

CITY OF WILMINGTON, NC

BID INVITATION

BIDS ARE DUE: THURSDAY, MAY 08, 2025, AT 3:00 PM

BID NAME: REMOVE AND REPLACE PLAYROOM MAT AT FIT FOR FUN CENTER

PRE-BID MEETING: **MANDATORY PRE-BID MEETING WILL BE HELD ON TUESDAY, APRIL 29, 2025, AT 10:00 AM.**

LOCATION: 302 B SOUTH 10TH STREET, WILMINGTON, NC 28401

PROJECT NO.: N/A

CONTRACT NO.: S6-0425

SUBMIT BIDS TO: PURCHASING DIVISION
P.O.BOX 1810
929 N. FRONT STREET, 10TH FLOOR
WILMINGTON, NC, 28401-1810
(910) 341-7886
ALISSA.GUARASCIO@WILMINGTONNC.GOV

COMPANY NAME: _____

ADDRESS: _____

TELEPHONE: _____ FAX _____

EMAIL: _____

LICENSE NO. _____

ADVERTISEMENT FOR BIDS
CITY OF WILMINGTON, NC

REMOVE AND REPLACE PLAYROOM MAT AT FIT FOR FUN CENTER

CONTRACT NUMBER: S6-0425

Bid proposals must be addressed to Alissa Guarascio, Buyer, to P. O. Box 1810, 929 N. Front Street, 10th Floor, Wilmington, NC 28402, marked " **Playroom Mat Removal and Replace at Fit For Fun Center.**" Submittals will be received until 3:00 p.m. on Thursday, May 08, 2025, by hand delivery, mail, or email to Alissa.Guarascio@wilmingtonnc.gov at the Purchasing Division, 929 N. Front Street, 10th Floor, Wilmington, NC.

PROJECT DESCRIPTION: The scope of work involves the services needed to remove and replace the existing Playroom Mat with a new playroom mat at the Fit for Fun Center located at 302 B South 10th Street, Wilmington, NC 28401.

All firms submitting bids for the proposed work must be registered with the Secretary of State.

MBE/WBE/HUB/DBE OBLIGATION:

In accordance with the City of Wilmington's Minority/Disadvantaged Business Policy, the bidder shall make good faith efforts, as defined by the Bid Specifications, to subcontract 14% of the dollar value of the prime contract to businesses which are at least 51 % owned and controlled by minority, socially, and/or economically disadvantaged individuals (MBE/DBE's).

A complete copy of the City of Wilmington's MBE/WBE policy is available for inspection at the Purchasing Manager's Office.

The City of Wilmington does not discriminate on the basis of race, sex, color, age, national origin, religion or disability in its employment opportunities, programs, services, or activities.

Bids for this project shall be guaranteed by all bidders for a period of 90 calendar days following the bid opening.

THE CITY OF WILMINGTON RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS.

Daryle L. Parker
Purchasing Manager
April 22, 2025

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

AFFIDAVIT AND CERTIFICATE OF
NON-COLLUSION, NON-SUSPENSION AND NON-CONVICTION

The undersigned, being first duly sworn, deposes and says:

1. I understand that for the purposes of this affidavit, the term "bidder" shall include the person(s), firm(s), or corporation(s) signing this affidavit, the undersigned's subcontractor(s), subsidiary(ies) and affiliate(s) and any officer, director, employee or agent of the bidder; and the term "conviction" shall include guilty pleas, pleadings of nolo contendere and similar pleas.
2. This Affidavit and Certificate is made in accordance with Article 3 of Chapter 133 of the North Carolina General Statutes; I certify that this proposal is made without prior understanding, agreement, or connection with any person(s), firm(s), or corporation(s) making bids or proposals; I further certify that the bidder has not entered into any agreement with any other bidder or prospective bidder or with any other person(s), firm(s) or corporation(s) relating to the price named in said proposal, nor any agreement or arrangement under which any person(s), firm(s) or corporation(s) is to refrain from bidding, nor any agreement or arrangement for any act or omission in restraint of free competition among bidders; I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards; and I further certify that the bidder will abide by all terms of this bid or proposal.
3. The bidder is not suspended or debarred from bidding by any federal or state governmental agency that is providing funds for this contract.
4. The bidder is not presently charged in an indictment or information with engaging in any conspiracy, combination, or other unlawful act in restraint of trade or any similar charges in any federal court or a court of this or any other state.
5. The bidder, within one year immediately preceding the date of this affidavit, has not been convicted of charges or engaging in any conspiracy, combination, or other unlawful act in restraint of trade or similar charges in any federal court or a court of this or any other state.
6. If, during the time of this proposal, from the date advertised to the date bids are opened, the bidder is indicted or convicted of bid-rigging, I understand this proposal shall be rejected and not considered for award.
7. I hereby affirm that all information contained in this affidavit is true, correct, accurate and complete, and any untrue, incorrect, inaccurate or incomplete statements will result in the disqualification and rejection of this proposal. I certify that I am authorized to sign this bid and to make the representations set forth herein on behalf of myself and the bidder.

This the _____ day of _____, 2025.

COMPANY NAME _____

BY: _____
(Owner, Partner, or Corporate President, Vice
President or Assistant Vice President only)

ATTEST:

(Secretary, Assistant Secretary,
Cashier or Assistant Cashier only)

(CORPORATE SEAL)

(TO BE EXECUTED ON BEHALF OF THE CONTRACTOR)

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public, certify that
(Name)

_____ personally came
(Name of Secretary, Assist. Sec., Cashier, Assist. Cashier)

before me this day and acknowledged that he (she) is _____
(Secretary, Assist. Sec.,

_____ of _____, a
Cashier, Assist. Cashier) (Name of Corporation)

corporation, and that by authority duly given and as the act of the corporation, the foregoing Affidavit

was signed in its name by its _____,
(President, Vice President, Assist. Vice President)

sealed with its corporate seal, and attest by himself (or herself) as its

(Secretary, Assist. Sec., Cashier, Assist. Cashier)

WITNESS my hand and official seal, this the _____ day of _____, 2025.

Notary Public

My Commission Expires: _____ (NOTARY SEAL)

GENERAL SPECIFICATIONS INSTRUCTIONS TO BIDDERS

Purpose

It is the intent of this Invitation to Bid No. S6-0425 to obtain bids for services required to Remove and Replace Playroom Mat at Fit For Fun Center located at 302 B South 10th Street, Wilmington, NC 28401. The scope includes the removal of the existing playroom mat and the replacement installation of a new playroom Mat, as the City requires. You are requested to submit your bid on the enclosed Bid Sheet and return the entire package to Alissa Guarascio, Buyer, City of Wilmington, Alissa.Guarascio@wilmingtonnc.gov , Post Office Box 1810, 929 N. Front St., Floor 10, Wilmington, North Carolina 28401. Bids must be received no later than Thursday, May 08, 2025, by 3:00 pm.

Contacts

Contact Aaron Cramer, Superintendent, Buildings and Facilities, at Aaron.Cramer@wilmingtonnc.gov , with any questions concerning the scope of this contract.

Marking of Envelopes

Bids must be contained in a sealed envelope, plainly marked, showing the name, Invitation to Bid number, date, time (if time is specified) and the bidder's name. Any company submitting a "No Bid" in response to an Invitation to Bid should clearly mark the outside of the envelope.

Late Bids Will Not Be Considered

Bids received after the due date and time will not be considered.

Compliance with Specifications

Your bid must be in strict compliance with the specifications and offer the same services as requested in the Invitation to Bid.

Price Corrections

All prices and notations shall be written in ink or typed. Changes or corrections made on the bid form must be made by striking through instead of using a liquid cover product and initialed by the individual signing the bid page. No corrections will be permitted once bids have been opened.

Withdrawal of Bids

Bids may be withdrawn at any time prior to the due date and time specified upon written or personal request of the bidder. No quote may be withdrawn for a period of thirty (30) days after the scheduled opening time (if the time is specified) and date. Negligence on the part of the bidder shall not constitute a right to withdraw the quote after the bids have been opened.

Rejection of Bids

The City reserves the right to reject any and all bids.

Offer

CONTRACTOR is to provide a single price proposal that encompasses the entirety of the described scope of services.

Responsibility of Compliance with Legal Requirements

The bidder's products, service and facilities shall be in full compliance with any and all applicable state, federal, local, environmental and safety laws, regulations, ordinances and standards or any standards adopted by nationally recognized testing facilities regardless of whether or not they are referred to in this invitation.

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.

Terms and Conditions attached to the bid by the bidder may render the bid 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 attachments are agreed to and initialed by the City of Wilmington prior to the due date and time of the opening of the Bids.

Validity of Bids

Bids shall remain open and valid for a period of ninety (90) days from the due date specified in the Invitation to Bid.

**INVITATION TO BID S6-0425: REMOVE AND REPLACE PLAYROOM MAT AT FIT FOR
FUN CENTER**

PROJECT DESCRIPTION:

Title: Playroom Mat Replacement – Fit for Fun Center

Location of Work:

Fit For Fun Center – 302 B South 10th Street

SCOPE OF WORK:

Work to be Completed:

- **Demolition to Include:**
 - Removal of existing green Playroom Mat located in the Activity Room.
 - Removal of all cove base molding in project areas.
 - Asbestos testing report will be provided by owner.
 - Contractor required to abate all necessary asbestos if found per code.
 - Activity Room dimensions are roughly 60 ft x 33 ft = 1980 Sq Ft.
- **Installation of new Gerflor - Taraflex Sport M Plus Dry-TEX or approved equal.**
 - **All floor preparation cost should be included in the installation cost.**
 - Properly prepare all flooring areas per manufacture specifications.
 - Flooring must meet or exceed:
 - Class (3) shock absorption
 - Overall thickness: 0.30” (7.5mm)
 - Protoscol surface treatment = no wax for life
 - Wear layer thickness: 83 mil (2.1mm)
 - ASTM F2772 Class3: 45% shock absorption
 - Dry-TEX moisture tolerance: 100% RH, 25lb
 - Resistance to stains and scratches and easy to maintain
 - Floor color to be Maple #5763
- **Installation of new Cove Base.**
 - New cove base shall be either rubber or vinyl and 4” in height.
 - Color of new cove base will be black.
- **Alternate #1**
 - Provide cost to install an oval track design around the perimeter of the room. See Attachment #2 for design idea.
 - Floor color of track to be Anthracite #6873
 - Oval track is to stay 3 feet off perimeter walls.
 - Oval track to be 4 feet wide with dash line in middle as shown in picture in Attachment #2.
 - Track design must be approved by owner prior to installation.
 - Assume track width and length to be roughly 4 feet wide x 146 feet long = 584 Sq Ft.

Details:

- The City of Wilmington is looking for a Flooring Professional to remove existing flooring and replace it with an Gerflor - Taraflex Sport M Plus Dry-Tex flooring system, or approved equivalent, per manufacture specifications.
- Contractor to provide samples and specifications of product/s used in this project.
- City must approve all products prior to ordering.
- Restore any doors, walls, floors, or roofs damaged during demo or installation of the new system.
- Provide 1-year labor and material guarantee.
- Remove all jobsite related debris from site daily.
- Contractor will maintain a safe and clean work site at all times.
- **Contractor is responsible for verifying all final measurements.**
- Bid must include all labor, material, supplies, and equipment needed to complete the work required.
- Bid will be awarded to the **lowest responsive and responsible bidder.**
- Provide Liability and Worker's Compensation Insurance certificate with City of Wilmington as additional insured.
- All work must be performed in compliance with federal, state, and local codes.
- Each party submitting a proposal shall possess all necessary local licenses as are required by law, at time of installation.
- Any vendor entering into a contractual agreement must first be a vendor on record with the City Of Wilmington. Vendor applications can be found at:
<http://www.wilmingtonnc.gov/departments/finance-department/doing-business-with-the-city>

SPECIAL INSTRUCTIONS:

- (1) All prices quoted shall remain firm for ninety (90) days after the due date of the proposal
- (2) All quotes should include any required NC Sales Tax.
- (3) If you are offering pricing which is based on other entity or agency solicitation pricing, clearly state so and include a copy of the applicable solicitation with your submittal.
- (4) If not submitting a proposal, please indicate "NO BID" and return the cover memo.

Items to be Submitted

Four (4) hard copies in sealed envelope labeled “S6-0425- REMOVE AND REPLACE PLAYROOM MAT AT FIT FOR FUN CENTER” of the proposal must be submitted by email, mail or hand delivery to Alissa Guarascio, Buyer at Alissa.Guarascio@wilmingtonnc.gov , PO Box 1810, Wilmington, NC 28401 or 929 N. Front Street, 10th Floor, Wilmington, NC 28402 on or before Thursday, May 08, 2025, by 3 pm., EST.

MANDATORY PRE-BID TO BE HELD ON TUESDAY, APRIL 29, 2025, AT 10:00 AM

LOCATION: 615 BESS ST, WILMINGTON NC 28401

The City shall not be responsible for any expense incurred by the firm in preparing and submitting a proposal. All proposals submitted become the property of the City.

Timeline

ITB Process	Date	Time
Advertisement	04/22/2025	3:00 PM
MANDATORY PRE-BID	04/29/2025	10:00 AM
ITB Written questions are due	05/02/2025	4:00 PM
City Responses to ITB Questions	05/06/2025	4:00 PM
ITB Due Date & Bid Opening	05/08/2025	3:00 PM

Questions concerning this ITB should be directed to the Project Manager. Questions may be submitted no later than Friday, May 02, 2025, by 4:00 PM before the deadline. All questions and answers regarding the ITB may be shared with all contractors known to be interested in submitting a proposal.

Project Manager for the City of Wilmington:

Name: Brooke Cooper

Department: Public Works

Email: Brooke.cooper@wilmingtonnc.gov

Phone: (910) 341-7853

The City reserves the right to re-advertise and reject any or all proposals that are deemed to be non-responsive, late in submission, or unsatisfactory. The City of Wilmington shall have no obligation to award a contract for services as a result of this ITB.

PROPOSAL CERTIFICATION

Signature: _____ Date: _____

By Signing above I Certify that I have carefully read and fully understand the information contained in this ITB; and that I have the capability to successfully undertake and complete the responsibilities and obligations of the Proposal being submitted and have the authority to sign Proposal on behalf of my organization.

BY (Printed): _____

TITLE: _____

COMPANY: _____

ADDRESS: _____

TELEPHONE: _____

EMAIL: _____

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

1. Please indicate type of business organization:

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

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

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

Firm is incorporated in what state?

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

North Carolina Secretary of State? _____

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

Name in full of all general partners and addresses:

Is this a limited or general partnership? _____

If a limited partnership, what is state of registration? _____

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

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

Name of owner: _____

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

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

What is state of organization? _____

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

6. For all bidders:

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

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

If so, please provide the recording information:

Deed Book _____ at Page _____.

BID SUBMITTAL SHEET

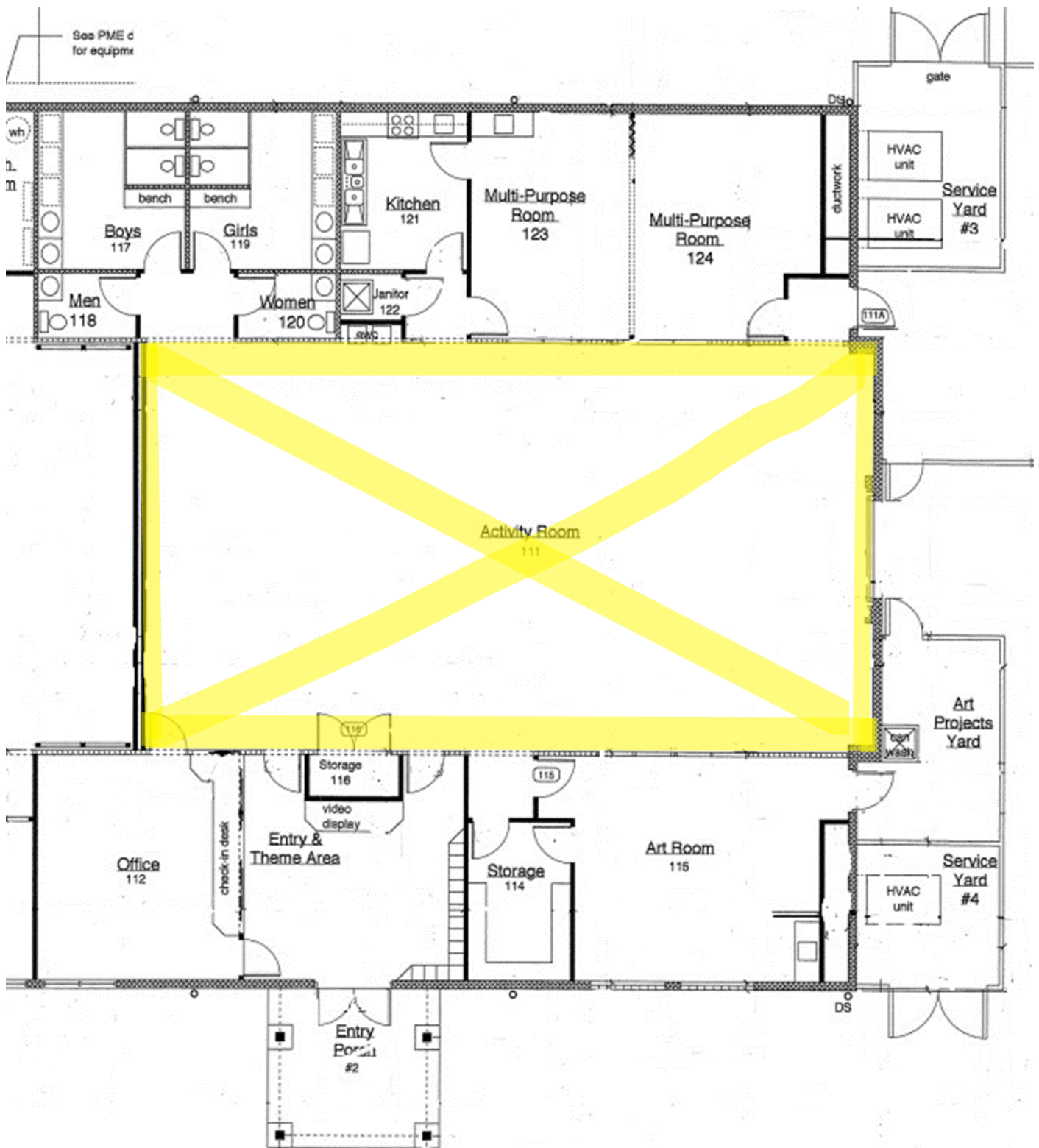
In accordance with the terms, conditions and specifications, I/we, as authorized signatory to commit the firm, do hereby accept in total all the terms and conditions stipulated and referenced in this ITB document and hereby submit the following prices:

	Item Description	Units	Quantity	Unit Price	TOTAL
1.	Demolition and Disposal of existing flooring	Square Foot	1900	\$	\$
2.	Demolition of Cove Base	Linear Foot	186	\$	\$
3.	Installation of New Taraflex Flooring	Square Foot	1980	\$	\$
4.	Installation of New Cove Base	Linear Foot	186	\$	\$
5.	Asbestos Abatement	Lump Sum	1	\$	\$
		Total Cost			\$
Total Cost in Words:					
	Item Description	Units	Quantity	Unit Price	TOTAL
Alternate #1	Oval Track Installed	Square Foot	584	\$	\$
Alternate #1	Alternate Line Item #3 Cost	Square Foot	1396	\$	\$
Project Total Cost including Alternate			\$		
Project Total Cost including Alternate in Words:					
Length of Project:		Expected Start Date:			
Floor/Mat Warranty:		Installation Warranty:			

The undersigned acknowledges receipt of any issued Addendums to this Project by recording the Addendum number and date acknowledged below:

Addendum #1: _____ Dated: _____
 Addendum #2: _____ Dated: _____
 Addendum #3: _____ Dated: _____

ATTACHMENT 1 – WORKING AREA DRAWINGS



ATTACHMENT 2 – Track Design Idea



ACKNOWLEDGEMENT OF DOCUMENTS

A. The undersigned Bidder acknowledges that the following required documents are a part of this Bid Submission Sheet and are attached hereto:

1. Acknowledgment of Project Description, Scope of Work, and Special Instructions (Pages 1-3)
2. Bid Submittal Sheets (P-1 -P-6)
3. Business Information including business name, tax ID #, vendor # (if applicable), contact information.
4. Specification Sheets including warranty information.
5. Proposed duration for the work from start to completion, to include Delivery Details
6. Acknowledge Contract "Installation Services" Terms & Conditions (Pages C1 - C13)

Company Name: _____

Company Address: _____

City/State/Zip: _____

Telephone Number: _____ **Fax Number:** _____

E-mail: _____

Signature: _____ **Date:** _____

Name (Print): _____ **Title:** _____

Expected Date to Begin Work: _____ **Length of Project:** _____

Warranty: _____

INSTALLATION SERVICES AGREEMENT

THIS AGREEMENT (hereinafter the "Agreement") 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 the "CITY" and Wilmington Purchasing Division, Inc., hereinafter referred to as, the "CONTRACTOR."

WITNESSETH:

1. Purpose of Agreement

The CITY hereby agrees to purchase the materials and services listed below from the CONTRACTOR and CONTRACTOR agrees to provide all the tools, materials, equipment, and/or supplies required to provide Services hereunder to CITY, as ordered in accordance with the provisions of this Agreement.

2. Contract Documents

This Agreement for Materials and Installation Services consists of the following contract documents, all of which are by this reference incorporated herein and made a part of this Agreement. The parties agree that only the terms and conditions outlined in this Agreement, not those described or referenced by any of the following contract documents, shall apply unless explicitly stated otherwise in the body of this Agreement:

(1) Estimate/Quotation/Invoice - Exhibit A, dated & attached.

3. Scope of Services

- a. CONTRACTOR hereby agrees to perform, in a manner satisfactory to the CITY, professional and timely services as set forth in Exhibit "A" attached hereto and incorporated herein by this reference. The parties hereto acknowledge that the terms outlined in Exhibit "A" shall be valid and enforceable to the extent they are not inconsistent with the provisions as set forth herein, and to the extent that they are inconsistent, the provisions as set forth in this Agreement shall control.
- b. CONTRACTOR will remove the existing Playroom Mat and replace by installing a new play room Mat at Fit for Fun Center located at 302 B South 10th Street, Wilmington NC 28401.
- c. During the period of this Agreement, the CONTRACTOR and the CITY may negotiate and agree in writing to provide additional equipment and/or services not herein described, but that are commonly provided by high quality professional vendors, and which may enhance the process and improve results.

4. Quantities and Prices

CONTRACTOR will provide the materials and services required by this Agreement at the following price:

ENTER DOLLAR AMOUNT IN WORDS HERE (\$0,000.00).

5. Contractor Submissions and Payment

- a. The CONTRACTOR shall submit invoices corresponding to each order to the City with sufficient details to enable a review and assure compliance with the terms and conditions of this Agreement.
- b. Payments shall be made by the CITY within 30 days after receipt of an approved invoice.

6. Term of Contract

The CONTRACTOR shall commence the work to be performed under this Agreement within ten (10) days of receipt of a written order from the Purchasing Manager and shall complete all work hereunder within (0) DURATION TERM ENTERED HERE of the date of beginning. The CONTRACTOR further agrees to pay, as liquidated damages, the sum of \$0.00 for each consecutive calendar day thereafter.

7. City Obligations

CITY officials may conduct inspections during the installation process and of completed work to assure compliance with Agreement specifications.

8. City Officials

The undersigned listed below is the designated Official responsible for communicating with the CONTRACTOR for the purpose of contract administration, including but not limited to conducting inspections during installation, arranging for a mutually agreeable work schedule, ordering any special goods or services, reviewing, and approving invoices, reporting, and resolving problems, etc. During the period of performance, these officials and/or their designees will make themselves available to the CONTRACTOR via business/cell phones and email.

Brooke Cooper, Facilities Project Coordinator
City of Wilmington
P.O. Box 1810
Wilmington, NC 28402-1810
Phone: (910) 341-7853
Email: Brooke.Cooper@wilmingtonnc.gov

Point of Contact shall be the CONTRACTOR's representative for this Agreement. Any notice required to the CONTRACTOR under this Agreement shall be sufficient if mailed to the CONTRACTOR by certified mail as indicated below:

Company Name
Address
City, State Zip
Phone XXXXXXXXXXXX
Email: XXXXXXXXXXXX @company

9. 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.

10. Personnel

It is mutually agreed that the 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.

11. 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.

12. 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.

13. Suspension or Termination of Contract

- a) 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 errors, omissions or negligent acts, the CONTRACTOR shall be in breach of this contract and the CITY may take corrective action as it deems necessary including, but not limited to, termination, withholding or reduction of payment.
- b) 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.
- c) 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. (CONTRACTOR shall be paid for all reimbursable expenses, without markup, which are due him.)
- d) The CITY and the CONTRACTOR shall have the right to terminate this Agreement without cause upon 30 days' notice to the other party.
- (e) Nothing contained herein shall prevent the CITY from pursuing any other remedy, which it may have against CONTRACTOR including claims for damages.

14. 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.

15. Contract Disputes

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

16. 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 Agreement of the types and in the amounts listed. 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.

(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** during and until completion of the work, under the CGL by endorsement CG 20 10 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf 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. **Additional insured** status for both ongoing and completed operations, in favor of City of Wilmington, its officers, officials, agents and employees, will be carried by Subcontractor performing installation.
- 4) There shall be no endorsement or modification of the CGL or Umbrella Liability limiting the scope of coverage for liability arising from explosion, collapse, underground property damage, or damage to the named insured's work, when those exposures exist.
- 5) The CONTRACTOR'S Commercial General Liability insurance shall be primary as respects the City of Wilmington, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of Wilmington, its officers, officials, and employees shall be excess of and not contribute with the CONTRACTOR'S insurance.
- 6) The insurer shall agree to **waive all rights of subrogation** against the City of Wilmington, its officers, officials, agents, and employees for losses arising from work performed by the CONTRACTOR for the City of Wilmington.

(B) WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY

- (1) CONTRACTOR shall maintain Workers' Compensation as required by the general statutes of the State of

North Carolina and Employer's Liability Insurance.

(2) The Employer's Liability, and if necessary, Commercial Umbrella Liability insurance shall not be less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 policy limit.

(3) The insurer shall agree to **waive all rights of subrogation** against the City of Wilmington, its officers, officials, and employees for losses arising from work performed by the CONTRACTOR for the City of Wilmington.

(C) BUSINESS AUTO LIABILITY

(1) CONTRACTOR shall maintain Business Auto Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$1,000,000 each accident.

(2) Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos.

(3) Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01.

(4) Pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached when those exposures exist.

(5) CONTRACTOR **waives all rights against** the City of Wilmington, its officers, officials, agents and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by CONTRACTOR pursuant to Section 11.C.1 of this agreement.

(6) The CONTRACTOR'S Business Auto Liability insurance shall be primary as respects the City of Wilmington, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by The City of Wilmington, its officers, officials, and employees shall be excess of and not contribute with the CONTRACTOR'S insurance.

(D) DEDUCTIBLES AND SELF-INSURED RETENTIONS.

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 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 Agreement 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 Agreement are deemed complete.

(2) Evidence of **additional insured** status shall be noted on the certificate of insurance.

(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. **Additional insured** status for both ongoing and completed operations, in favor of City of Wilmington, its officer, officials, agents and employees, will be carried by Subcontractor performing installation.

(I) CONDITIONS

(1) The insurance required for this Agreement must be on forms acceptable to The City of Wilmington.

(2) The CONTRACTOR shall provide that the insurance contributing to satisfaction of 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) 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.

(5) 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 Agreement.

(6) 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.

17. 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 the prior written agreement of the CITY.

18. No Presumption

None of the Parties shall be considered the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Agreement was drafted with substantial input by all Parties and their counsel, and no reliance was placed on any representations other than those contained herein.

19. 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.

20. Entire Agreement

This Agreement constitutes the entire understanding of the parties.

21. Binding Effect

This Agreement shall be binding upon the heirs, successors, assigns, agents, officials, employees, independent contractors, and subcontractors of the parties.

22. Continuing Obligation

The parties will make and execute all further instruments and documents required to carry out the purposes and intent of the Agreement.

23. 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.

24. Interpretation/Governing Law

All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina without regard to any conflicts of law principles and subject to the exclusive jurisdiction of federal or state courts within the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard. The place of this Agreement, its situs and forum, shall be Wilmington, New Hanover County, North Carolina, and in said County and State shall all matters, whether sounding in contract or tort relating to the validity, construction, interpretation, or enforcement of this Agreement be determined.

25. Minority Business Enterprise (MBE)

The CITY desires that minority business enterprises have the maximum opportunity to participate in the performance of this Agreement and will:

(a) 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.

(b) Ensure that competitive and equitable bidding opportunities are followed to afford minority business enterprises participation. Strive to obtain contract and subcontract awards to minority business enterprises.

(c) 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.

(d) Provide technical assistance as needed.

(e) Promulgate and enforce contractual requirements that the general contractor on all construction projects shall exercise all necessary and reasonable steps to ensure that minority business enterprises participate in the work required in such construction contract.

(f) The CONTRACTOR shall ensure that minority business enterprises have the maximum opportunity to compete for and perform portions of the work included in this Agreement 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 Agreement or other appropriate remedy.

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

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

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

26. 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.

27. 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.

28. 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 Quality, Health Departments, and any other federal, state or local agency having jurisdiction, to ensure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder. CONTRACTOR specifically acknowledges and agrees that CONTRACTOR, and any subcontractors it uses, has complied with, and shall continue to comply with the provisions of the federal E-Verify program in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes. CONTRACTOR shall maintain adequate safeguards with respect to sensitive customer information in conformance with and pursuant to 16 C.F.R. § 681.1 and in accordance with N.C.G.S. § 132-1.10 and § 75-65.

29. Amendments

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

30. 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 based on 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 contract in whole or in part.

31. Non-Appropriations Clause

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.

32. 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.

33. No Publicity

No advertising, sales promotion or other materials of the CONTRACTOR or its agents or representations may identify or reference this Agreement 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 response to requests for proposals and may identify the CITY as a customer in presentations to potential customers.

34. 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 Agreement.

35. 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.

36. Authority to Act

Each of the persons executing this Agreement on behalf of CONTRACTOR does hereby covenant, warrant, and represent that the CONTRACTOR is a duly organized and validly existing legal entity authorized to transact business within the State of North Carolina, that the CONTRACTOR has full right and authority to enter into this Agreement, and that each and all persons signing on behalf of the CONTRACTOR were authorized to do so.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the CITY has caused this Agreement to be duly executed in its name and the CONTRACTOR has caused this Agreement to be duly executed in its name and behalf.

CITY OF WILMINGTON, NORTH CAROLINA

By: _____

Authorized Signature, Title

Date: _____

WITNESS:

Daryle L. Parker, Purchasing Manager

APPROVED AS TO FORM:

Gina Essey, 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 _____, 2025.

Martha Wayne, Finance Director

Project String:

Org:/Obj: Project:

Amount:

Requisition:

Federal ID Number: 56-6000239

VENDOR SIGNATURE PAGE

CERTIFICATION OF INSURANCE