



**GENERAL SERVICES**  
CITY OF DURHAM

**Request for Qualifications (RFQ)  
For  
FY27-FY29 On-Call Professional Services:  
Geotechnical, Environmental, Materials Testing & Special Inspections, Surveying, and Cost Estimating**

Date of Issue: 11/21/2025

**A. PURPOSE FOR RFQ**

1. Through this request for qualification (RFQ), notice is hereby given that the City of Durham, North Carolina, General Services Department, is seeking consulting firms to provide professional services for FY27-FY29 On-Call Services: Geotechnical, Environmental, Materials Testing/Special Inspection, Surveying, and Cost Estimating for a multi-year portfolio of projects.
2. This RFQ provides complete information on the services being sought, the submittal requirements, and timeline. Copies of the RFQ may be downloaded directly from this site:  
<http://durhamnc.gov/bids.aspx>.

Interested firms shall **email** a Statement of Qualifications, meeting the requirements defined in the RFQ to:

Bree Aguilar  
City of Durham, Owner  
General Services Department  
2011 Fay Street  
Durham, NC 27704  
Phone: (919) 691-5962  
Email: [bree.aguilar@durhamnc.gov](mailto:bree.aguilar@durhamnc.gov)

3. **Emailed Statements of Qualifications must be received by 3:00pm EST on 12/30/2025**  
To ensure receipt of any addenda to the RFQ, please contact the person listed above to register as an interested firm. The City is not responsible for providing updated information/changes to firms not known by the City as holding a copy of this RFQ.
4. **Any questions regarding this RFQ must be received in writing prior to 12/12/2025 by 3:00pm EST.** Questions received after this date may not receive a response. Questions should be directed to Bree Aguilar at [bree.aguilar@durhamnc.gov](mailto:bree.aguilar@durhamnc.gov) and will be answered in an addendum posted on the City's website: <http://durhamnc.gov/bids.aspx>. Firms who are registered as interested firms will receive the addendum via email. Questions received by the Department of General Services after this date will not receive a response or be the subject of addenda.

5. This RFQ does not obligate the City to pay any costs incurred by respondents in the preparation and submission of a response. Furthermore, the RFQ does not obligate the City to accept or contract for any expressed or implied services. The City of Durham reserves the right to reject any and all submittals. The City of Durham is committed to a program of equal employment opportunity regardless of race, color, creed, sex, age, nationality or disability.

**B. BACKGROUND AND SCOPE OF SERVICES**

The City of Durham, North Carolina General Services Department (GSD) is responsible for City facility design, construction, operation, maintenance, evaluation, rehabilitation, and improvement projects.

The City intends to select at a minimum one consultant for each discipline area below but may select multiple consultants for any given discipline. It is anticipated that each selected firm will execute a master service agreement (MSA) with the City and supplemental service agreements (SSA) will be executed as projects arise.

The City anticipates needing professional services in the following discipline areas and respondents must indicate the discipline area(s) in which they wish to be considered. The discipline area(s) must be able to be performed directly by the consultant, not by a subconsultant or subcontractor. It is not anticipated that an individual firm will supply all services listed below, but a firm may submit on more than one service if they are qualified to do so.

- Geotechnical Engineering**
- Environmental Assessments**
- Hazardous Materials Testing**
- Construction Materials Testing and Special Inspections**
- Surveying**
- Cost Estimating**

The contract term will be two (2) years. The City reserves the right to cancel the MSA or SSA at any time or discontinue a firm’s participation. Instances where this may occur include, but are not limited to, contracted firms not meeting performance expectations, or routinely declining opportunities to participate.

**C. SCHEDULE**

<b>Preliminary Project Schedule</b>	<b>Date</b>
RFQ Questions Received By	12/12/2025 3:00pm EST
Pre-Submittal Meeting	N/A
Qualifications Due By	12/30/2025 3:00pm EST
RFQ Evaluation	January 2026

**D. PRE-SUBMITTAL MEETING**

1. **A pre-submittal meeting will not be held.**  
 Any questions regarding this RFQ must be received in writing prior to 12/12/2025 by 3:00pm EST. Questions received after this date may not receive a response. Questions should be directed to Bree

Aguilar at [bree.aguilar@durhamnc.gov](mailto:bree.aguilar@durhamnc.gov) and will be answered in an addendum posted on the City's website: <http://durhamnc.gov/bids.aspx>. Firms who are registered as interested firms will receive the addendum via email. Questions received by the General Services Department after this date will not receive a response or be the subject of addenda.

#### **E. EQUAL BUSINESS OPPORTUNITY PROGRAM**

1. It is the policy of the City to provide equal opportunities for City contracting for small firms owned by socially and economically disadvantaged persons doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities to prevent such discrimination, to correct present effects of past discrimination and to resolve complaints of discrimination. This policy applies to all professional services categories.

**There are no MBE or WBE goals for this MSA, but Consultants should be prepared to have goals assigned for Supplemental Agreements; these goals will be published in the RFI or negotiated during the scope and fee negotiations in the situation where a firm is next in rotation on the On-Call list.**

2. The Underutilized Business Compliance Division within the Finance Department is responsible for the Equal Business Opportunity Program. All questions about Professional Services Forms should be referred to UBC department staff at (919) 560-4180.

#### **F. NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT (ADA)**

1. A person with a disability may receive an auxiliary aid or service to effectively participate in city government activities by contacting Durham One Call at 919-560-1200 or [ADA@DurhamNC.gov](mailto:ADA@DurhamNC.gov), as soon as possible but no later than 48 hours before the event or deadline date.

#### **AVISO EN VIRTUD DE LA LEY DE ESTADOUNIDENSES CON DISCAPACIDADES**

Con el fin de recibir un recurso o servicio auxiliar para participar de manera efectiva en las actividades del gobierno de la ciudad, cualquier persona con una discapacidad puede comunicarse con la línea Durham One Call al teléfono 919-560-1200 o al correo [ADA@DurhamNC.gov](mailto:ADA@DurhamNC.gov), tan pronto como sea posible, a más tardar 48 horas antes del evento o fecha límite.

#### **G. E-VERIFY COMPLIANCE**

1. If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) the contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor's subcontractors," and "comply" as used in this subsection (a) shall have the meanings intended by NCGS 143-129(j); and (iii) the City is relying on this subsection (a) in entering into this contract. (b) If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

#### **H. STATE TREASURER'S LISTS REGARDING IRAN AND BOYCOTT OF ISRAEL**

1. If the successful bidder or the City signs the contract on October 1, 2017 or afterwards, and the value of the contract is \$1,000 or more, the following applies unless the bidder otherwise states in

its bid: the bidder affirms (by submitting a bid) that (1) its name does not appear on the list of companies that are engaged in a boycott of Israel developed by the N. C. State Treasurer under N.C.G.S. 147-86.81(a)(1) or on a list created by the Treasurer pursuant to N.C.G.S. 147-86.58 as a company engaging in investment activities in Iran, and (2) it has no reason to expect that its name will appear on either of those lists. Take notice that a contract between a company named on either list and the City may be void.

## **I. VALUES OF CITY OF DURHAM REGARDING TREATMENT OF EMPLOYEES OF CONTRACTORS**

1. Statement of City EEO Policy. The City of Durham opposes discrimination in employment because of race, color, religion, sex, national origin, disability, familial status, military status, sexual orientation, gender identity, and protected hairstyle. Consistent with Chapter 34 (Non-Discrimination) of the Durham City Code, the City requires that firms doing business with the City:
  - a) not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, familial status, military status, sexual orientation, gender identity, and protected hairstyle.
  - b) take affirmative action to ensure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, national origin, sex, disability, familial status, military status, sexual orientation, gender identity, and protected hairstyle. This action includes employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
  - c) state, in solicitations or advertisement for employees, that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, disability, familial status, military status, sexual orientation, gender identity, and protected hairstyle.
  - d) include this Statement of City EEO Policy in every purchase order for goods to be used in performing City contracts and in every subcontract related to City contracts.
2. Livable Wage. The City of Durham desires that firms doing business with the City pay their workers a livable wage rate while working on City contracts. The livable wage rate is \$21.90 per hour through June 30, 2026. The City will re-set the rate for the period after June 30, 2026.

## **J. SUBMITTAL RESPONSE REQUIREMENTS**

1. EMAIL one electronic copy in PDF format of your submittal to [bree.aguilar@durhamnc.gov](mailto:bree.aguilar@durhamnc.gov). Please limit response to 20 pages. The page limit does not include required City forms, table of contents or cover pages. Font size shall be no less than 10 pt.

**Section 1** - Statement of Interest: The Statement of Interest should include a synopsis of the prime firm, indicate the discipline area(s) in which they wish to be considered, the firm's understanding of services required, and the project team's approach to completing the necessary field work and design tasks in order to meet a project's Scope of Work requirements on schedule. Include description of your team's approach and experience with the public procurement process and construction administration for municipal projects.

**Section 2** - Resumes: Provide the names and brief resumes of the principal-in-charge, potential project manager(s) and/or other key staff members who will comprise the core of your firm's project team. Provide a narrative discussing your approach to staffing, and delivering timely and

quality service on two or more assignments running concurrently. Additionally, the name, email, and phone number of a designated contact person responsible for responding to project inquiries should be provided.

**Section 3 - Reference Projects:** Please identify recent, representative projects of a similar scope, complexity and size performed by the proposed team. At least three should be completed projects. For each project, provide references (name, email and phone number) estimated and completed project budget, year(s) the project was performed. Identify which team firm performed the work and identify the members of the proposed team’s organization and the role each played in the reference project.

**Section 4 - All City and EBOP Professional Services Forms:** Please submit Appendix B (EBOP Professional Services Forms), Appendix C (Non-Collusion Affidavit), Appendix E (Trade Secrets and Confidentiality) and North Carolina Professional Licenses.

**K. SELECTION CRITERIA**

1. Submitted firms' responses to this RFQ will be evaluated and ranked by an RFQ Evaluation Team comprised of members of the City of Durham selected to assess submitted qualifications. Each submitter will be evaluated based on their SOQ score as determined through the qualification review process and criteria noted in this section.

Overall team qualifications and experience of key team members	40 points
Reference projects and demonstrated experience working on similar projects	40 points
Submittal quality and responsiveness	20 points

If deemed necessary, the City’s review panel for this project may choose to interview a short list of firms to determine the final selection.

The evaluation criteria are intended to be used to make a recommendation to the City Manager or City Council who will award the contract, but who is not bound to use these criteria or to award to the consultant(s) on the basis of the recommendation. Further, the City reserves the right to vary from this procedure as it is determined to be in the City’s best interest.

**L. NON-CONTACT PROVISION**

1. Interested firms shall be prohibited from contacting any City official or employee during the course of the pre-submittal, interview, negotiations, pre-contracting, or other process of this solicitation, except to participate in the pre-proposal conference and to submit questions via the City’s designated project manager. Any such contact shall be grounds for disqualification of any firm who may have initiated such contact.

**M. AWARD AND CONTRACT**

1. The City of Durham **Modified Master-Service Agreement Contract** and exhibits will be used, and the selected vendor will be expected to accept the terms of the attached modified contract as supplemented by the City without modification. Exceptions will be considered only to address errors or ambiguities in text, or if such modifications are in the best interest of the project and the City.

## **N. APPENDICES**

1. Appendix A: Insurance Requirements
2. Appendix B: EBOP Professional Services Forms
3. Appendix C: Non-Collusion Affidavit
4. Appendix D: DRAFT City of Durham's **Modified Master-Service Agreement Contract**
5. Appendix E: Trade Secrets and Confidentially

END OF PUBLIC NOTICE

## **Insurance Requirements**

The Contractor agrees to maintain on a primary basis, at its sole expense, and at all times during the life of this contract the following applicable coverages and limits. The requirements contained herein, as well as the City's review or acceptance of insurance maintained by the Contractor, is not intended to, and shall not in any manner, limit or qualify the liabilities or obligations assumed by the Contractor under this contract.

**Commercial General Liability** – Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement excluding or limiting Product/Completed Operations, Contractual Liability, Cross Liability, or Personal and Advertising Injury Liability.

**Automobile Liability** – Limits of no less than \$1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned, and Hired automobiles. In the event the Contractor does not own automobiles, the Contractor agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or by separate Auto Liability policy. Automobile coverage is necessary only if vehicles are used in the provision of services under this contract or are brought on a City site.

**Umbrella or Excess Liability** – The Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability. However, the Annual Aggregate limits shall not be less than the highest "Each Occurrence" limit for required policies. The Contractor agrees to endorse the City as an "Additional Insured" on the Umbrella or Excess Liability unless the certificate of insurance states the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

**Workers' Compensation & Employers Liability** – The Contractor agrees to maintain Worker's Compensation Insurance in accordance with Chapter 97 of the North Carolina General Statutes and with Employer Liability limits of no less than \$1,000,000 for each accident, each employee, and policy limit. This policy must include a waiver of subrogation.

**Professional Liability**- The Contractor agrees to maintain Professional Liability Insurance with limits no less than \$1,000,000.

**Additional Insured** – The Contractor agrees to endorse the City as an Additional Insured on the Commercial General Liability. The Additional Insured shall read "City of Durham as its interest may appear".

**Certificate of Insurance** – The Contractor agrees to provide the City a certificate of insurance evidencing that all coverage, limits, and endorsements required herein are maintained and in full force and effect, and certificates of insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by the Contractor's insurer. If the Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein or receives notice that coverage no longer complies with the insurance requirements herein, the Contractor agrees to notify the City within five (5) Business Days with a copy of the non-renewal or the cancellation notice or with written specifics as to which coverage is no longer in compliance. The Certificate Holder address should appear as follows:

City of Durham  
Attn: General Services Department  
101 City Hall Plaza  
Durham, NC 27701

All primary insurance carriers must be authorized to do business in North Carolina. As used in this contract, "Business Day" is defined as any day other than Saturdays, Sundays, and any legal holiday recognized by the City pursuant to City Code Section 42-16, as amended.



**FINANCE**

CITY OF DURHAM

# EQUAL BUSINESS OPPORTUNITY PROGRAM

PROFESSIONAL SERVICES  
FORMS



JULY 2024



**FINANCE**

CITY OF DURHAM

## ABOUT THE PROGRAM

The City's **Equal Business Opportunity Program (EBOP)** is specified by City Ordinance (City of Durham Code of Ordinances, Chapter 18, Article III). As stated in the ordinance, the purpose of the program is to provide equal opportunities for city contracting for underutilized business enterprises owned by minorities and women doing business in the city's contracting marketplace. It is further the policy of the city to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct the present effects of past discrimination and to resolve complaints of discrimination.

The **Small Local Business Enterprise (SLBE)** program works to increase employment opportunities for our residents and to enhance our tax base by promoting City contracting opportunities for small local business enterprises. The SLBE program is for construction of up to \$500,000 and professional services contracts \$100,000 or less. Firms that meet program requirements may apply to be part of the program. Only firms in the SLBE program will receive advertisements and be eligible to bid on SLBE projects.

An **Underutilized Business Enterprise (UBE)** is a business, certified by the N. C. Department of Administration HUB Office, N.C. Department of Transportation or the U.S. Small Business Administration Section 8(a) Business Development Program as a minority or women business enterprise. The qualifying UBE needs to have its certification from one of the above-named entities before the bid opening if it is to count toward meeting the goals. Failure to provide evidence of UBE status may disqualify the firm's participation for the purpose of meeting UBE goals. For purposes of this document and associated forms, any reference to an "UBE," or similar reference shall include reference to a qualified women or minority owned firm certified and approved in accordance with the above paragraphs.



**FINANCE**

CITY OF DURHAM

## **SELECTION OF CONSULTANTS/CONTRACTORS FOR ARCHITECTURAL/ENGINEERING AND OTHER PROFESSIONAL SERVICES ACCORDING TO NC GS.**

### **143-64.31 (Mini Brooks)**

The UBC Manager or designee based on Ordinance may determine UBE participation goals for each contracting category to be awarded by the City. Goals for each project or contract will be based upon the availability of UBEs within the defined scope of work, delineated into percentages of the total value of the work.

#### **Selection Committee for Professional Services**

A selection committee may be established and may be composed of the following: City Manager or a designated representative of this office; Director of Finance or a designated representative of this office; department head responsible for the project; City Engineer if engineering services are involved; and the Purchasing Manager or designee. Other representatives may be called upon as needed based on their areas of expertise.

Scoring criteria examples are below:

1. Firms' interest in the project;
2. Current work in progress by firm;
3. Past experience with similar projects;
4. General proposal for carrying out the required work;
5. Designation of key personnel who will handle the project, with resume for each;
6. Proposed associate consultants/contractors, UBE subconsultants;
7. Indication of capability for handling the project;
8. Familiarity with the project;
9. References;
10. UBE Participation; and
11. Documentation of Good Faith Efforts should UBE participation requirements not be met.

After ranking the firms' presenting proposals, interviews may be conducted by the selection committee with the top ranked firms. The contracting department will make the final recommendation, prepare contracts for review by the City Attorney, and prepare the recommendation for the City Council. The following may be included in the recommendation:

1. Description and scope of the project;
2. Recommended firm;
3. Contract cost;
4. Time limits;
5. Basis for selection;
6. Source for funding;
7. Equal Business Opportunity Ordinance compliance; and
8. Recommendation that the contract be approved by the City Council.

#### **Contract Award**

A provision must be written in each contract with an architect or engineer requiring them to work with the Finance Department in creating and identifying separate work.

#### **Project Evaluation**

An evaluation shall be made of each contract after its completion to be used in consideration of future professional services contracts. The evaluation shall cover appropriate items from the check list for ranking applicants. A copy of the evaluation shall be given to the consultant, and any comment he/she cares to make shall be included in the files.



# EBOP FORM INSTRUCTIONS

## FOR USE IN PROFESSIONAL SERVICES PROJECT PROPOSALS WITH THE CITY OF DURHAM

These instructions summarize the provisions of the City of Durham’s Equal Business Opportunity Ordinance as it applies to the proposal process. Of course, as with any summary, it cannot reflect all of the ordinance.

### Forms:

- Underutilized Business Participation Documentation
- Intent to Perform as a Sub-consultant/Subcontractor
- Post Proposal Submission UBE Deviation
- Documentation of Good Faith Efforts

<b>FORM</b>	<b>NECESSARY?</b>	<b>WHEN TO SUBMIT?</b>
Underutilized Business Participation documentation	Always required.	With the proposal.
Intent to Perform as a Sub-consultant/Subcontractor	Required for any UBEs proposed to perform on contract to count toward UBE goals.	With the proposal.
Post Proposal Submission UBE Deviation	Required to report any deviation from UBE participation prior or subsequent to startup of the project.	If the proposed sub-consultant/subcontractor is unable to perform; substitutions both prior to and after awarding of a contract are subject to City approval.
Documentation of Good Faith Efforts	Required if the proposal fails to meet the established UBE goals. Whenever contract alternatives, amendments, or extra work orders which increase the total value of the original contract, consultant must make a good faith effort to increase UBE participation such that amounts subcontracted are consistent with established goals.	With the proposal unless otherwise stated by the City.



# UNDERUTILIZED BUSINESS PARTICIPATION DOCUMENTATION

## FOR INSTRUCTIONS

1. Click on the text fields to enter the name of the prime and the name of the project.
2. Input the goals for this project as provided by the UBC representatives. Enter the minority-owned UBE goal and the women-owned UBE goal separately. You do not need to enter the percent (%) symbol.
3. Complete the information in the table for minority-owned UBE sub-consultants or contractors, including the name of the subcontractor, the goods and services to be provided, and the percentage of project work. The Total MBE percentage of work will auto-calculate.

*a) If you plan on using more than five MBEs in the proposal, please enter "see attached" in the name column of the fifth line and enter the total percentage of project work for all remaining MBEs in the "% of project work" column of the fifth line. Attach a second copy of this form with the remaining MBEs listed.*

4. Repeat Step 3 for women-owned UBE sub-consultants or subcontractors.
5. Based on the information you have input, the MBE and WBE percentage of the proposal will be auto-calculated.
  - a. If you do not meet both goals, you must complete the Good Faith Effort Form.
6. Click on the text fields to add the name and signature of the authorized officer of the prime (e-signature accepted).

# INTENT TO PERFORM AS A SUB-CONSULTANT/ SUBCONTRACTOR

## FORM INSTRUCTIONS

**The bidder must provide this form for each UBE firm that the bidder would subcontract with if the City awards the contract to the bidder.**

1. Click on the text fields to enter the bidder (primary) information including the name of the bidder, the name of the project, and the total dollar amount of the bid (this is the dollar amount of the entire bid package, not just the work that will be completed by this subcontractor).
2. Enter the contact information, including name, telephone number, and address of the UBE specified in this form.
3. Enter a description of the work this UBE intends to perform and the dollar value of the subcontract.
  - a. The value of this subcontract as a percentage of the total base bid will auto-calculate.
4. The authorized representative of the UBE should sign (e-signature accepted) and enter their title.
5. Indicate whether the appropriate contact person for this UBE is the signatory or a different individual and enter their telephone number and email address.



# REQUEST TO CHANGE UBE PARTICIPATION

This form is to be used to report any deviation from UBE participation either prior to or subsequent to the startup of the project. The Finance Department must be notified if proposed sub-consultant/subcontractor is unable to perform and for what reasons.

Substitutions of subcontractors in these circumstances, both before and after the awarding of a contract, are subject to City approval. Consult the City's Finance Department on the procedures to follow in order to comply with City Code 26- 10(c).

## FORM INSTRUCTIONS

1. Click on the text fields to enter the prime information including the name of the bidder/consultant, the name of the project, name and title of the bidder/contractor authorized representative, telephone number, address, and email address.
2. Enter the total dollar amount of the contract.
3. Enter the total dollar amount of the contract including changes to date, but not those proposed on this form.
4. Indicate whether the changes proposed on this form will increase, decrease, or not change the value of this contract. If they will increase or decrease the value of this contract, enter the dollar amount of the increase or decrease in the text boxes.
5. Enter the name of the subcontractor proposed to be changed on this form. Indicate whether this is a MBE, WBE, or not a UBE and enter a description of the goods or services to be provided before this change.
6. Describe the nature of the change to this subcontract.
7. Enter the dollar value of the subcontract before the change proposed on this form and the dollar value of the subcontract after the change proposed on this form.
8. If you will be substituting a new subcontractor for the one listed to be changed, enter the name of the subcontractor, indicate whether this is a MBE, WBE, or not a UBE, and describe the goods or services to be provided by this substitute.



# BIDDER'S GOOD FAITH EFFORTS

Bidders that do not attain the UBE goals have the responsibility to make good-faith efforts and to demonstrate to the City that they have made such efforts. In determining a bidder's good-faith efforts to engage UBEs, the City Manager shall consider the information supplied by the bidder to answer the questions in this form, along with other criteria that the City Manager deems proper.

## FORM INSTRUCTIONS

1. Click on the text fields to enter the name of the bidder and the name of the project.
2. In the Soliciting UBEs table, click on the open boxes to place a check mark next to the actions your firm has taken. Points will be automatically totaled based on the check marks added.
3. Collect and submit the documentation for each criteria points claim to earn the Good Faith Efforts Points for the corresponding category requirement.



## Underutilized Business Participation in Bid

Name of bidder:

Name of Project:

Total bid (\$): *(from the entire bid package, not just the UBE portion)*

### Contract UBE Goals

*Please input the UBE goals for this bid as provided by the City underutilized business compliance (UBC) representatives. Enter them as a decimal (e.g. if the goal is 5%, please enter .05).*

Minority-owned business goal:

Women-owned business goal:

### Minority-owned UBE Subcontractors

Name of MBE	Goods and services to be provided	Subcontract amount \$
-------------	-----------------------------------	-----------------------

*Please see instructions if your bid includes more than five MBE subcontractors*

**Total MBE (\$):**

### Women-owned UBE Subcontractors

Name of WBE	Goods and services to be provided	Subcontract amount \$
-------------	-----------------------------------	-----------------------

*Please see instructions if your bid includes more than five WBE subcontractors*

**Total WBE (\$):**

### Are the MWBE goals met?

MBE percentage achieved:

WBE percentage achieved:

*If you did not meet the goal(s) and you are deemed apparent lowest responsible bidder, you are required to make good faith efforts, to provide documentation of these efforts within two business days after bid opening, and to sign the statement below.*

As an authorized representative of the Bidder, I swear or affirm under penalty of fraud that the good-faith efforts documentation submitted with this bid, pertaining to the base bid and all alternates, if any, is correct and not intended to defraud or mislead. After the contract between the City and Bidder is signed, except to the extent that the City gives prior written approval for changes, the Contractor agrees that it shall engage the subcontractors listed on this form and on all applicable Intent to Perform as a Subcontractor form(s) to perform the work for the dollar amounts or percentages described on these forms.

Signature of authorized representative of bidder:

Date:



## Intent to Perform as Sub-consultant/Subcontractor

*This form is required for any subcontracts the bidder proposes to count toward the UBE goals.  
It is due within 5 days after bid opening unless otherwise stated.*

Name of bidder:

Name of project:

Total bid:

The undersigned firm meets the City of Durham's criteria as an Underutilized Business Enterprise (UBE). The undersigned UBE represents that it will enter into a formal contract with the Bidder to perform the following work in connection with the project, in the dollar amount or percentage listed below, if the bidder signs a contract with the City of Durham for the project.

Name of UBE:

Telephone Number:

Address:

Description of work to be performed:

Value of proposed subcontract (\$):

Percentage of base bid:

Signature  
(authorized rep. of UBE)

Title:

For questions about this form or the proposed subcontract, the City should contact (select one):

The signatory listed above, at:

Telephone number:

Email address:

A different individual (name, title):

Telephone number:

Email address:

By submitting this form to the City of Durham, the Bidder represents that if the Bidder signs the contract with the City of Durham for the project, the Bidder will enter into the subcontract described above with the UBE.

As an authorized representative of the Bidder, I swear or affirm under penalty of fraud that the good-faith efforts documentation submitted with this bid, pertaining to the base bid and all alternates, if any, is correct and not intended to defraud or mislead. After the contract between the City and Bidder is signed, except to the extent that the City gives prior written approval for changes, the Contractor agrees that it shall engage the subcontractors listed on this form and on all applicable Intent to Perform as a Subcontractor form(s) to perform the work for the dollar amounts or percentages described on these forms.

**Signature of authorized representative of bidder:**

**Date:**



## Request to Change UBE Participation After Bid Opening

*This form is required if the bidder proposes changes in subcontracting and is due before the bidder/contractor can make the proposed change.*

Name of bidder/contractor:

Name of project:

Name and title of bidder/  
contractor representative:

Telephone number:

Address:

Email address:

Total original contract amount (\$):

Total amount of contract including changes to  
date, but not those proposed on this form (\$):

This proposed change will (mark one):

- increase the value of the contract by:
- decrease the value of the contract by:
- not change the value of the contract.

### Subcontractor to be changed

Name of subcontractor:

This subcontractor is (mark one):

- Minority-owned UBE
- Women-owned UBE
- Not a UBE

Goods/services to be provided  
before proposed change:

Describe the nature of this change:  
*(e.g. "adding \$5,000 in concrete work",  
"eliminating \$7,000 in grading")*

Subcontract dollar amount before proposed change:

Subcontract dollar amount after proposed change:

### Substitute Subcontractor (if applicable)

Name of subcontractor:

This subcontractor is (mark one):

- Minority-owned UBE
- Women-owned UBE
- Not a UBE

Goods/services to be provided:

As an authorized representative of the Bidder, I swear or affirm under penalty of fraud that the good-faith efforts documentation submitted with this bid, pertaining to the base bid and all alternates, if any, is correct and not intended to defraud or mislead. After the contract between the City and Bidder is signed, except to the extent that the City gives prior written approval for changes, the Contractor agrees that it shall engage the subcontractors listed on this form and on all applicable Intent to Perform as a Subcontractor form(s) to perform the work for the dollar amounts or percentages described on these forms.

**Signature of authorized representative of bidder:**

**Date:**

## Bidder's Good Faith Efforts (GFE)

*This form is required if the bidder fails to meet the UBE goals and is due within 2 days after bid opening unless otherwise stated.*

Name of bidder: \_\_\_\_\_

Name of project: \_\_\_\_\_

### Unfortunately, you have failed to meet the UBE participation goals set for this contract.

You must document that you have met the GFE requirements by completing this form and submitting documentation for each category claimed points. Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive. All actions relate only to the time before your firm submitted its bid or proposal to the City. Actions your firm took after it submitted the bid or proposal cannot be used.

### Soliciting Underutilized Business Enterprises (UBEs)

Total Available GFE Points: <b>120</b>		Minimum GFE Points Required for this Project: <b>50</b>
Points	Good Faith Effort (GFE)	
20	Solicit through all reasonable and available means, advertising and written or electronic notices; the interest of all UBEs certified in the scopes of work of the contract at least 10 days before the bid date and notified them of the nature and scope of the work to be performed. The bidder shall provide interested UBEs with timely and adequate information about the plans, specifications, and requirements of the contract to allow UBEs to respond to the solicitation. The bidder must follow up on initial solicitations with interested UBEs.	
10	Select portions of the work to be performed by UBEs in order to increase the likelihood that the contract specific goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate UBE participation, even when the bidder would otherwise prefer to perform these work items with its own forces. It is the bidder's responsibility to make a portion of the work available to UBEs and to select those portions of the work (including needs for goods) consistent with the availability of UBEs so as to facilitate UBE participation.	
10	Negotiate in good faith with interested UBEs. Evidence of such negotiation includes the names, addresses, and telephone numbers of UBEs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and specific information on why agreements could not be reached with UBEs. The bidder may not reject UBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. Additional costs involved in finding UBEs is not in itself sufficient reason for a bidder's failure to meet the contract specific goals, as long as such costs are commercially reasonable. The ability or desire of a bidder to perform the work of a contract with its own forces does not relieve it of the responsibility to make good faith efforts.	
15	Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.	
15	Provided assistance to MWBE businesses in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted MWBE businesses in obtaining the same unit pricing with the bidder's suppliers in order to help MWBE businesses in establishing credit.	
15	Use the services of the City, available minority/women community organizations, minority and women contractors' groups, government sponsored minority/women business assistance agencies and other appropriate organizations to provide assistance in the recruitment of UBEs.	
10	Attend any pre-bid meetings scheduled by the City.	
15	Followed up with interested UBE subcontractors.	
10	Negotiated joint venture and partnership arrangements with MWBE businesses in order to increase opportunities for MWBE business participation on a public construction or repair project when possible.	

**Total GFE Points (Claimed by Bidder)** \_\_\_\_\_ **Total GFE Points Earned (Assessed by City)** \_\_\_\_\_

As an authorized representative of the Bidder, I swear or affirm under penalty of fraud that the good-faith efforts documentation submitted with this bid, pertaining to the base bid and all alternates, if any, is correct and not intended to defraud or mislead. After the contract between the City and Bidder is signed, except to the extent that the City gives prior written approval for changes, the Contractor agrees that it shall engage the subcontractors listed on this form and on all applicable Intent to Perform as a Subcontractor form(s) to perform the work for the dollar amounts or percentages described on these forms.

Signature of authorized representative of bidder: \_\_\_\_\_

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

NON-COLLUSION AFFIDAVIT

By executing this proposal, I certify that this proposal is submitted to the City of Durham competitively and without collusion. I am authorized to represent the candidate both in submitting this bid and in making this Non-Collusion Affidavit. To the best of my knowledge and belief, (1) the candidate has not violated N. C. General Statute section 133-24 in connection with the proposal, (2) the candidate has not entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with its proposal, and (3) the candidate intends to do the work with its own bona fide employees or subcontractors and is not bidding for the benefit of another contractor. The neuter includes the masculine and the feminine. The candidate to which this Non-Collusion Affidavit refers is:

\_\_\_\_\_  
*(insert name of candidate)*

\_\_\_\_\_  
*(signature of individual)*

ACKNOWLEDGMENT

*Type or print name of the individual who signed the affidavit:*

\_\_\_\_\_

*Type or print the name of Notary Public signing this acknowledgment:*

\_\_\_\_\_

*Place where acknowledgment occurred:* County of \_\_\_\_\_, State of \_\_\_\_\_

*Notary's residence:* County of \_\_\_\_\_, State of \_\_\_\_\_

I, the Notary Public named above, certify (1) the individual named above personally appeared before me this day, (2) I have personal knowledge, or satisfactory evidence, of the individual's identity; and (3) the individual acknowledged signing the foregoing affidavit.

This the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. \_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

**CITY OF DURHAM, NORTH CAROLINA**  
**GOVERNING AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES**  
**BETWEEN THE CITY AND \_\_\_\_\_**

THIS AGREEMENT (hereafter, "Governing Agreement" or "Agreement") is made the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the City of Durham, Durham County, North Carolina (hereinafter called "City") and \_\_\_\_\_ for itself and its successors and assigns (hereinafter called "Consultant"), *[insert:*

*a corporation organized and existing under the laws of [name of State];*

*a limited liability company organized and existing under the laws of [name of State];*

*a professional corporation organized and existing under the laws of [name of State];*

*a professional association organized and existing under the laws of [name of State];*

*a limited partnership organized and existing under the laws of [name of State];*

*a sole proprietorship;*

*or a general partnership*

*If it's a corporation, LLC, or limited partnership, use the above "organized and existing" language, and do not substitute news about the contractor's principal office or place of business.].*

**PROFESSIONAL SERVICES**

WHEREAS, City desires to engage Consultant to provide Professional On-Call Services related to *Geotechnical Engineering, Environmental Assessments, Hazardous Materials Testing, Construction Materials Testing and Special Inspections, Surveying, and Cost Estimating* (hereafter "Professional Engineering Services") as set forth herein and in accordance with Supplemental Agreements (hereafter "Services"); and

WHEREAS, Consultant has the experience, staff, and resources to perform such Services;

NOW, THEREFORE, City and Consultant, in consideration of their mutual covenants, herein agree as follows:

**SECTION I. EMPLOYMENT OF CONSULTANT**

- A. Consultant shall perform on-call Professional Services as set forth in this Agreement and a Supplemental Agreement (hereafter "Supplemental Agreement"). The Supplemental Agreement is made a part of this Agreement as if fully set forth herein. City shall pay Consultant for the performance of Services in the manner set forth herein and in the Supplemental Agreement.
- B. Requests for services made by the City to Consultant are contingent upon execution of a Supplemental Agreement and the sufficiency of funding. No services shall commence on a particular project until a Supplemental Agreement has been executed by both parties, and City has notified Consultant to proceed as set forth in Section IV below.

**SECTION II. CONTENT AND EXECUTION OF SUPPLEMENTAL AGREEMENT**

- A. Services to be provided shall be set forth in a Supplemental Agreement, and amendments to that Agreement. The Supplemental Agreement may also include additional terms and conditions

regarding payment and other matters necessary for the execution of particular projects. Supplemental Agreements shall not vary the terms of this Governing Agreement, except where the Supplemental Agreement expressly replaces a term of the Governing Agreement. If there is an ambiguity between this Governing Agreement and Supplemental Agreements, this Governing Agreement shall control.

- B. Supplemental Agreements, and amendments to such Agreements, where payment for the Supplemental Agreement, as amended, does not exceed \$250,000 may be negotiated and executed by the City Manager or his/her designee consistent with the authority delegated by the Durham City Council. Certain modifications to the Supplemental Agreements may be made by the City of Durham's Director of the *General Services* (hereafter "Director") or their designee as described in Section IIIB below. It is necessary to give the Director the authority to make minor modifications to Supplemental Agreements because of the manner in which projects change as the work is progressively completed, and the need for flexibility as a project unfolds. Changes falling outside of the aforementioned areas shall require formal amendment to the Supplemental Agreement and shall be entered into and executed by the City Manager or his/her designee as described above.

### **SECTION III. RESPONSIBILITIES OF CONSULTANT AND CITY**

#### **A. CONSULTANT'S RESPONSIBILITIES**

1. Reporting/Coordination. Consultant shall provide progress reports in a format acceptable to the City at intervals established in the Supplemental Agreement. At any time, upon request, the City shall be entitled to information regarding the status of the project. Consultant is responsible for coordinating its work with the City in such a manner so as to meet project deadlines.
2. Delays/Extensions. If delays to the completion date for the project or for tasks within the project that have individual deadlines result from circumstances that could not reasonably be foreseen by Consultant and which are beyond the reasonable control of the Consultant, one or more extensions of time may be granted, upon written request documenting the reasons for the request. The Director may, in his/her discretion, which shall be reasonably exercised, is authorized to grant such request if such request falls within the parameters set forth in Section IIIB below.
3. Responsibility for Services Performed. Consultant shall maintain an adequate professional staff within the State of North Carolina to render Services to the City. Consultant may use subcontractors to provide Services only if such subcontractors and the services to be performed are identified in either the Governing Agreement or a Supplemental Agreement. Otherwise all services described in the Supplemental Agreement shall be rendered by Consultant's employees. Consultant is responsible for the professional quality, technical accuracy, and timely completion and submission of all Services performed under this Agreement and Supplemental Agreements, and for the performance and payment of all subcontractors.
4. Professional Certifications/Endorsements. All final plans, documents, reports, studies, and other data or materials prepared by the Consultant will bear the endorsement of a person employed by Consultant or its approved subcontractors who shall be duly registered in the appropriate professional category for the work performed.
5. Ownership of Work Product.

- (a) The Consultant hereby assigns to the City, without reservation, all copyrights in all Service-related documents, including sketches, models, photographs, data sets, source code and scripts, and other Services-related expressions created by the Consultant. Among those documents are certain “Work Product,” including Service-related deliverables, programs, applications, reports, design drawings, and construction documents. The City’s obligation to pay the Consultant is expressly conditioned upon the Consultant’s obtaining a valid written comprehensive assignment of copyrights from its subconsultant in terms identical to those that obligate the Consultant to the City as expressed in this subsection, which copyrights the Consultant, in turn, hereby assigns to the City. The City, in return, hereby grants the Consultant and its subcontractors a revocable, nonexclusive license to reproduce the documents for purposes relating directly to the Consultant’s performance of its obligations under this Agreement for the Consultant’s archival records, and for the Consultant’s reproduction of drawings and photographs in the Consultant’s marketing materials. This nonexclusive license shall terminate automatically upon the occurrence of either a breach of this Agreement by the Consultant or the accused commission by the Consultant of a tort or a crime affecting the City or the Services. This nonexclusive license is granted to the Consultant alone and shall not be assigned by the Consultant to any other person or entity, except that the non-exclusive license granted in this Agreement to the Consultant for purposes of the Consultant’s performance hereunder may be sub-licensed to the Consultant’s subcontractors (with the same limitations). Subject to the foregoing, this nonexclusive license shall terminate automatically upon a Consultant’s assignment of this nonexclusive license to another or its attempt to do so.
  - (b) To the extent that liability arises from misuse of the Work Product by the City or another consultant or designer, the Consultant shall not be responsible for that misuse. If the City uses the Work Products for purposes including additions to and modifications of the Services, and for other projects, the City shall indemnify the Consultant for losses, including reasonable attorneys’ fees, suffered by the Consultant as a result of the use of the design and these documents for such other purposes. If these documents are used for other purposes, the City shall see that they are modified (i) to indicate that the Consultant did not prepare them for such other purposes and is not responsible for their use in connection with such other purposes and (ii) to delete the Consultant’s name and seal from the documents (where permitted or required by law).
  - (c) Except for the licenses granted in this subsection III.A.5, no other license or right shall be deemed granted or implied under this Agreement. No other Service-related data, expression, or documents may be reproduced by the Consultant or its subconsultant for any other purposes without the express written permission of the City.
  - (d) If the City subsequently reproduces Service-related documents or creates a derivative work based upon Service-related documents created by the Consultant, the City shall (where permitted or required by law) remove or completely obliterate the original professional’s seals, logos, and other indications on the documents of the identity of the Consultant and its subconsultants.
6. Retention of Records. Consultant shall maintain all books, documents, and papers pertaining to Services performed under this Agreement, and accounting records, and other records of costs incurred in performance of this Agreement and Supplemental Agreements and shall make them

available to the City upon request during the period of this Agreement and for three years after final payment is made. Records of costs incurred include the Consultant's general accounting records and the project records, together with supporting documents and records of the Consultant and all subcontractors-performing work on the project, and all other records of the Consultant and subcontractors considered necessary by the City for a proper audit of project costs.

7. Meetings. Consultant shall meet with City representatives at mutually agreed upon times upon the City's request. Such meetings shall be held at locations designated by the City.
8. UBE Utilization. Consultant shall provide to the Director a UBE utilization report on an annual basis or at mutually agreed upon timeframe upon the City's request.
9. Standard of Care; Errors and Omissions.
  - (a) Standard of Care. The standard of care for all professional services performed or furnished by Consultant under this contract will be the care and skill ordinarily used by members of the subject profession practicing on similar projects whether such projects can be found locally, regionally or nationally. The Consultant warrants the accuracy of Consultant's written representations made to City as to Consultant's qualifications and experience during the process in which the City selected the Consultant. The Consultant warrants that it is registered, licensed, and authorized to practice engineering in North Carolina. The Consultant warrants that its designs, Construction Contract Documents, and the Consultant's services provided under this Agreement shall conform to all applicable federal, state, and local statutes and regulations governing its services, the project, and the Services. Subject to the foregoing standard of care, Consultant and its subconsultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
  - (b) Compensation for errors and omissions. If (1) the Consultant creates plans or specifications containing an error or omission that causes actual construction of a portion of the work that needs to be changed solely because of the Consultant's error or omission, and, (2) the City elects to apply this subsection III.A.9.(b), the Consultant shall pay the City all reasonable costs of correcting the error or omission, including an amount, calculated according to subsection III.A.9.(b)(ii) below, to compensate the City for time spent by City's employees because of the error or omission without regard to what other services those employees might have done for the City had the error not occurred.
    - (i) (Unforeseen Conditions) An error or omission shall not be grounds for payment under this subsection III.A.9.(b), if the error or omission occurred because of physical conditions that were: (1) not in fact known to the Consultant; (2) not in fact known to the Consultant's subconsultants; (3) not readily apparent to the Consultant; and (4) not readily apparent to the Consultant's subconsultants.
    - (ii) (Cost of Employees' Time) The cost of the employees' time will be calculated as follows: the time spent by any salaried employee of the City because of the error or omission shall be compensated at an hourly rate equal to the employee's gross salary (using standards to determine gross salary for federal income tax purposes) during the applicable fiscal year of the City divided by the number of hours worked by that employee for the Owner during that fiscal year.

- (iii) (Limits on Double Payments) If this subsection III.A.9.(b) is applied to compensate the City for an error or omission, the Consultant shall not owe the City any other compensation to remove the erroneously built work and replace it with correct work. However, the payment of such compensation or the application of this subsection III.A.9.(b) shall not affect liability to the Consultant for personal injury or damage to property. (In the preceding sentence, “damage to property” excludes the damage suffered by the City for the cost of replacing the erroneously installed work for which this paragraph provides compensation, but it includes all other general, special, consequential, or other kinds of damage resulting from the error or omission.)
- (iv) (Limit on Use of Payment against Consultant) A payment by the Consultant pursuant to this subsection III.A.9.(b) shall be considered a compromise, and the City shall not introduce the fact of the payment in any legal action or proceeding except to the extent that compromises are admissible.
- (v) (Nonpayment Hereunder Not to Prevent Other Claims) If this subsection III.A.9.(b) is not applied by the City so as to compensate the City for an error or omission, this subsection III.A.9.(b) shall not be used to construe this contract so as to reduce any remedy that is available to the City because of that error or omission. For example, to the extent an error or omission is not compensated for because the amount exceeds the insurance deductible, the City will not be deemed to have waived a claim therefor for all damages arising from the error or omission.

10. Conflicts of Interest.

- (a) The Consultant does hereby certify that it has not entered into and, during the lifetime of the contract, will not enter into any agreement with a third-party affording the Consultant, or any subconsultants that they may hire, with any direct or indirect financial interest in the outcome of the project, except with regard to the project development, human and natural environmental and/or engineering services associated with this contract.
  - (i) Pursuant to N.C.G.S. § 133-1, the Consultant will not knowingly specify building materials, equipment, or other items that are manufactured, sold or distributed by any firm or corporation in which the designer has a financial interest.
  - (ii) Pursuant to N.C.G.S. § 133-2, the Consultant will not employ or allow manufacturers or their representatives or agents to write, plan, draw, or make specifications for such public works.
  - (iii) The Consultant does hereby certify that it does not have any potential conflict of interest with any entity involved with the project. Any potential conflict of interest shall be disclosed immediately to the City.
- (b) The Consultant shall comply with all applicable conflicts of interest laws including N.C.G.S. § 133-32 and 23 C.F.R. § 1.33.

**B. CITY'S RESPONSIBILITIES**

- 1. Director Authority. The Director or his/her designee is authorized to take actions on behalf of the City with respect to performance of this Agreement and Supplemental Agreements. His/her instructions, requests, and decisions on behalf of the City, where documented in writing, and not inconsistent with this Agreement or Supplemental Agreements shall be binding. This authorization does not give the Director the authority to enter into Supplemental Agreements or amendments to the Agreement or Supplemental Agreements, other than as described in this Agreement. The Director may authorize and execute the following changes, if such are agreed

to in writing by both parties: change the amount of payment for particular subtasks, if such changes do not alter the rate of compensation of Consultant or its subordinates, or increase the total compensation required for completion of the project as provided for in the Supplemental Agreement, or reduce the amount of work being performed by Consultant; refine or redistribute services where there is no change in the general amount, scope, or nature of the work to be performed on a project; and extend time for a project or portion thereof if the final completion date for the project is not extended by more than 25% of the time originally allotted for the project.

2. City Information. City shall provide existing data, plans, reports, and other information in possession of or under control of the City, which are necessary for Consultant's Performance of Services and shall assist Consultant in obtaining other necessary information from City's files.
3. Notice of Inadequate Performance. City shall give prompt written notice to the Consultant if the City observes or otherwise becomes aware of any fault or defect in Consultant's conformance to this Agreement. Failure to give such notice shall not constitute a waiver of the City's right to require compliance with this Agreement or Supplemental Agreements.

#### **SECTION IV. PERIOD OF SERVICE**

##### **A. DURATION**

This Governing Agreement shall authorize Supplemental Agreements to be executed for a four (4) year period from the date of execution of this Agreement (the "GA Term"). Any Supplemental Agreement executed during the GA Term shall be binding for the time period set forth therein, and this Agreement and such Supplemental Agreement, and amendments to such Agreements, shall be binding for the time period set forth in the Supplemental Agreement. Any Supplemental Agreement initially executed during the GA Term may be amended for additional scope, fee or time after the GA Term has expired.

##### **B. NOTICE TO PROCEED**

Services shall commence upon execution of Supplemental Agreements describing the specific project and Services to be performed. The Director or his/her designee will issue a written Notice to Proceed following execution of such Supplemental Agreement(s). Consultant will not commence Services until such notice is received.

#### **SECTION V. COMPENSATION**

##### **A. GENERAL PROVISIONS/HOURLY RATE SCHEDULE**

The terms of payment for Services provided by Consultant shall be set forth in each Supplemental Agreement. Such Agreement may provide for compensation in accordance with an hourly rate schedule, or a set fee for Services, paid one time or in periodic payments, or a combination of these methods of compensation.

Unless otherwise provided in the Supplemental Agreement, Consultant shall obtain, and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services,

permits, and licenses necessary to perform Services under this Agreement. In addition to hourly rates or the set fee payment set forth in the Supplemental Agreement, City shall pay Consultant for expenses and costs only when reimbursement for such items is specifically provided for in a Supplemental Agreement. The City shall not be obligated to pay any expenses and costs not specifically identified in a Supplemental Agreement.

## B. INVOICES/COSTS

### 1. Frequency/Detail

Invoices for all compensation owed in accordance with the Supplemental Agreement, including but not limited to hourly fees, lump sum payments, periodic payments, and all specifically identified, reimbursable costs and expenses shall be submitted to the City on a monthly basis, or on such other schedule as may be provided in the Supplemental Agreement. Invoices shall provide sufficient detail to process the invoice for payment and for a proper pre-audit and post-audit thereof in accordance with City standards. If Consultant has performed Services for which payment is not yet due, as, for example, when there is a limitation on the amount of periodic payments, or when compensation is not due until a particular task is completed, Consultant shall invoice the City only for those amounts owed under the provisions of the Supplemental Agreement, and shall show Services performed for which compensation is not yet owed separately from the amounts currently due.

### 2. Receipts

If a Supplemental Agreement specifically allows for basic incidental project expenses to be billed without receipts, these expenses may include but are not limited to local mileage, local and long distance telephone calls, fax expenses, photocopies, and other routine expenses normally sustained in the performance of engineering and planning work. If such expenses are specifically allowed, Consultant may include, without receipts, an amount equal to 6.5% of labor costs as an allocation for these expenses, without providing receipts for the expenses. A percentage amount for basic incidental project expenses shall not be allowed if compensation is through a set fee, whether paid at one time or in periodic payments. A Supplemental Agreement may also specifically allow for payment of unusual, non-routine direct expenses. In order to be eligible for reimbursement, such expenses must be identified in the Supplemental Agreement. Such expenses may include but not be limited to, mileage for travel to sites outside of a 75-mile radius of Durham (but not including mileage to and from Consultant's place of business to Durham), rental cars, permit fees, lodging, and meals. Where such expenses are eligible for reimbursement, the Consultant shall collect and maintain receipts for said expenses and furnish such receipts to the City with the periodic invoices submitted for Services. Reimbursement shall be provided per City guidelines. Travel, lodging, and meal costs shall be governed by City guidelines and restrictions regarding reimbursable costs for City employees.

### 3. Additional Guidelines Regarding Determination of Costs.

Where reimbursement for costs is specifically allowed in the Supplemental Agreement, but the determination of such costs is not provided for in this Agreement or such Supplemental Agreement, or in the event of a dispute regarding costs not governed by this Agreement, the provisions of State law, City regulations or guidelines shall apply, with the limitation that the more restrictive of those regulations or guidelines will govern in case of inconsistency.

#### 4. Disputed Items

In the event that Consultant's invoices and receipts are submitted in compliance with the requirements of this Agreement, if the City disputes any items in any invoices submitted by Consultant City shall notify the Consultant within 60 days of receipt of any disputed item and request clarification and/or remedial action. If objections are not raised within 60 days of receipt of the invoice, the City's objections shall be waived, and the invoice shall be deemed due and owing. After this point, Consultant may include the disputed item(s) in its regular, periodic invoices or on a special invoice for the disputed item only.

#### C. PAYMENT

Within approximately 30 days of City receiving Consultant's invoice, City shall pay Consultant for undisputed amounts within the invoice, unless the invoice does not properly reflect the amounts owed in accordance with limitations contained in a Supplemental Agreement.

#### D. AUDIT OF RECORDS

The Consultant agrees to maintain all information pertaining to billing for Services performed under this Agreement for three years after final payment has been made.

### **SECTION VI. UBE REQUIREMENTS**

#### A. EEO

POLICY STATEMENT. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, DISABILITY, FAMILIAL STATUS, MILITARY STATUS, SEXUAL ORIENTATION, GENDER IDENTITY, AND PROTECTED HAIRSTYLE. The Consultant shall comply with all applicable provisions of Article I of Chapter 34 of the Durham City code (Non-Discrimination) and shall explicitly require the same of its subconsultants in their subcontracts.

#### B. EBOP

The Consultant shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunity Program), as amended from time to time. The failure of the Consultant to comply with Article III of Chapter 18 shall be a material breach of Agreement which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that chapter, this contract, and State law. The Participation Plan submitted in accordance with that chapter is binding on the Consultant. Section 18-59(f) of Article III of Chapter 18 provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Consultant's alleged violations of its obligations under Article III of Chapter 18 and not to the Consultant's alleged violations of other obligations.

## SECTION VII. INSURANCE COVERAGE AND INDEMNIFICATION

### A. GENERAL INSURANCE REQUIREMENTS

*The Consultant agrees to maintain on a primary basis, at its sole expense, and at all times during the life of this contract the following applicable coverages and limits. The requirements contained herein, as well as the City's review or acceptance of insurance maintained by the Contractor, is not intended to, and shall not in any manner, limit or qualify the liabilities or obligations assumed by the Contractor under this contract.*

*Commercial General Liability – Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement excluding or limiting Product/Completed Operations, Contractual Liability, Cross Liability, or Personal and Advertising Injury Liability.*

*Automobile Liability – Limits of no less than \$1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned, and Hired automobiles. In the event the Contractor does not own automobiles, the Contractor agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or by separate Auto Liability policy. Automobile coverage is necessary only if vehicles are used in the provision of services under this contract or are brought on a City site.*

*Umbrella or Excess Liability – The Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability. However, the Annual Aggregate limits shall not be less than the highest "Each Occurrence" limit for required policies. The Contractor agrees to endorse the City as an "Additional Insured" on the Umbrella or Excess Liability unless the certificate of insurance states the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.*

*Workers' Compensation & Employers Liability – The Contractor agrees to maintain Worker's Compensation Insurance in accordance with Chapter 97 of the North Carolina General Statutes and with Employer Liability limits of no less than \$1,000,000 for each accident, each employee, and policy limit. This policy must include a waiver of subrogation.*

*Professional Liability- The Contractor agrees to maintain Professional Liability Insurance with limits no less than \$1,000,000.*

*Additional Insured – The Contractor agrees to endorse the City as an Additional Insured on the Commercial General Liability. The Additional Insured shall read "City of Durham as its interest may appear".*

*Certificate of Insurance – The Contractor agrees to provide the City a certificate of insurance evidencing that all coverage, limits, and endorsements required herein are maintained and in full force and effect, and certificates of insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by the Contractor's insurer. If the Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein or receives notice that coverage no longer complies with the insurance requirements herein, the Contractor agrees to notify the City within five (5) Business Days with a copy of the non-renewal or the cancellation notice or with written specifics*

*as to which coverage is no longer in compliance. The Certificate Holder address should appear as follows:*

*City of Durham  
Attn: General Services Department  
101 City Hall Plaza  
Durham, NC 27701*

*All primary insurance carriers must be authorized to do business in North Carolina. As used in this contract, "Business Day" is defined as any day other than Saturdays, Sundays, and any legal holiday recognized by the City pursuant to City Code Section 42-16, as amended.*

## B. INDEMNIFICATION

### (a) Standard Indemnification Provision.

This section shall be applied to the maximum extent allowed by law, but it shall be construed and limited as necessary to comply with § 22B-1 of the North Carolina General Statutes ("NCGS"). The Contractor shall defend, indemnify, and hold harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or its Derivative Parties. In performing its duties under this subsection, the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses. Included without limitation within "Charges" are (1) interest and reasonable attorney's fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract. By appropriate litigation, each Indemnitee, severally, shall have the right to enforce this section directly against the Contractor, but not against the City.

### (b) Definitions. These definitions apply to this section only unless otherwise stated.

(i) The words "Construction Agreement", "Derivative Parties", "Design Professional", "Design Professional Agreement", "Design Professional Services", "Fault", and "Subcontractor" as used in this section shall have the meanings defined by NCGS §22B-1.

(ii) "Contractor" – Each party to this Agreement except the City of Durham.

(iii) "Indemnitees" means the City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.

(iv) In this section, except as used in subsection (a), "Defend" means to pay for or furnish counsel at the expense of the Contractor to defend any of the Indemnitees against claims alleged or brought against any of the Indemnitees by a third party alleged or brought in any court or other tribunal, including forms of alternative dispute resolution required by law or contract, before the court or tribunal has reached a final determination of fault.

### (c) Insurance Contracts and Bonds.

This section does not affect an insurance contract, workers' compensation, or any other agreement issued by an insurer; and this section does not apply to lien or bond claims asserted under NCGS Chapter 44A.

(d) Survival.

This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

(e) If this contract is a Construction Agreement or a Design Professional Agreement, the following restrictions and qualifications apply to the Standard Indemnification Provision of subsection (a):

(i) Restriction regarding Indemnitees' Negligence.

Contractor shall not be required to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

(ii) Restriction regarding Fault in Construction Agreements and Design Professional Agreements.

Nothing in this contract requires the Contractor to indemnify or hold harmless Indemnitees or any other person or entity against losses, damages, or expenses unless the fault of the Contractor or its Derivative Parties is a proximate cause of the loss, damage, or expense indemnified.

(iii) Restriction regarding Negligence of Design Professionals.

Nothing in this contract requires the Contractor, provided that it is a design professional, to defend Indemnitees or any other person or entity against liability or claims for damages, or expenses, including attorney's fees, proximately caused or allegedly caused by the professional negligence, in whole or in part, of the Contractor, the City, or their Derivative Parties, whether the claim is alleged or brought in tort or contract.

(iv) Liability When at Fault.

The parties intend that nothing in this contract shall be construed to exclude from any indemnity or hold harmless provisions enforceable under subsection (e)(i) (Restriction regarding Indemnitees' Negligence) and subsection (e)(ii) (Restriction regarding Fault in Construction Agreements and Design Professional Agreements) any attorneys' fees, litigation or arbitration expenses, or court costs actually incurred by the City to defend against third party claims alleged in any court, tribunal, or alternative dispute resolution procedure required of the City by law or by contract, if the fault of the Contractor or its Derivative Parties is a proximate cause of the attorney's fees, litigation or arbitration expenses, or court costs to be indemnified. Every provision in this contract that violates the parties' intent expressed in the preceding sentence shall be construed and revised to the extent that it is lawful in order to make the provision conform with such intent.

(v) Other Provisions.

Every provision in this contract that violates this subsection (e) shall be construed and revised to the extent that it is lawful in order to make the provision conform with those subsections.

## **SECTION VIII. GENERAL PROVISIONS**

## A. CHOICE OF LAW AND FORUM

This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section. This subsection VII.A shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

## B. SUCCESSORS AND ASSIGNS

City and Consultant, respectively, bind themselves, their partners, successors, assigns, and legal representatives to this Agreement. Neither City nor Consultant shall assign, delegate, or transfer any interest in or duties arising out of this Agreement without the written consent of the other.

## C. MODIFICATIONS; ENTIRE AGREEMENT

No modification to this Agreement, or any attachments hereto, or to any Supplemental Agreement, shall have any force or affect unless the change is reduced to writing, dated, and made part of this Agreement. Except where this Agreement authorizes changes to be made by the Director (or designee), the execution of any changes on behalf of the City must be signed by the City Manager or a deputy or Assistant City Manager. This Agreement contains the entire Agreement between the parties pertaining to the general provisions of employment of the Consultant. There are no promises, conditions, inducements, warranties, or written or oral understandings, expressed or implied, between the parties, other than as specifically set forth or referenced in this Agreement.

## D. NOTICES

1. In General. This subsection (1) pertains to all notices related to or asserting default, breach of contract, claim for damages, suspension or termination of performance, suspension or termination of contract, and extension or renewal of the term. All such notices must be in writing and made by personal delivery, UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or certified United States mail, return receipt requested; in addition, subsection (2) must also be complied with.
2. Additional Notice by Fax or Email. In addition to complying with subsection (1), the party giving notice or other communication shall also send it by fax or email if the other party has provided a valid, working fax number or email address.
3. When Notice Period Is Less than 9 Days. If a required notice period is less than 9 days, the party shall also make reasonable attempts, before or promptly after giving written notice under subsections (1) and (2), to use a telephone to orally communicate the substance of the contents of the written notice. Communicating the substance of the contents by an in-person conversation will satisfy the preceding sentence.
4. Change of Address; Discovery of Invalid Fax Number or Email Address. A change of address, fax number, email address, telephone number, or person to receive notice may be made by either

party by notice given to the other party. At any time that a party discovers that the other party has provided it a fax number or email address that is not valid, the discovering party shall provide notice of the discovery to the other party, so that it can substitute a valid fax number or email address.

5. Date Notice Deemed Given. If a notice is sent by United States mail, it is deemed complete upon actual delivery or on the third day following the day on which it is deposited with the United States Postal Service, whichever occurs first. Notice is deemed given when both subsection (1) and subsection (2) have been complied with.
6. When Undeliverable Notice Is Deemed Sent. If a notice is undeliverable because the address or other information provided to the sender by the other party is incorrect, incomplete, or out of date, the notice will be deemed sent on the date that the sender attempts to deliver by fax or email, or the date it places the notice in the custody of UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or the U. S. Postal Service for certified United States mail, return receipt requested. If a fax is not received because the recipient's fax number is busy on three attempts to fax that are at least ten minutes apart during a 4-hour period, the fax will be deemed undeliverable.
7. Addresses. Subject to change pursuant to subsection (4), the addresses for these notices, are:

For the City:

*(City Contact Name)*

101 City Hall Plaza

Durham, NC 27701

Fax number is (919)560-\_\_\_\_\_

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

For Consultant:

*(Enter Consultant Contact Name)*

*(Consultant Name)*

*(Consultant Address)*

Fax number: \_\_\_\_\_

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

## F. DISPUTE RESOLUTION

Any party allowed to use the dispute resolution process adopted by the State Building Commission pursuant to G. S. 143-135.26(11) (the "DR process") shall participate in mediation pursuant to the DR process as a precondition to initiating litigation concerning the dispute. The amount of \$15,000 or more must be at issue before a party may require other parties to participate in the DR process. The costs of the DR process shall be divided between the parties to the dispute with one-third of the costs to be paid by the City of Durham, if the City of Durham is a party to the dispute. If only the City and one other party are parties to a dispute, the two parties shall divide the costs of the DR process equally.

## G. DISCLOSURE/PUBLICITY

The Consultant shall make no statements, or press or publicity releases concerning this Agreement or Supplemental Agreements or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement or Supplemental Agreements during the period of the Agreement, without first notifying the City and securing its consent in writing. The Consultant also agrees that it shall not publish, copyright, or patent any of the data furnished in compliance with this Agreement or Supplemental Agreements, it being understood that such data or information is the property of the City.

## H. WAIVER

No action or failure to act by the City shall constitute a waiver of any of the City's rights or remedies arising out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

## I. LIMITED THIRD PARTY RIGHTS CREATED

This Agreement is intended for the benefit of the City and the Consultant and not any other person, except to the extent otherwise expressly stated in this contract.

## J. SEVERABILITY

If any provision of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforceable to the extent permitted by law.

## K. PERFORMANCE OF GOVERNMENT FUNCTIONS

Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

## L. ASSIGNMENT, SUCCESSORS AND ASSIGNS.

Without the City's written consent, the Consultant shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Consultant and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Consultant's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Consultant the right to assign, it is agreed that the duties of the Consultant that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

## M. COMPLIANCE WITH LAW

In performing all of the Services, the Consultant shall comply with all applicable law.

## N. MUNICIPAL ADVISOR

In the performance of its services on behalf of the City, Consultant (a) is not recommending that the City take or refrain from taking any action regarding municipal financial products or the issuance of municipal securities; (b) is not acting as a municipal advisor to the City and does not owe a fiduciary duty to the City pursuant to Section 15B of the Securities Exchange Act of 1934, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, with respect to any of Consultant's deliverables; and (c) is acting for its own interest.

#### O. PUBLIC HEALTH EMERGENCY DECLARATIONS

This section shall take effect upon the declaration of a state of emergency made pursuant to applicable law, code, or ordinance by any federal, state, county, or city official, due to a public health emergency, such as an epidemic, pandemic, or endemic disease. The Consultant shall comply with the written procedures and policies adopted by the City department or office primarily responsible for administering this contract. The Consultant shall ensure that all assigned temporary employees and subcontractors comply with the written procedures and policies while performing the Work on City property.

#### **SECTION IX. E-VERIFY REQUIREMENTS:**

- A. If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) the contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor's subcontractors," and "comply" as used in this subsection (A) shall have the meanings intended by NCGS 143-129(j); and (iii) the City is relying on this subsection (A) in entering into this contract.
- B. If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

#### **SECTION X. CRITERIA FOR INACTIVE STATUS OR REMOVAL FROM ON-CALL LIST**

The criteria outlined below will be used to place a firm on inactive status or remove the Consultant from the "On-Call" List.

- A. If Consultant loses technical expertise, as determined by the City, in the form of individuals, expertise or certification affecting the Consultant's overall qualifications to perform the described project work for which the Consultant was originally qualified by the City, and does not replace that expertise within two (2) months, then the Consultant will be put on inactive status. Replacement of technical expertise will require written City approval to allow the firm to be reinstated on the "On-Call" List.
- B. If Consultant declines a specific project assignment two (2) consecutive times, then the Consultant will be put on inactive status. A written request from the inactive firm, providing appropriate justification, will be required to seek reinstatement on the "On-Call" List. Written City approval will be required to allow the firm to be reinstated on the "On-Call" List.
- C. Consultant may be removed from the "On-Call" List for any of the following reasons as determined by the City:

1. Loss of Technical Expertise - If the Consultant loses their technical expertise and has not replaced that expertise within three (3) months.
2. Declining work - If the Consultant is put on inactive status two (2) times for declining specific project assignments.
3. Responsiveness and accessibility of the Project Manager - If a Project Manager or his/her designee is nonresponsive and inaccessible for more than seven (7) working days
4. Poor quality control - If the Consultant exhibits poor quality control.
5. Poor work product and/or deliverables – If the Consultant produces poor work product and/or deliverables.
6. Late work milestone performance and/or late deliverables - If the Consultant performs work milestones late and/or delivers late work product or deliverables (only due to their fault).

## **SECTION XI. TERMINATION OF AGREEMENT**

### **A. DEFAULT**

This Agreement or Supplemental Agreements may be terminated in whole or in part in writing by either party at any time for breach or default; provided that no termination for default may be affected unless the other party is given a ten (10) working day cure period after written notice of intent to terminate is delivered by Certified Mail, Return Receipt Requested to the party allegedly in default.

### **B. TERMINATION FOR CONVENIENCE OF CITY**

The City may terminate this Agreement or Supplemental Agreements in whole or in part in writing, by giving ten (10) days' notice, delivered by Certified Mail, Return Receipt Requested at any time the interest of the City requires such termination.

If the Agreement or any Supplemental Agreement is terminated for convenience before performance is completed, the Consultant shall immediately discontinue all services, unless notice from the City directs otherwise. City shall pay Consultant for the services performed to the date of receipt of notice of termination. The City shall pay Consultant the lesser of either Consultant's substantiated labor and costs, or the percentage of the contract price corresponding to the percentage of the total work that has been completed under the Supplemental Agreement.

### **C. DELIVERY OF DOCUMENTS AFTER TERMINATION**

Upon any termination, Consultant shall deliver or otherwise make available to City all documents, data, drawings, specifications, reports, estimates, summaries, and such other information and materials that have been created, in whole or in part, or accumulated by Consultant in performing this Agreement or Supplemental Agreements. Consultant shall only be responsible for the accuracy and reliability of fully completed work delivered in accordance with early termination.

### **D. CITY MAY COMPLETE WORK**

Upon termination City may complete the services in any way that the City, in its discretion, determines is appropriate, including but not limited to using City personnel, or contracting with outside parties. Completion of such work shall not waive any of City's rights and remedies.

E. FEDERAL CLAUSES

If any Supplemental Agreement is funded in whole or in part with federal funds or assistance, the Consultant shall comply with all federal clauses and exhibits that the City incorporates into that agreement.

IN WITNESS WHEREOF, the City and the Consultant have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

CITY OF DURHAM

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

Preaudit Certificate, if appropriate: \_\_\_\_\_

*INSERT CONSULTANT SIGNATURE LINE AND NOTARIZATION*

## Appendix E: Trade Secrets and Confidentiality

As a general rule, all submissions to the City are available to any member of the public. However, if materials qualify as provided in this section, the City will take reasonable steps to keep Trade Secrets confidential.

**(a) Designation of Confidential Records.** The terms “Trade Secrets” and “record” are defined in (a)(1) (Definitions). To the extent that the candidate wishes to maintain the confidentiality of Trade Secrets contained in materials provided to the City that will or may become a record, the candidate shall prominently designate the material as “Trade Secrets” at the time of its initial disclosure to the City. The candidate shall not designate any material provided to the City as Trade Secrets unless the candidate has a reasonable and good-faith belief that the material contains a Trade Secret. When requested by the City, the candidate shall promptly disclose to the City the candidate’s reasoning for designating material as Trade Secrets. In providing materials to the City, the candidate shall make reasonable efforts to separate those designated as Trade Secrets from those not so designated, both to facilitate the City’s use of records and to minimize the opportunity for accidental disclosure. For instance, if only a sentence or paragraph on a page is a Trade Secret, the page must be marked clearly to communicate that distinction. To avoid mistake or confusion, it is generally best to have only Trade Secret information on a page and nothing else on that page. To the extent authorized by applicable state and federal law, the City shall maintain the confidentiality of records designated “Trade Secrets” in accordance with this section. Whenever the candidate ceases to have a good-faith belief that a particular record contains a Trade Secret, it shall promptly notify the City.

(1) Definitions.

“Trade secret” means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:

- a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and
- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The existence of a trade secret shall not be negated merely because the information comprising the trade secret has also been developed, used, or owned independently by more than one person, or licensed to other persons.

“Record” means all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, received by the City of Durham in connection with the candidate’s proposal.

**(b) Request by Public for Access to Record.** When any person requests the City to provide access to a record designated as Trade Secrets in accordance with subsection (a), the City may

- (1) decline the request for access,
- (2) notify the candidate of the request and that the City intends to provide the person access to the record because applicable law requires that the access be granted, or
- (3) notify the candidate of the request and that the City intends to decline the request.

Before declining the request, the City may require the candidate to give further assurances so that the City can be certain that the candidate will comply with subsection (c) (Defense of City).

**(c) Defense of City.** If the City declines the request for access to a record designated as Trade Secrets in accordance with subsection (a), the candidate shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of the City’s non-disclosure of the records. In providing that defense, the candidate shall at its sole expense defend Indemnitees with legal counsel. The legal counsel shall be limited to attorneys reasonably acceptable to the City Attorney.

Definitions. As used in this subsection (c), “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, fines, penalties, settlements, expenses, attorneys’ fees, and interest.

Indemnitees" means the City, and officers, officials, independent contractors, agents, and employees, of the City. "Indemnitees" does not include the candidate. The City may require the candidate to provide proof of the candidate's ability to pay the amounts that may reasonably be expected to become monetary obligations of the candidate pursuant to this section. If the candidate fails to provide that proof in a timely manner, the City shall not be required to keep confidential the records whose non-disclosure gives rise to the potential monetary obligation. Nothing in this agreement shall require the City to require any natural person to be imprisoned or placed in substantial risk of imprisonment, being found by a court to be in contempt, or being in violation of a court order as a result of alleged nondisclosure of records or for alleged noncompliance with a court order respecting disclosure of records. This subsection (c) is separate from and is to be construed separately from any other indemnification and warranty provisions in the contract between the City and the candidate.