agreement are the property of the CITY. The CONTRACTOR agrees that any such documents shall not be made available to any individual or organization other than appropriate CITY officials without prior written approval of the CITY. Nothing contained in this paragraph shall be construed to prevent the CONTRACTOR from making information, reports and documents available to those individuals or firms directly concerned with the project involved with prior written agreement of the CITY.
12. Subcontracts  
The CONTRACTOR shall utilize no subcontracts for carrying out the services to be performed under this agreement without the written approval of the CITY.
13. Entire Agreement  
This agreement constitutes the entire understanding of the parties.
14. Binding Effect  
This agreement shall be binding upon the heirs, successors, assigns, agents, officials, employees, independent contractors, and subcontractors of the parties.
15. Continuing Obligation  
The parties will make and execute all further instruments and documents required to carry out the purposes and intent of the agreement.
16. Reference  
Use of the masculine includes feminine and neuter, singular includes plural; and captions and headings are inserted for convenience of reference and do not define, describe, extend or limit the scope of intent of the agreement.
17. Interpretation  
All of the terms and conditions contained herein shall be interpreted in accordance with the laws of 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. Notwithstanding the presumption of law whereby an ambiguity or conflict in provisions shall be construed against the drafter, the parties hereto acknowledge that they were entitled to representation by counsel and having obtained such counsel, this Agreement has been negotiated at arm's length by both parties, and they have both participated in the drafting of this Agreement. Therefore, such presumption shall not be applied if any provision or term of this Agreement required judicial interpretation.
18. Counterparts. This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.
19. Minority Business Enterprise (MBE)  
The CITY desires that minority business enterprises have the maximum opportunity to participate in the performance of this contract and will:
  1. Promote affirmatively (where feasible) in accordance with North Carolina General Statute



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

2. Insure that competitive and equitable bidding opportunities are followed to afford minority business enterprises participation. Strive to obtain contract and subcontract awards to minority business enterprises.

3. Identify and communicate to the minority business enterprises community procedures and contract requirements necessary for procurement of goods and services for construction projects and subcontracts.

4. Provide technical assistance as needed.

5. Promulgate and enforce contractual requirements that the general contractor or all construction projects shall exercise all necessary and reasonable steps to insure that minority business enterprises participate in the work required in such construction contracts.

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

A minority business enterprise is defined as a business, with at least fifty (51%) percent owned and controlled by minority group members. The minority ownership must exercise actual day-to-day management. Minority group members may consist of Black Americans (an individual of the Black race of African origin), Hispanic Americans (an individual of a Spanish speaking culture and origin at parentage), Asian Americans (an individual of a culture, origin or parentage traceable to the areas of the Far East, Southeast Asia, the Indian subcontinent and the Pacific Islands), Indian Americans (an individual who is an enrolled member of a Federally recognized Indian tribe, or recognized by the tribe as being an Indian, as evidenced by a certification of a tribal leader), American Aleuts or any recognized minority group approved by the CITY.

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

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

20. Immunity Not Waived

This agreement is governmental in nature for the benefit of the public and is not intended to be for private profit or gain. Any fees charged hereunder are intended to reflect as closely as possible the CITY'S actual cost and neither party intends to waive its sovereign immunity by reason of this agreement.

21. 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.

22. Other Laws and Regulations

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.

23. Amendments

This agreement shall not be modified or otherwise amended except in writing signed by the parties.

24. Non-Discrimination

CONTRACTOR will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this agreement because of race, creed, color, sex, age, disability or national origin. To the extent applicable, CONTRACTOR will comply with all provisions of Executive Order No. 11246 the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state and local laws, ordinances, rules, regulations, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this agreement and may result, at CITY'S option, in a termination or suspension of this agreement in whole or in part.

25. Non-Appropriation. In the event no City funds or insufficient City funds are appropriated or otherwise available by any means whatsoever in any fiscal year for any payment due under this Agreement, then the City will immediately notify CONTRACTOR of such occurrence and this Agreement shall create no further obligation of the City as to such fiscal year and shall be null and void, except as to the portions of payments for which funds shall have been appropriated and budgeted. In such event, this Agreement shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to the City of any kind whatsoever.

26. No Publicity. No advertising, sales promotion or other materials of the CONTRACTOR or its agents or representations may identify or reference this Contract or the CITY in any manner absent the written consent of the CITY. Notwithstanding the forgoing, the parties agree that the CONTRACTOR may list the CITY as a reference in responses to requests for proposals, and may identify the CITY as a customer in presentations to potential customers.

27. CITY Not Liable For Special or Consequential Damages. The CITY shall not be liable to the CONTRACTOR, its agents or representatives or any subcontractor for or on account of any stoppages or delay in the performance of any obligations of the CITY, or any other consequential, indirect or special damages or lost profits related to this Contract.

Public Records. CONTRACTOR acknowledges that the CITY is a public entity, subject to North Carolina's public records laws (N.C.G.S. § 132) and that any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial process.

If CONTRACTOR believes documents related to the Agreement contain trade secrets or other proprietary data, CONTRACTOR must notify the CITY and include with the notification a statement that explains and supports CONTRACTOR'S claim. CONTRACTOR also must specifically identify the trade secrets or other proprietary data that CONTRACTOR believes should remain confidential.

In the event the CITY determines it is legally required to disclose pursuant to law any documents or information CONTRACTOR deems confidential trade secrets or proprietary data, the CITY, to the extent possible, will provide CONTRACTOR with prompt written notice by certified mail, fax, email, or other method that tracks delivery status of the requirement to disclose the information so CONTRACTOR may seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The notice will include a time period for CONTRACTOR to seek court ordered protection or other legal remedies as deemed appropriate by CONTRACTOR. If CONTRACTOR does not obtain such court ordered protection by the expiration of said time period, the CITY may release the information without further notice to CONTRACTOR.

28. 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.

IN WITNESS WHEREOF, the CITY has caused this agreement to be duly executed in its name and behalf and the CONTRACTOR has caused this agreement to be duly executed in its name and behalf and its corporate seal to be hereunto affixed, and attested to.

CITY OF WILMINGTON, NORTH CAROLINA

By: \_\_\_\_\_  
Anthony N. Caudle, City Manager

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

WITNESS:

\_\_\_\_\_  
Daryle L. Parker, Purchasing Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Melissa I. Huffman, Assistant City Attorney

FINANCE OFFICER'S CERTIFICATION STATEMENT

This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.

This \_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Jennifer R. Maready, Finance Director

Org.: \_\_\_\_\_ Obj: \_\_\_\_\_

Amount \$ \_\_\_\_\_

Requisition/PO# \_\_\_\_\_

Federal ID # 56-6000239

VENDOR

By: \_\_\_\_\_

**BID SUBMITTAL**

**CITY OF WILMINGTON STORMWATER SERVICES TREE PLANTINGS ITB: S10-1021**

<b>Heal Our Waterways Trees</b>					
<b>ITEM</b>	<b>DESCRIPTION</b>	<b>Size</b>	<b>QUANTITY</b>	<b>UNIT PRICE</b>	<b>TOTAL COST</b>
1	2124 Lynwood Drive Dwarf Bald Cypress, <i>Taxodium distinchum</i> <i>Alternative species: River Birch, Betula nigra</i>	2 ½-3"	10		
2	598 Clearbrook Drive Longleaf Pine, <i>Pinus palustris</i>	2 ½-3"	5		
3	413 S. College Road Trench Dwarf Bald Cypress, <i>Taxodium distinchum</i> <i>Alternative species: River Birch, Betula nigra</i>	2 ½-3"	8		
4	413 S College Road Wetland Bald Cypress, <i>Taxodium distinchum</i> <i>Alternative species: River Birch, Betula nigra</i>	2 ½-3"	2		
<b>Total Trees</b>			<b>25</b>		

**HOW Base Bid Subtotal:** \_\_\_\_\_

<b>Wrightsville Green CIP Trees</b>					
<b>ITEM</b>	<b>DESCRIPTION</b>	<b>Size</b>	<b>QUANTITY</b>	<b>UNIT PRICE</b>	<b>TOTAL COST</b>
5	2000 Wrightsville Green Ave, Wrightsville Green HOA Bald Cypress; <i>Taxodium distichum</i>	2 ½-3"	4		
6	2000 Wrightsville Green Ave, Wrightsville Green HOA Red maple; <i>Acer rubrum</i>	2 ½-3"	4		
7	2000 Wrightsville Green Ave, Wrightsville Green HOA Overcup Oak; <i>Quercus lyrata</i>	2 ½-3"	4		
8	2000 Wrightsville Green Ave, Wrightsville Green HOA Pin Oak; <i>Quercus palustris</i>	2 ½-3"	4		
9	2000 Wrightsville Green Ave, Wrightsville Green HOA River Birch; <i>Betula nigra</i>	2 ½-3"	4		
<b>Total Trees</b>			<b>20</b>		

**CIP Base Bid Subtotal:** \_\_\_\_\_

**TOTAL BID:** \_\_\_\_\_

\*\*

Company Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

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

\*\* All bid submittals should be valid for at least sixty (60) days after submittal due date.