

Request for Proposals for the MLK Community Center Commercial Kitchen Operator

RFP No. S12-1224



Solicitation Due Date: Tuesday, December 10, 2024, **Time:** 3:00 p.m. (Eastern Time)

All Proposals must be received by the City of Wilmington, (City) by the date and time cited above. It shall be the Proposer's sole risk to assure submission by the designated time.

VENDORS ARE STRONGLY ENCOURAGED TO READ THE ENTIRE SOLICITATION.

Solicitation packages can be obtained by downloading from the City's website <https://www.wilmingtonnc.gov/current-bids>. For assistance obtaining copies of the RFP or should you experience problems downloading the solicitation, email Raquel Perez at raquel.perez@wilmingtonnc.gov

All questions concerning the RFP **must** be submitted via email only to Amy Beatty, amy.beatty@wilmingtonnc.gov, as identified within this solicitation in **Section 1.8**. Communications with other City staff, other than for assistance with downloading the solicitation, may disqualify you from the evaluation process.



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1 RFP Introduction and Background

1.1 Introduction

The City of Wilmington (City) is soliciting proposals from qualified organizations capable of setting up and operating a community-driven commercial kitchen. The kitchen is located in the MLK Community Center located at 401 S. 8th Street in Wilmington, North Carolina. The kitchen is currently being professionally renovated from a recreational kitchen to a commercial kitchen.

In addition to soliciting written responses, this document provides information to assist Proposers in preparing their responses and facilitates the subsequent evaluation and comparison process. In that regard, this RFP:

- Provides information essential to soliciting meaningful recommendations and realistic commitments from the Proposers
- Specifies the desired format and content of Proposals in response to this RFP
- Outlines the City's evaluation and selection procedures
- Establishes a schedule for the preparation and submission of Proposals in response to this RFP

This RFP and the selected Proposal in response to this RFP will be incorporated into the contract resulting from this solicitation.

1.2 About The City, the MLK Center and the MLK Commercial Kitchen

The City of Wilmington, incorporated in 1739, is in the southeastern region of North Carolina. The city borders the Cape Fear River on the west and the Intracoastal Waterway on the east, adjacent to the Atlantic Ocean. Wilmington is the County Seat of New Hanover County and is one of the fastest growing regions in the southeast. Its population (2022) stands at 120,324. The City has a Council-Manager form of government. The Council is comprised of the Mayor and six council members. The Mayor is elected at large every two years and the Council members are elected at large every four years with staggered terms. The Council is the legislative body of city government with the Mayor as a voting member and the presiding officer. The city manager is appointed by the Council and administers the daily operations of the City through appointed department heads. City Council meetings are typically held the 1st and 3rd Tuesday of each month in City Hall.

A commercial kitchen was included in the scope of a 2024 renovation project to the MLK Center. The MLK Center is Wilmington's oldest community center. It is located blocks from the heart of downtown Wilmington surrounded by a residential neighborhood and across the street from two schools. It contains two gyms (one under construction with a completion date of April 2025), two multi-purpose rooms, a computer room, conference room and is adjacent to an outdoor sports complex.

The kitchen is 671 square feet, increasing to 750 square feet when the walk-in cooler's area is included. It includes a dry storage area, a pantry, a service area, ranges, friers, a char grill and flat grill, prep space and more. The kitchen is intended to serve as a shared-use facility with space and equipment designed for use by aspiring entrepreneurs seeking to work in the food service business. The kitchen is also expected to be used as a teaching and programming space.

1.3 Project Mission and Objectives

The project mission is for the City of Wilmington to support the establishment of a certified commercial kitchen that will promote economic opportunities for low to moderate income individuals by providing work space, business training, and networking opportunities for culinary start-ups and those interested in food ventures and careers, and to enhance the health and wellness of those in our community who lack access to nutrition classes and healthy meal preparation.

The overall goal of the project is to help provide incubation opportunities for Wilmington residents desiring to start their own food business, and to be a community driven hub for nutrition, food preparation, wellness, business and economic education.

- Key Objectives and Outcomes:
 - Incubator & Business Training: The kitchen will support residents, specifically targeting low to moderate income residents who seek to become entrepreneurs and small business owners in the food business industry whether it be as chefs, bakers, instructors, suppliers, restaurateurs or other food-related occupations. Technical, business and regulatory instruction shall be included.
 - Development: The kitchen will provide rental space for individuals, specifically targeting low to moderate income individuals who wish to manufacture, produce, prepare, assemble or provide food for ready-to-eat consumption by the public or for resale, improving access and affordability to locally made products, especially to low-income or underserved neighborhoods.
 - Education: The kitchen will be used as an educational space for community classes designed to improve the health and wellness of the community: programs for youth and older adults on nutrition, diabetes prevention, meal preparation, etc.
 - Community: The kitchen will be used to cater the MLK Center's Thanksgiving Dinner event, MLK Day holiday events and Juneteenth festivities.
 - Collaboration: Collaborate with the City of Wilmington to offer classes, programs and events.

1.4 Definitions

In order to simplify the language throughout this RFP, the following definitions shall apply:

ADDENDA – Written instruments issued by the City prior to the date for receipt of Proposals that modify or interpret the RFP documents by addition, deletions, clarification, or corrections.

CITY – City of Wilmington, North Carolina.

CITY EVALUATION COMMITTEE – The team of City staff that will participate in the review, evaluation, and scoring of proposals and subsequent evaluation processes, including demonstrations and reference checks.

CITY PROJECT MANAGER – The person designated by the City to be the City Project Manager assigned to act on behalf of the City during the term of the resulting Contract.

CONTRACT DOCUMENTS – The RFP, submitted Proposals, including any diagrams, Addenda, and a form of agreement between the City and the Contractor, including all change orders, insurance certificates, exhibits, amendments, and attachments.

CONTRACTOR – The Contractor(s)/consultant(s) that may be awarded a contract to provide operational services at the MLK Community Center Commercial Kitchen

DAYS – Means calendar days unless otherwise specified.

PROJECT – The project to open and operate a commercial kitchen at the MLK Community Center.

PROJECT SCOPE – Scope of services to be provided by the Contractor(s).

PROPOSAL – A complete and properly signed Proposal to provide goods, commodities, labor, or services for the sum stated and submitted in accordance with the RFP.

PROPOSER or VENDOR – The person, Contractor, corporation, partnership, or other entity submitting a Proposal on items listed in the RFP documents, and thereby agreeing to meet the specified Contract terms and conditions if awarded the contract.

SERVICES or WORK – All services to be performed by the Contractor to successfully complete the Project to the satisfaction of the City.

SUBCONTRACTOR or SUBCONSULTANT – Any individual, corporation, company, or other entity that contracts to perform work or render services to a Contractor or to another subcontractor as part of this Contract with the City.

VENDOR – See “PROPOSER.”

1.5 RFP Schedule of Events

The following RFP Schedule of Events represents the best estimate of the schedule the City will follow, which is subject to change at the City’s discretion. Vendors are encouraged to hold the demonstration dates listed. If a component of the schedule is accelerated or delayed, it shall be anticipated that the remaining components may also be adjusted by a similar number of days via RFP Addendum prior to the submittal deadline.

Table 02: RFP Schedule of Events

Event	Estimated Date
RFP Published	November 8, 2024
Pre-Proposal Vendor Teleconference	Thursday, November 14, 2024, at 1pm ET
Deadline for Questions from Vendors	November 25, 2024, at 5pm ET
Deadline for Proposal Submissions	December 10, 2024, at 3pm ET
Shortlist Vendors Notified	TBD
Vendor Demonstrations	TBD

1.6 Prequalification of Vendors

The City has not employed a prequalification process. No Vendors are either prequalified or precluded from responding to this RFP. The City has not engaged in any formal discussions or demonstrations with vendors leading up to the issuance of this RFP.

1.7 Minimum Qualifications

In order for Proposals to be evaluated and considered for award, Proposals must be deemed responsive to this RFP as determined in the discretion of the City Evaluation Committee. To be deemed responsive, the submitted Proposal documents shall conform in all material respects to the requirements stated in the RFP, and Proposers shall document and validate the capability to fully perform all requirements defined by the RFP. Factors to be considered in connection with a Proposer's capability to fully perform all requirements of the RFP include, and may not be limited to: experience, integrity, reliability, capacity, and other factors required to provide the Services defined by the RFP.

1.8 Questions and Inquiries

It shall be the responsibility of the Proposers to inquire about any portion of the RFP that is not fully understood or that is susceptible to more than one interpretation [prior to the question period closing](#).

- All questions concerning the RFP **must** be submitted via email only to Amy Beatty, amy.beatty@wilmingtonnc.gov
- Questions and answers will be issued in accordance with [Section 1.10 – Amendments and Addenda](#).
- Only questions and answers publicly published through Addenda shall be binding.

Proposers shall not contact other City staff with any questions or inquiries. Unauthorized contact with any personnel of the City may be cause for rejection of the Proposer's response. The decision to reject a Proposal is solely that of the City.

1.9 Non-Mandatory Pre-Proposal Vendor Teleconference

A non-mandatory Pre-Proposal Vendor Teleconference will be held on **Thursday, November 14, 2024, at 1pm Eastern Time**.

Vendors that are interested in participating in the Pre-Proposal Vendor Teleconference shall contact Daryle Parker, daryle.parker@wilmingtonnc.gov to request the teleconference information.

The format of the Pre-Proposal Vendor Teleconference will be an overview presentation of the RFP, its contents, the RFP Schedule of Events, and additional topics. Following the presentation, Vendors will be able to ask questions related to the RFP or the overall process. The City will attempt to answer all questions at that time, but answers provided shall not be binding. Following the Pre-Proposal Vendor Teleconference, the City will post online the material questions asked and their respective answers in an addendum.

1.10 Amendments and Addenda

All clarifications, corrections, or revisions to this RFP will be documented in an addendum, which will be publicly published to the City website. Only questions and answers in an addendum shall be considered as part of the RFP. The City reserves the right to revise the RFP prior to [the deadline for](#)

[Proposal submissions](#). Revisions shall be documented in an addendum and publicly published and/or provide via email.

The City will attempt to publicly publish periodic addenda on a timely basis between the RFP publishing date and the close of the question period. Vendors are responsible for monitoring the City website for the periodic posting of addenda prior to the submittal due date.

1.11 Non-Warranty of RFP Information

Due care and diligence has been exercised in the preparation of this RFP and all information herein is believed to be substantially correct. However, the responsibility for determining the full extent of the exposure to risk and verification of all information herein shall rest solely on those parties making Proposals. The City, its representatives, and its agents shall not be responsible for any error or omission in this RFP, nor shall they be responsible for the failure on the part of any Proposers or their representatives to verify the information herein and to determine the full extent of that exposure.

2 Project Scope

Proposers should be experienced in kitchen management, business management, facility/program operations, or the culinary industry combined with experience in the nonprofit sector in the areas of food distribution, human services, or public health with demonstrated successes in:

- Program development
- Facility management
- Community networking
- Outreach/Education
- Fundraising
- Business development
- Promotion

Provide a narrative that includes the proposer's plan to achieve the kitchen's stated mission and objectives. **Include potential partnerships/sponsorships in your response.**

3 Proposal Evaluation and Award

The following subsection outlines the intended proposal evaluation process the City has identified. The City reserves the right to deviate from this process at its own discretion, and to (i) negotiate any and all elements of the RFP, (ii) amend, modify, or withdraw the RFP, (iii) revise any requirements under the RFP, (iv) require supplemental statements of information from any Proposer, (v) extend the deadline for submission of Proposals, (vi) cancel, in whole or part, this RFP if the City deems it is in its best interest to do so, (vii) request additional information or clarification of information provided in any Proposal without changing the terms of the RFP, (viii) award this project in whole or in part to a vendor other than the highest scoring vendor based on the determination of the best overall value and/or fit for the City, and/or (ix) waive any portion of the selection process in order to accelerate the selection and negotiation with the top-ranked Proposer. The City may exercise the foregoing rights at any time without notice and without liability to any Proposer, or any other party, for expenses incurred in the preparation of responses hereto or otherwise.

- Vendor Shortlist:** The City Evaluation Committee will initially review and evaluate each Proposal received to determine the Proposer's ability to meet the requirements of the City. The evaluation criteria described in will be the basis for evaluation. The Evaluation Committee will determine the Proposers best suited to meet the needs of the City based on the scoring of the evaluation criteria. These Vendors will form the Vendor Shortlist.
- Vendor Presentations:** The City, at its sole discretion, reserves the right to request presentations with those Proposers on the Vendor Shortlist, or any other Proposer. Presentations may be conducted at City offices or via web conference, subject to then-current public health guidance. Demonstrations will involve a scripted demonstration. The schedule, scripts, and presentation requirements will be provided with the invitation to participate in demonstrations. Proposers will have an opportunity to review the format of the presentations and ask questions related to procedure and specific demonstration scenarios. Vendors that are invited to participate in presentations are advised that the provided scripts must be strictly adhered to while presenting. Evaluation Committee members will view the presentations, and additional City staff may also be in attendance to observe and provide informal feedback.

- c. **Reference Checks:** The City may employ a process of contacting references provided through Proposers' proposals. This process may include teleconference meetings, web conferences, and in-person meetings with references. The City reserves the right to conduct reference checks at any point in the evaluation process, and to contact other known users of the proposed system(s) beyond just those references provided.
- d. **Best and Final Offer and Request for Clarification:** A Best-and-Final-Offer process may be initiated if it is determined to be in the best interest of the City. Such process may be initiated following the identification of the Vendor Shortlist or at any other evaluation process step. Additional processes of scope and cost clarification may be employed as part of the evaluation process if it is deemed to be in the City's best interest.

3.1 Clarification and Discussion of Proposals

The City may request clarifications and conduct discussions with any Proposer that submits a Proposal, including requesting additional information. The City reserves the right to select the Proposal or Proposals that it believes is the most responsive as determined by the City Evaluation Committee, which will best serve the City business and operational requirements, considering the evaluation criteria set forth below. The initial evaluation may be adjusted because of a clarification under this section. The City reserves the right to waive irregularities in the Proposal content or to request supplemental information from Proposers.

3.2 Evaluation Criteria

As described in the preceding Evaluation process sub-section, the City intends to follow a cumulative approach to scoring based on key evaluation activities (e.g., scoring is conducted in a progressive manner, following various steps in the process). The City hereby reserves the right to evaluate, at its sole discretion, the extent to which each Proposal received compares to the stated criteria. Vendor proposals shall be evaluated in accordance with the following criteria, subject to variation at the sole discretion of the City:

3.2.1 Short-List Identification: The City intends to utilize the criteria presented in Table 08 following the Evaluation Team's review of Proposals.

Table 08: Short-List Identification Criteria

Criteria	Description	Points
Business Plan	<p>Provide a detailed business plan for the operation and management of the kitchen which should include the following:</p> <ul style="list-style-type: none"> • Experience managing similar facilities • Background and history that uniquely qualify your proposal • Resumes/experience of the key personnel that will be involved with operations • Financial structure • Ability to contribute to maintenance and future capital improvements. • How rental space will be marketed; identify rental space occupancy target rates • Program promotional strategy 	30
Qualifications	<p>Discuss knowledge/understanding of the mission and objectives. Demonstrate the financial and human resource capacity to perform the work. List any current litigation in which key participants are a defendant. Clearly define the proposed organizational structure: include an organizational chart (include subcontractors/sub-consultants and their ability to undertake the assignment) and define responsibilities. Provide resumes/relevant experience of proposed team members.</p>	30
Financial Proposal	<p>Submit a proposed operating budget. It is expected that all costs for the operation and management are the responsibility of the entity selected. Please state any exceptions to this. Propose any revenue sharing programs</p>	20

Criteria	Description	Points
	and any plans for maintenance and ongoing capital improvements.	
Proposer Experience	<p>This criterion considers but is not limited to the following:</p> <ul style="list-style-type: none"> The Proposer's experience delivering the services requested in the RFP. Include the experience of named staff delivering the services. The Proposer's experience with similar implementations for comparable organizations. 	15
MBE/WBE/HUB/DBE	<p>The City and its contractor agree to ensure that MBE/WBE/HUB/DBE's have the maximum opportunity to participate in the performance of contract and subcontracts financed in whole or in part with City of Wilmington funds provided under this agreement. In this regard, bidders and contractors shall take all necessary and reasonable steps in accordance with N.C.G.S. § 143-128 to ensure that MBE/WBE/HUB/ DBE firms have the maximum opportunity to compete and perform under this bid, any change orders and any subsequent contract. The City of Wilmington and its contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and/or performance of this contract. A complete copy of the City of Wilmington's MBE/DBE policy is available for inspection at the Purchasing Manager's Office.</p>	5

No Obligation, Right of Rejection, and Multiple Award

The inquiry made through this RFP implies no obligation on the part of the City. This RFP does not constitute an offer or a contract with any Proposer or other party. The City reserves the right to reject any or all Proposals, in whole or in part, and to waive any informality in proposals received, deemed to be in the best interest of the City or to accept or reject all or any part of any Proposal. Proposals deemed to be received from debarred or suspended Vendors will be rejected. The City may reject any Proposal that is not responsive to all of the material and substantial terms, conditions, and performance requirements of this RFP. The City further reserves the right to award all, part, or none of the components/functional areas included in this RFP. In addition, the City reserves the right to make one or more awards to competing Proposers for subsets of functionality as a result of this RFP. The City also reserves the right to refrain from making an award if it determines it to be in its best interest. The City reserves the right to abandon the Project and/or to re-advertise and solicit other Proposals. The City reserves the right to create a Project of lesser or greater expense than described in this RFP or the Proposer's reply, based on the component prices or scope submitted. The City reserves the right to cancel this solicitation or to change its scope if it is considered to be in the best interest of the City.

3.3 Offer Held Firm

Unless otherwise specified, all bids/proposals submitted shall be valid for a minimum period of 180 calendar days following the date established for receiving bids/proposals. At the end of the 180 calendar days the bid/proposal may be withdrawn at the written request of the bidder/proposer. If the bid/proposal is not withdrawn at that time, it remains in effect until an award is made or the solicitation is cancelled.

3.4 Contract Negotiation

After final evaluation, the City may negotiate with the Proposer(s) of the highest-ranked Proposal. If any Proposer fails to negotiate in good faith, the City may terminate negotiations and negotiate with the Proposer of the next highest-ranked Proposal or terminate negotiations with any or all Proposers. If contract negotiations are commenced, they may be held at City office locations or via teleconference. If contract negotiations are held, the Proposer will be responsible for all of Proposer's costs including, without limitation, its travel and per diem expenses and its legal fees and costs.

3.5 Failure to Negotiate

If the selected Proposer:

1. Fails to provide the information required to begin negotiations in a timely manner
2. Fails to negotiate in good faith
3. Indicates it cannot perform the contract within the designated timeframes or within budgeted funds available for the Project
4. If the Proposer and the City, after a good-faith effort, cannot come to terms; then

The City may terminate negotiations with the Proposer initially selected and commence negotiations with the next highest-ranked Proposer. At any point in the negotiation process, the City may, at its sole discretion, terminate negotiations with any or all Proposers.

3.6 Contract Type

The contract resulting from this RFP shall be in form and content satisfactory to the City and shall include, without limitation, the terms and conditions provided for in this RFP and any sample agreement provided by the City, and such other terms and conditions as the City deems necessary and appropriate.

The initial contract price will be based on prices submitted by the Selected Proposer, subject to contract negotiations with the City, and shall remain firm for the initial term of the contract. Price adjustments may be negotiated at the request of either party in the extension periods with mutual agreement of the parties. A party proposing a price change in an extension period must notify the other party at least one-hundred eighty (180) days prior to the commencement of any extension period.

3.7 Contract Changes

Written requests for price changes, during the implementation process or thereafter, resulting from a change of scope, as initiated or requested by the City, must be submitted in writing to the City via Change Order. Any increase will be based on the Contractor's actual cost increase only, as shown in written documentation. All Change Order requests must be in writing, must not constitute increases in profit, and must contain data establishing or supporting the increase in cost. At the option of the City, (1) the request may be granted; (2) the Change Order may be modified to include a greater, or lesser, scope; or (3) the City and Proposer may continue with the Contract without change. The City will accept or reject all such written requests within ninety (90) days of the date of receipt of Contractor's request for price increase or receipt of proper written documentation, whichever is later.

If a price increase is approved, the City will issue an amendment or change order to the contract specifying the date the increase will be effective. All Services and related accessories are to be billed at prices in effect at the time the service was rendered or order was placed. If a price increase is rejected, the Contractor will be notified and, at the option of the City, the Contract may be (1) cancelled and the solicitation may be re-advertised; or (2) continued without change.

All other Contract changes will be effective only on written agreement signed by both parties.

3.8 Contract Approval

The City's obligation will commence only following the City Council's approval of a Contract and the parties' execution of the Contract. Upon written notice to the Contractor, the City may set a different starting date for the Contract. The City will not be responsible for any work done or expense incurred by the Contractor or any subcontractor, even such work was done or such expense was incurred in good faith, if it occurs prior to the Contract start date set by the City.

4 Submittal Response Format

4.1 General Instructions

The following instructions must be followed by Proposers submitting Proposals. Offers that do not comply with all instructions contained herein may be disqualified:

1. **Deadline:** The deadline for Proposal submissions is established in [Section 1.5](#). It will be the sole responsibility of the Proposer to submit its Proposal to the City before the closing deadline.
2. **Hard Copy Proposals:** Proposers shall submit one (1) version of the Technical Proposal and one (1) version of the Price Proposal in separate three-ring binders with tab separators or otherwise under separate cover, clearly marked "Original.", as well as three (3) copies of the proposal under similar format. Technical Proposals shall not include extraneous marketing materials.
3. **Email Proposals:** No emails will be accepted for proposal submission.
4. **Electronic Media Proposal File Formats and Naming:** Proposers shall submit along with the hard copy proposals, one (1) electronic version of the Technical Proposal and one (1) electronic version of the Price Proposal on separate removable devices (e.g., USB drive). The following table provides the required file formats and naming conventions for the electronic media files.

- 4.2 **Confidential Information:** Proposers shall clearly mark any information or graphics that are considered to be confidential as such within Proposal submissions. Any such designation as confidential shall be specific as to the portions of the proposal deemed confidential by the vendor, and not the entire Proposal response.

- 4.3 **Delivery/Mailing Instructions:** Sealed Proposals shall be clearly labeled on the outside of the packaging with the RFP Number and RFP Title (**RFP No. S12-1224 MLK Community Center Commercial Kitchen Operator**). The mailing address for Proposals is contained in the following table.

Proposal Mailing Address

Mailing Address
Attn: Daryle Parker, Purchasing Manager City of Wilmington 929 N. Front St./ P.O. 1810 Wilmington, NC 28402

5 Contractual requirements & terms and conditions

CONTRACTUAL REQUIREMENTS & TERMS AND CONDITIONS

The following terms and conditions apply to this RFP solicitation process and will be incorporated into the resulting contract as applicable. The City expects the resulting contract to include the RFP and proposal response as exhibits.

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

B. Workers’ Compensation and Employer’s Liability

1. CONTRACTOR shall maintain Workers’ Compensation as required by the general statutes of the State of North Carolina and Employer’s Liability Insurance.

2. The Employer's Liability, and if necessary, Commercial Umbrella Liability insurance shall not be less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 policy limit.
3. The insurer shall agree to waive all rights of subrogation against the City of Wilmington, its officers, officials, agents and employees for losses arising from work performed by the CONTRACTOR for the City of Wilmington.
4. The U.S. Longshore and Harborworkers Compensation Act endorsement shall be attached to the policy when the services will be on or in close proximity to navigable waterways.
5. The Maritime Coverage endorsement (WC 00 02 01) shall be attached to the policy when the contracted services involve the use of watercraft.

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

C. Business Auto Liability

1. CONTRACTOR shall maintain Business Auto Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$1,000,000 each accident.
2. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos.
3. Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01.
4. Pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached when those exposures exist.
5. CONTRACTOR waives all rights against the City of Wilmington, its officers, officials, agents and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by CONTRACTOR pursuant to Section 11.C.1 of this agreement.
6. The CONTRACTOR's Business Auto Liability insurance shall be primary as respects the City of Wilmington, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of Wilmington, its officers, officials, and employees shall be excess of and not contribute with the CONTRACTOR's insurance.

D. Professional Liability Insurance

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

or an extended discovery period will be exercised for a period of 2 (two) years beginning from the time that work under the contract is complete.

E. Fidelity Coverage (Employee Dishonesty)

Contractor shall maintain Fidelity Coverage providing employee dishonesty, forgery or alteration, theft, disappearance, destruction, and computer fraud coverage covering Contractors, employees, officials, and agents for Fidelity in the amount of \$500,000. This requirement may be met with Commercial Crime insurance or a Fidelity Bond.

F. 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.

G. 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.

H. 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.

I. Evidence of Insurance

1. The CONTRACTOR shall furnish the City of Wilmington with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the work, and thereafter upon renewal or replacement of each certified coverage until all operations under this contract are deemed complete.
2. Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in Section 11.
3. With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to the City of Wilmington with final application for payment and thereafter upon renewal or replacement

of such insurance until the expiration of the period for which such insurance must be maintained.

J. Subcontractors

CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein. Commercial General Liability coverage shall include independent CONTRACTOR's coverage, and the CONTRACTOR shall be responsible for assuring that all subcontractors are properly insured.

K. Conditions

1. The insurance required for this contract must be on forms acceptable to the City of Wilmington.
2. The CONTRACTOR shall provide that the insurance contributing to satisfaction of insurance requirements in Section 11. Minimum Scope and Insurance Requirements shall not be canceled, terminated or modified by the CONTRACTOR without prior written approval of the City of Wilmington.
3. The CONTRACTOR shall promptly notify the Safety & Risk Manager at (910) 341-5864 of any accidents arising in the course of operations under the contract causing bodily injury or property damage.
4. The City of Wilmington reserves the right to obtain complete, certified copies of all required insurance policies, at any time.
5. Failure of the City of Wilmington to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of the City of Wilmington to identify a deficiency from evidence that is provided shall not be construed as a waiver of CONTRACTOR's obligation to maintain such insurance.
6. By requiring insurance herein, the City of Wilmington does not represent that coverage and limits will necessarily be adequate to protect the CONTRACTOR and such coverage and limits shall not be deemed as a limitation of CONTRACTOR's liability under the indemnities granted to the City of Wilmington in this contract.
7. The City of Wilmington shall have the right, but not the obligation of prohibiting CONTRACTOR or any subcontractor from entering the project site or withhold payment until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City of Wilmington.

INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR shall release, indemnify, keep and save harmless the CITY, its agents, officials and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the CITY or third persons, and to all property proximately caused by, directly or indirectly, the performance or nonperformance by CONTRACTOR (or by any person acting for CONTRACTOR or for whom CONTRACTOR is or is alleged to be in any way responsible), whether such claim may be based in whole or in part upon

contract, tort (including alleged active or passive negligence or participation in the wrong), or upon any alleged breach of any duty or obligation on the part of CONTRACTOR, its agents, officials and employees or otherwise. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the CITY, its agents, officials, and employees including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include without limitation the costs incurred by the CITY, its agents, officials and employees, in connection with investigating any claim or defending any action and shall also include reasonable attorneys' fees by reason of the assertion of any such claim against the CITY, its agents, officials or employees. CONTRACTOR expressly understands and agrees that any performance bond or insurance protection required by this agreement, or otherwise provided by the CONTRACTOR, shall in no way limit CONTRACTOR's responsibility to release, indemnify, keep and save harmless and defend the CITY as herein provided. The intention of the parties is to apply and construe broadly in favor of the CITY the foregoing provisions subject to the limitations, if any, set forth in N.C.G.S. 22B-1.

ASSIGNMENT

No party shall sell or assign any interest in or obligation under this Agreement without the prior express written consent of all the parties.

COMPLIANCE WITH LAWS

CONTRACTOR will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances including those regarding toxic, hazardous and solid wastes and any pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. CONTRACTOR will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Management, Health Departments, and any other federal, state or local agency having jurisdiction, to insure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder. CONTRACTOR specifically acknowledges and agrees that CONTRACTOR, and any subcontractors it uses, has complied with and shall continue to comply with the provisions of the federal E-Verify program in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes. CONTRACTOR shall maintain adequate safeguards with respect to sensitive customer information in conformance with and pursuant to 16 C.F.R. §681.1 and in accordance with N.C. Gen. Stat. §132-1.10 and §75-65.

CONTRACTOR REPRESENTATIONS AND WARRANTIES

Independent CONTRACTOR. This Agreement does not create an employee/employer relationship between the parties. It is the intention of the parties that the CONTRACTOR will be an independent CONTRACTOR and not the CITY's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax

Act, the provisions of the federal Internal Revenue Code, the provisions of the North Carolina revenue and taxation laws, the North Carolina Wage and Hour Act, the North Carolina Workers' Compensation Act, and the provisions of the North Carolina Employment Security Law. The CONTRACTOR will retain sole and absolute discretion in the judgment of the manner and means of carrying out the CONTRACTOR's activities and responsibilities hereunder. The CONTRACTOR agrees that he/she/it is a separate and independent enterprise from the CITY; and that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the services described herein. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the CITY, and the CITY will not be liable for any obligation incurred by the CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

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

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

Records. The CITY has the right to audit all records pertaining to this Agreement both during its performance and after its completion. Further, upon termination of this Agreement, the CONTRACTOR shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials produced by CONTRACTOR in connection with services rendered pursuant to this Agreement. If compensation for expenses shall be provided to CONTRACTOR, the CONTRACTOR shall maintain all expense charge documents for a period of three (3) years following the completion of this agreement and said documents shall only be forwarded to the CITY upon request.

Ownership of Documents. The CONTRACTOR agrees that all materials and documents developed pursuant to this Agreement shall be the exclusive property of the CITY, and the CONTRACTOR shall retain no property or copyright interest therein. Further, upon termination of this Agreement, the CONTRACTOR shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials received or obtained from the CITY in connection with services rendered pursuant to this Agreement.

ACKNOWLEDGEMENTS

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

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

Immunity Not Waived. This Agreement is governmental in nature, for the benefit of the public. CONTRACTOR acknowledges that CITY reserves all immunities, defenses, rights or actions arising out of CITY's sovereign status under applicable law. No waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of CITY's entry into this Agreement.

Saving Clause. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Agreement is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

Entire Agreement and Amendment. This Agreement, including any Exhibits attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the parties, and no warranties, inducements, considerations, promises or other inferences shall be implied or impressed upon this Agreement that are not set forth herein. This Agreement shall not be altered or amended except in writing signed by all Parties.

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

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

Minority Business Enterprise (MBE). The CITY desires that minority business enterprises have the maximum opportunity to participate in the performance of this contract and will:

1. Promote affirmatively (where feasible) in accordance with North Carolina General Statute 143-129, together with all other applicable laws, statutes and constitutional provisions, the procurement of goods, services in connection with construction projects for minority owned business enterprises.

2. Ensure that competitive and equitable bidding opportunities are followed to afford minority business enterprises participation. Strive to obtain contract and subcontract awards to minority business enterprises.
3. Identify and communicate to the minority business enterprises community procedures and contract requirements necessary for procurement of goods and services for construction projects and subcontracts.
4. Provide technical assistance as needed.
5. Promulgate and enforce contractual requirements that the general CONTRACTOR or all construction projects shall exercise all necessary and reasonable steps to ensure that minority business enterprises participate in the work required in such construction contracts.

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

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

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

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

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 _____, 2024.

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 _____, 2024.

Notary Public

My Commission Expires: _____

(NOTARY SEAL)

**MKL COMMUNITY CENTER
COMMERCIAL KITCHEN OPERATOR**

CERTIFICATION

Proposers Signature: _____ **Date:** _____

By signing above, I certify that I have carefully read and fully understand the information contained in this RFP; 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. **It is the offeror's responsibility to ensure that all addenda have been reviewed prior to proposal submission.**

BY (Printed): _____

TITLE: _____

COMPANY: _____

ADDRESS: _____

TELEPHONE: _____

EMAIL: _____

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

1. Please indicate type of business organization:

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

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

Name and title of officers, authorized by Corporate Resolution, who will execute the contract on

behalf of corporation (generally President and Secretary).

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 or 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 _____.