



**Department of Transportation  
101 City Hall Plaza, Ste 4200  
Durham, NC 27701**

## **Requests for Proposals**

**Bid No.**

**Date of Issue: February 17, 2020**

### **Marketing and Communications Support for Way To Go Durham**

The City of Durham is seeking a qualified marketing firm to provide marketing and communications services to the City's mobility program, Way To Go Durham.

**Submittals are due by 4:00 pm on March 4, 2020**

<b>Project Manager Name</b>	Tom Devlin
<b>Project Manager Title</b>	Transportation Planner
<b>Project Manager Department</b>	Dept. of Transportation
<b>Project Manager Telephone</b>	919-560-4366 x36507
<b>Project Manager Email</b>	tom.devlin@durhamnc.gov

## TABLE OF CONTENTS

<b>Table of Contents</b>	<b>1</b>
10. Date of RFP	2
20. Project Manager and Contact	2
<b>Description of Project and Nature of RFP</b>	<b>2</b>
30. Project	2
40. Scope of Work	2
50. Compensation Amount and Schedule	3
60. Definitions in this RFP	3
70. Contract	3
80. Trade Secrets and Confidentiality	3
90. Bonds	5
100. Insurance	5
110. Discretion of the City	6
<b>Schedule</b>	<b>6</b>
120. Schedule	6
130. Keeping Proposals Open	6
140. Deadline to Submit Proposals	6
<b>Getting More Information on the Project and RFP Process</b>	<b>7</b>
150. Questions	7
160. Pre-Submittal Conferences, Meetings, and Site Visits	7
170. Updates and Revisions to RFP	7
<b>Evaluation Criteria</b>	<b>7</b>
180. Evaluation Criteria	7
<b>Contents of Proposal</b>	<b>7</b>
240. Contents of Proposal	7
<b>Cover Letter with Proposal</b>	<b>9</b>
250. Cover Letter	9
260. Addendums	9
<b>How to Submit a Proposal</b>	<b>9</b>
270. How to Submit a Proposal	9
280. Format	10
290. Alternative Proposals	10
300. Candidate to Bear Expense	10
310. State Treasurer’s Lists Regarding Iran and Boycott of Israel	10
320. Notice Under the Americans with Disabilities ACT (ADA)	10
330. Values of City Regarding Treatment of Employees/Contractors	11
<b>Exhibit A – Equal Business Opportunity Program</b>	
<b>Exhibit B – UBE Listing</b>	
<b>Exhibit C – Sample Contract</b>	

**10. Date of RFP.**

February 17, 2020

**20. Project Manager and Contact with City; Questions about this RFP.**

Direct questions and concerns to

Attn: Tom Devlin  
City of Durham  
Department of Transportation  
101 City Hall Plaza; Ste 4200  
DURHAM NC 27701-3329

tom.devlin@durhamnc.gov  
(O) 919-560-4366 x36507  
(F) 919-560-4561

If you have concerns about this RFP that you believe are not being addressed by the project manager, please contact Bill Judge, Assistant Transportation Director, [bill.judge@durhamnc.gov](mailto:bill.judge@durhamnc.gov) or 919-560-4366 x36420.

**DESCRIPTION OF PROJECT AND NATURE OF RFP****30. Project.**

Twenty-five people move to Durham, North Carolina each day. This city of 260,000 is expected to grow by an additional 160,000 residents with 25 years. With this growth comes challenges, especially in downtown Durham where there are 15,000 parking spaces for 25,000 employees, a 90% drive alone rate, and many employers provide free parking.

The City of Durham is committed to increasing mobility throughout the city and the region. With the launch of a new mobility program, "Way To Go Durham", the city will focus on outreach, public education, and the marketing of sustainable commute and travel options (bus, carpool/vanpool, bike/walk) to reduce the number of drive alone trips through the city.

Way To Go Durham is also the public face of the Bloomberg Philanthropy's Mayors Challenge program, which develops tools and incentives that combine TDM strategies with behavioral science practices.

Way To Go Durham is committed to developing and supporting solutions to reduce congestion, greenhouse gas emissions, and the burden on our existing transportation system.

More information can be found at [WayToGoDurham.com](http://WayToGoDurham.com).

**40. Scope of Work.**

The City is soliciting a person or firm to for marketing and communications support for upcoming public education initiatives to reduce drive alone travel within the city.

The selected vendor will be asked to develop a general communications and social media calendar for Way To Go Durham and a campaign around four different target markets:

**Large Employers (50+ employees)** – Encourage large employers to establish a transportation benefits program to discourage drive alone commuting. Elements of a transportation benefits program may include: discounted/free bus passes, ridematching services for carpool/vanpool, parking cash-out, bicycle facilities, etc.

**Residents** – Development of a way-finding map for large apartment complexes in the city to show transportation amenities (such as bus stops, carshares, bike racks) and other highlights (restaurants/stores/downtown) that are within a 5, 10, 15-minute walk/bike ride.

**Commuters** – Make commuters who live near pre-identified Park & Rides aware of their existence and the opportunities to connect to transit or meet a carpool/vanpool.

**Students** – Encourage college students to use the bus by entering them into a prize drawing every time they use their bus pass.

It will not be necessary for the campaigns to run simultaneously and may be staggered throughout the calendar year of 2020.

Services required include, but are not limited to: graphic design, copy writing, social media development, communications calendar creation, advertising sourcing. Printing of any materials and sourcing of any prizes/incentives will be handled by the City outside of this proposal.

#### **50. Compensation Amount and Schedule.**

Proposals shall not exceed \$45,000. Selected vendor may invoice monthly for services provided in that month.

#### **60. Definitions in this RFP: City, RFP, Proposal, Candidate, Contractor, Should.**

Unless the context indicates otherwise – (a) The expressions “RFP,” “this RFP,” and “the RFP” refer to this document as it may be amended or updated. (b) “City” and “city” mean the City of Durham. (c) The “proposal” is the response of a person, firm, or corporation proposing to provide the services sought by this RFP. (d) The word “Candidate” or “candidate” is the person, firm, or corporation that submits a proposal or that is considering submitting a proposal. (e) The word “Contractor” or “contractor” is the person, firm, or corporation with which the City enters into a contract to provide the services sought by this RFP. That is, “contractor” generally refers to a successful candidate that has obtained a fully executed contract with the City, while “candidate” is generally reserved to the stage before a contract has been signed. (f) The word “should” is used to tell candidates what the City thinks it wants and/or what the project manager thinks is best. Candidates that want to increase the likelihood of being selected will, in general, do what the RFP says candidates “should” do, but failure to comply with all “shoulds” will not necessarily and automatically result in rejection.

#### **70. Contract.**

The City anticipates that the conclusion of the RFP process will be a contract between the City and the successful candidate under which the successful candidate will provide the goods and services generally described in this RFP. It is the City’s intention to use the contract that is attached as Exhibit A, modified and filled in to reflect the RFP and the proposal. If a candidate objects to any of the contract, it should state the objections in its proposal.

#### **80. 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.

Definitions.

In this section (Trade Secrets and Confidentiality) –

The term “candidate” includes the candidate as contractor (that is, after it is a party to a contract with the City).

The term “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.

The term "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.

**(a) Designation of Confidential Records.** To the extent that the candidate wishes to maintain the confidentiality of trade secrets contained in materials provided to the City, the candidate shall prominently designate the material with the words "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; the candidate may need to label parts of that reasoning 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 the materials 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.

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

- (1) decline the request for access,
- (2) notify the candidate of the request and that the City has provided, or 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) below.

**(c) Defense of City.** If the City declines the request for access to a record designated as trade secrets in accordance with subsection (a), then, in consideration of the promises in (b) above and for considering the candidate's proposal, the candidate agrees that it 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 person (including the City itself) to be placed in substantial risk of imprisonment, of being found by a court to be in contempt, or of being in violation of a court order. 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.

**85. Reserved.**

**90. Bonds.**

*No performance bond or payment bond is required for this contract.*

**100. Insurance.**

Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following applicable coverages and limits.

The requirements contained herein, as well as City's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by 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(s) excluding nor limiting Product/Completed Operations, Contractual Liability, Cross Liability, or Personal and Advertising Injury Liability.

Additional Insured – 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 – Contractor agrees to provide City of Durham a Certificate of Insurance evidencing that all coverage's, 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 Contractor's insurer. If 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, Contractor agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance.

The Certificate Holder address should read:

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

**110. Discretion of the City.**

- A. The City of Durham reserves the right to reject any or all proposals.
- B. NOTWITHSTANDING anything to the contrary in this document or in any addendums to this document, unless the contrary provision refers specifically to this provision, the City reserves the right (i) to negotiate changes of any nature with any candidate with respect to any term, condition, or provision in this document and/or in any proposals, whether or not something is stated to be mandatory and whether or not it is said that a proposal will be rejected if certain information or documentation is not submitted with it, and (ii) to enter into an agreement for some or all of the work with one or more persons, firms, or corporations that do not submit proposals. For example, all deadlines are for the administrative convenience or needs of the City and may be waived by the City in its discretion. This subparagraph B applies to the entire RFP, including the UBE portions.
- C. Where the City asks or tells candidates to do stated things, such as that a proposal should follow a stated format

or that the candidate should do stated things in seeking the contract, the City may reject a proposal because it does not comply with those requests, so the candidate is adding to its risk of rejection by non-compliance. Still, the City may, in its discretion, waive non-compliance. This subsection (C) does not limit subsections (A) and (B).  
D. Of course, once a contract is signed, the parties to the contract may enforce the contract according to its terms as allowed by applicable law.

## **SCHEDULE**

### **120. Schedule.**

The City expects the services to be complete by December 31, 2020

The City will work with the selected vendor to establish a schedule for each project listed in the scope

### **130. Keeping Proposals Open.**

All proposals will remain open and valid for the City to accept for a period of 60 days after the deadline for submission of proposals. The Project Manager may release candidates from this obligation by a written letter that specifically refers to this paragraph if he or she determines that the candidate and/or the proposal will not meet the City's needs.

### **140. Deadline to Submit Proposals.**

Candidates should see that their proposals are received at the following physical address or email by March 4, 2020 at 4:00 pm.

Attn: Tom Devlin  
City of Durham  
Department of Transportation  
101 City Hall Plaza; Ste 4200  
DURHAM NC 27701-3329

tom.devlin@durhamnc.gov

## **GETTING MORE INFORMATION ON THE PROJECT AND RFP PROCESS**

### **150. Questions.**

Questions about the RFP and the RFP process should be submitted to the project manager identified at the beginning of this RFP.

### **160. Pre-submittal Conferences, Meetings, and Site Visits.**

The City will not conduct a pre-submittal conference or meeting.

### **170. Updates and revisions to RFP.**

If you have supplied the Project Manager with your preferred method of contact (email, fax, etc.), updates to this RFP ("addendums" or "addenda") will be sent to you in that manner. This RFP and addendums are normally posted on the City's website, on the Purchasing Division's webpage. Check that webpage to see that you have received all addenda.

## **EVALUATION CRITERIA**

### **180. Evaluation Criteria.**

If an award is made, it is expected that the City's award will be to the candidate that agrees to meet the needs of the City, and is the best overall proposal for the City. The evaluation criteria for the proposals is intended to be flexible to

allow for novel and creative approaches to the scope. A number of relevant factors will be considered, including qualifications, experience, creativity, effectiveness, cost, and an understanding of the target markets outlined in section 40.

**190 – 230.** Reserved.

## **CONTENTS OF PROPOSAL**

### **240. Contents of Proposal.**

The proposal should include sections, numbered as follows:

#### **1. Contact Information.**

Include the candidate's name and address, and the contact information (name, mailing address, email address, fax number, and telephone number) of the person whom the City should contact regarding the proposal.

#### **2. Legal Status of the Candidate and Signers.**

State the full, exact name of the candidate. State whether the candidate is an individual, corporation, limited partnership, general partnership, limited liability company, professional corporation, professional association, etc. If it is anything other than an individual or a general partnership, specify the State under which the entity is organized. If the State under which the entity is organized is not North Carolina, specify whether the candidate has received a certificate of authority from the N. C. Secretary of State to transact business in North Carolina. State whether the entity is in existence at the time the proposal is submitted, and if not, whether and when the candidate intends to officially form the entity. State the names and titles of the individuals who will sign the contract with the City.

#### **3. Qualifications, References, and Licenses.**

This part should include the candidate's experience on similar projects and include references and how to contact them.

#### **4. Project Team, Location of Work, and Subcontracting.**

State the names and qualifications of the individuals who will have responsibility for this project.

#### **5. Methods and Procedures.**

Candidates should provide a proposed scope, project schedule, and project budget for each target market identified in the Project Scope above.

Candidates shall also provide a portfolio or examples of previous work.

#### **6. Compensation.**

Explain the entire compensation arrangement that you propose, broken out by target market campaign.

#### **7. Assumptions regarding City of Durham Actions and Participation.**

If your proposal assumes that the City will take certain actions, provide facilities, or do anything else, you should state these assumptions explicitly.

#### **8. UBE Participation.**

It is the policy of the City to provide equal opportunities for City contracting for underutilized firms 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 present effects of past discrimination and to resolve complaints of discrimination. This policy applies to all professional services categories.

The design goals for this project are 8% M/UBE and 0% W/UBE. In accordance with the Ordinance, all proposers are required to provide information requested in the Professional Services Forms package included with this request. Proposals that do not contain the appropriate, completed Professional Services Forms may be deemed non-responsive and ineligible for consideration. The UBE Participation Documentation, the Employee Breakdown and the Letter of Intent to Perform as a Sub-consultant documents are required of all proposers. In lieu of the Employee Breakdown, contractors may submit a copy of the current EEO-1 form (corporate basis). The Request to Change UBE Participation and "UBE Goals Not Met/Documentation of Good Faith Efforts" forms are not applicable at this time.

The Department of Equity & Inclusion is responsible for the Equal Business Opportunity Program. All questions about Professional Services Forms should be referred to Eric Miller, Contracting and Compliance Manager at [eric.miller@durhamnc.gov](mailto:eric.miller@durhamnc.gov) or (919) 560- 4180 x17241.

UBE participation information and forms to be completed and returned with the proposal can be found at the end of this RFP.

#### **8.5 Reserved**

#### **9. Financial Condition, Insurance, Bonds, and Taxes.**

Candidates shall state if they are currently insured at the levels mentioned above in Section 100.

#### **10. Conflict of Interest.**

If the candidate has any grounds to believe there could be a conflict of interest, such as that a City employee who is involved in awarding the contract has a connection with the candidate, please explain.

#### **11. Reserved**

### **COVER LETTER WITH PROPOSAL**

#### **250. Cover Letter.**

The proposal should contain a cover letter, signed by a principal of the candidate. The cover letter should contain the following statement:

The undersigned, whose title and position with the candidate are stated next to or beneath his or her signature, has the authority to submit this proposal (including this cover letter) on behalf of the candidate in response to the City of Durham's Request for Proposals.

Unless otherwise clearly stated in this response to the RFP, our proposal accepts the terms and conditions stated in the RFP, including the description of services to be performed and the provisions of the contract to be signed.

The cover letter should contain one of the following two paragraphs A or B. If (i) the cover letter lacks both paragraph A and paragraph B, or (ii) the cover letter contains paragraph A but fails to comply with the instructions in the section of the RFP titled "Trade Secrets and Confidentiality," the City may treat everything it receives from the candidate as NOT trade secret or confidential, and the City may disclose to the public everything it receives from the candidate.

A. With respect to all trade secrets that the candidate may submit to the City in connection with this proposal or the contract, if the contract is awarded to the candidate, the candidate shall comply with the section of the RFP

titled "Trade Secrets and Confidentiality," including all of its subsections, including the subsection titled "Defense of City." The candidate acknowledges that the City will rely on the preceding sentence.

**-or-**

B. The candidate is not submitting any trade secrets to the City in connection with this proposal or the contract; if the contract is awarded to the candidate, the candidate will not submit any trade secrets to the City in connection with this proposal or the contract. The candidate acknowledges that the City will rely on the preceding sentence.

#### **260. Addendums.**

The cover letter should list the last addendum that the City issues for this RFP, with a statement such as *The undersigned candidate has read all the addendums issued by the City for this RFP, through and including Addendum No. \_\_\_\_*. In that blank the candidate should list the number of the last addendum

### **HOW TO SUBMIT A PROPOSAL**

#### **270. How to Submit a Proposal.**

Candidates may submit their proposals in a sealed envelope. The envelope should be addressed for delivery to the Project Manager at the address shown in the "Project Manager and Contact with City" section at the beginning of this RFP.

Write the following prominently on the outside of the envelope: Way To Go Durham

Proposals may also be emailed to [tom.devlin@durhamnc.gov](mailto:tom.devlin@durhamnc.gov).

Proposals are to be received no later than March 4, 2020 at 4:00 pm.

Oral qualifications/proposals will not be accepted.

#### **280. Format.**

Proposals that are delivered in a sealed envelope shall include one original that contains original signatures and marked as "original", and two additional paper copies. An electronic copy in form of a pdf file on a CD/DVD or flash drive should be provided as well. "Way To Go Durham" shall be written on the outside of the package with the name of the Proposer.

Proposals that are delivered electronically shall be in pdf format. Proposal files that are larger than 10 MB may be uploaded to a shared file storage location (such as DropBox or Google Drive) for the City to download.

No proposals will be considered after the deadline for submissions.

#### **290. Alternative Proposals.**

If you wish to submit a proposal that does not comply with the City's standards and expectations, consider submitting two proposals: a proposal that complies, plus a proposal that does not comply, so that your "non-compliant" version can be considered as an alternative if the City is interested. This will allow your compliant version to be considered if the City remains steadfast on applying the standards and expectations.

#### **300. Candidate to Bear Expense; No Claims against City.**

No candidate will have any claims or rights against the City arising out of the participation by a candidate in the proposal process. No candidate will have any claims or rights against the City for the City's failure to award a contract to it or for awarding a contract to another person, firm, or corporation, regardless of whether the other person, firm, or corporation participated in the RFP process or did not submit a proposal that complied with the RFP. A notice of award

will not constitute acceptance by the City; the City's only method of acceptance is the City's execution of a formal contract in accordance with law.

**310. State Treasurer's lists regarding Iran and Boycott of Israel.**

If the value of the contract is \$1,000 or more, the following applies unless the candidate otherwise states in its proposal: the candidate affirms (by submitting a proposal) 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.

**320. Notice under the Americans with Disabilities Act.**

A person with a disability may receive an auxiliary aid or service to effectively participate in city government activities by contacting the ADA Coordinator, voice (919) 560-4197, fax 560-4196, TTY (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 bajo el Acto de Americanos Discapacitados** – Una persona con una discapacidad puede recibir asistencia o servicio auxiliar para participar efectivamente en actividades del gobierno de la ciudad con ponerse en contacto con el Coordinador de ADA, buzón de voz (919) 560-4197, fax (919) 560-4196, TTY (919) 560-1200, o [ADA@durhamnc.gov](mailto:ADA@durhamnc.gov), lo más antes posible pero no menos de 48 horas antes del evento o fecha indicada.

**330. Values of City of Durham regarding Treatment of Employees of Contractors**

A. Statement of City EEO Policy. The City of Durham opposes discrimination in employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Therefore, it desires that firms doing business with the City:

1. not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
2. take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. 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.
3. state, in solicitations or advertisement for employees, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
- 4- 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.

B. 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 \$15.46 per hour

---- End of RFP ----



**EQUITY & INCLUSION**  
CITY OF DURHAM

# **EXHIBIT A**

## **EQUAL BUSINESS OPPORTUNITY PROGRAM**

### **PROFESSIONAL SERVICES FORMS**

Updated 08/19



## **Policy Statement**

It is the policy of the City to provide equal opportunities for City contracting to underutilized businesses 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.

## **Goals**

To increase the dollar value of all City contracts for goods and services awarded to minority and women business enterprises, it is a desire of the City that the contractor will voluntarily undertake efforts to increase the participation of minority and women individuals at higher skill and responsibility levels within non-minority firms engaged in contracting and subcontracting with the City.

The Equity & Inclusion Director shall determine participation goals based upon the availability of minority and women business enterprises (MWBs) within the defined scope of contracting, and the goals established for the contracting category.

## **Equal Business Opportunity Program UBE Participation Documentation**

**If applicable information is not submitted with your proposal, your proposal may be deemed non- responsive.**

**UBE Participation Documentation** must be used to document participation of an underutilized business enterprise (UBE) on Professional Services projects. All UBEs must be certified by the State of North Carolina as a historically underutilized business, the North Carolina Department of Transportation as a minority-owned or women-owned business or the U.S. Small Business Administration's 8(a) Business Development Program prior to the submission date. If a business listed has not been certified, the amount of participation will be reduced from the total utilization.

**Employee Breakdown** must be completed and submitted for the location providing the service/commodity. If the parent company will be involved in providing the service/commodity on the City contract, a consolidated employment breakdown must be submitted.

**Letter of Intent to Perform as a Sub-consultant/Subcontractor** must be completed for UBEs proposed to perform on a contract. This form must be submitted with the proposal.

### **Post Proposal Submission UBE Deviation**

Post proposal submission UBE deviation participation documentation must be used to report any deviation from UBE participation either prior to or subsequent to startup of the project. The Equity & Inclusion Department must be notified if the proposed sub-consultant/subcontractor is unable to perform and for what reasons. Substitutions of sub-consultants/subcontractor, both prior to and after awarding of a contract, are subject to City approval.

### **UBE Goals Not Met/Documentation of Good Faith Efforts**

It is the responsibility of consultants/contractors to make good faith efforts. Good Faith Efforts means the sum total of efforts by a particular business to provide equitable participation of minority-owned and women-owned individuals or businesses as sub-consultants/subcontractors.

Whenever contract alternatives, amendments or extra work orders are made individually or in the aggregate, which increase the total value of the original contract, the consultant must make a good faith effort to increase UBE participation such that the amounts subcontracted are consistent with the established goals.

# **ELECTION OF CONSULTANTS/CONTRACTORS FOR ARCHITECTURAL/ENGINEERING AND OTHER PROFESSIONAL SERVICES**

## **Goal**

The purpose is to provide underutilized business enterprises owned by minorities and women with equal opportunities for participation on City of Durham contracts.

## **Definition of the Scope of the Selection Policy**

The Equity & Inclusion Director shall 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 underutilized business enterprises(UBE's) within the defined scope of work, delineated into percentages of the total value of the work.

The City of Durham will consider a formal certification of the State of North Carolina's Historically Underutilized Businesses (HUB) Office, North Carolina Department of Transportation (N.C. DOT) minority and women businesses and the United States Small Business Administration (U.S. SBA) 8(a) Development Program as meeting the requirements of the Equal Business Opportunity Program, provided there is evidence that the firm is currently certified by one of the stated entities.

## **Underutilized Business Proposal Requirements**

The prime consultant/contractor shall submit a proposal in accordance with the City of Durham's request for Proposal. In addition, the prime consultant/contractor must submit all required Professional Services Forms.

## **Selection Committee for Professional Services**

A selection committee shall 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; the Equity & Inclusion Director or designee and Purchasing Manager or designee. Other representatives shall be called upon as needed based on their areas of expertise.

The committee shall screen the proposals based on the following criteria:

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 project;
8. Familiarity with the project;
9. Fees that have been charged for recent comparable projects;
10. References;
11. UBE Participation; and
12. Documentation of Good Faith efforts should UBE participation requirements not be met.

After ranking the firms presenting proposals based on the above criteria, interviews will be conducted by the selection committee with the top ranked firms (3-5). The contracting department will make the final recommendation, prepare contracts for review by the City Attorney, and prepare the recommendation for the City Council including the following:

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 Equity & Inclusion 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.



**PARTICIPATION DOCUMENTATION  
(TO BE COMPLETED BY PRIME CONSULTANT/CONTRACTOR ONLY)**

<b>Names of all firms in project (including sub-consultants/sub-contractors)</b>	<b>Location</b>	<b>UBE Firm?</b>	<b>Nature of Participation</b>	<b>% of Project Work</b>
		Yes ( ) No ( )		
		Yes ( ) No ( )		
		Yes ( ) No ( )		
		Yes ( ) No ( )		
		Yes ( ) No ( )		
		Yes ( ) No ( )		
		Yes ( ) No ( )		

TOTAL \_\_\_\_\_

\_\_\_\_\_  
Name - Authorized Officer of Prime Consultant/Contractor Firm (Print/Type)

\_\_\_\_\_  
Signature - Authorized Officer of Prime Consultant/Contractor Firm

\_\_\_\_\_  
Date

# COMPLETE THIS FORM OR SUBMIT AN EEO-1 REPORT

## EMPLOYEE BREAKDOWN

### Part A – Employee Statistics for the Primary Location

				M— a —l— e —s					F— e —m— a —l— e —s				
Employment category	Total Employees	Total males	Total females	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
Project Manager													
Professional													
Technical													
Clerical													
Labor													
Totals													

### Part B – Employee Statistics for the Consolidated Company (See instructions for this form on whether this part is required.)

				M— a —l— e —s					F— e —m— a —l— e —s				
Employment category	Total Employees	Total males	Total females	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
Project Manager													
Professional													
Technical													
Clerical													
Labor													
Totals													

It is in the City's interest to collect accurate data on the makeup of the business owners that contract with the City. Your response to the follow questions is optional, although the City would appreciate your response:

Are you (the business owner for this bid/proposal) certified as a minority or woman firm with the N.C. HUB Office, N.C. Dept. of Transportation or Small Business Administration 8(a) Program? Yes\_\_\_\_\_ No\_\_\_\_\_

If NOT, please put an X beside any of the following with which more than 50% of the ownership identifies: \_\_\_\_\_White/Non-Hispanic \_\_\_\_\_Black \_\_\_\_\_Hispanic \_\_\_\_\_Asian \_\_\_\_\_American Indian \_\_\_\_\_Woman

I certify that the information provided is true and correct at this time.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signature/ Name of Firm

## Letter of Intent to Perform as a Sub-Consultant

The undersigned intends to perform work in connection with the above project as a UBE: Minority(African American, American Indian, Asian or Hispanic) Woman

The UBE status of the undersigned is certified if identified as HUB certified by the N.C Department of Administration HUB Office, minority or women certified by the N.C. Department of Transportation and 8(a) certified by the U.S. Small Business Administration.

The undersigned is prepared to perform the following described work in connection with the above project (specify in detail particular work items or parts thereof to be performed):

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

<u>ITEMS</u>	<u>PROJECTED COMMENCEMENT DATE</u>	<u>PROJECTED COMPLETION DATE</u>

The consultant will subcontract \_\_\_\_\_ % of the dollar value of this contract to UBE sub-consultant.

The undersigned will enter into a formal agreement in the amount of \$ \_\_\_\_\_ for the above work with you, conditioned upon your execution of a contract with the City of Durham.

Name \_\_\_\_\_ Title \_\_\_\_\_

Company \_\_\_\_\_ Telephone \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

# REQUEST TO CHANGE UBE PARTICIPATION

Project: \_\_\_\_\_

Name of bidder or consultant: \_\_\_\_\_

Name and title of representative of bidder or consultant: \_\_\_\_\_

Address: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No: \_\_\_\_\_ Fax Number: \_\_\_\_\_

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

Total amount of original contract, before any change orders or amendments: \_\_\_\_\_

Total amount of the contract, including all approved change orders and amendments to date, but not counting the changes proposed in this form: \_\_\_\_\_

Dollar amount of changes proposed in this form: \_\_\_\_\_

The proposed change (*check one*) ☐ **increases** ☐ **decreases** the dollar amount of the bidder's/consultant's contract with the City.

Does the proposed change decrease the UBE participation? (*check one*) ☐ **yes** ☐ **no**

If the answer is **yes**, complete the following:

**BOX A. For the subcontract proposed to be changed (increased, reduced, or eliminated):** Name of sub-consultant \_\_\_\_\_

Goods and services to be provided before the proposed change: \_\_\_\_\_

***Is it proposed to eliminate this subcontract?*** ☐ **yes** ☐ **no**

If the subcontract is to be increased or reduced, describe the nature of the change (*such as adding \$5,000 in environmental work and deleting \$7,000 in architectural*): \_\_\_\_\_

Dollar amount of this subcontract before this proposed change: \_\_\_\_\_

Dollar amount of this subcontract after this proposed change: \_\_\_\_\_

This subcontractor is (check one):

- ☐ 1. Minority-owned UBE
- ☐ 2. Women-Owned UBE
- ☐ 3. Not a UBE

**BOX B. Proposed subcontracts other than the subcontract described in Box A above (continued)**

Name of sub-consultant for the new work: \_\_\_\_\_

Goods and Services to be provided by this proposed subcontract: \_\_\_\_\_

Dollar amount proposed of this proposed subcontract: This sub-consultant is:

- ☐ 1. Minority-owned UBE
- ☐ 2. Women-Owned UBE
- ☐ 3. Not a UBE

Add additional sheets as necessary.

**UBE GOALS NOT HAVING BEEN MET. The following information must be presented by the consultant concerning good faith efforts taken.**

It is the responsibility of consultants to make good faith efforts. Any act or omission by the City shall not relieve them of this responsibility. For future efforts, it shall be comprised of such efforts which are proposed to allow equitable participation of socially and economically disadvantaged employees and sub- consultants/subcontractors. The City Manager shall apply the following criteria, with due consideration of the quality, quantity, intensity and timeliness of efforts of consultants/contractors, in determining good faith efforts to engage UBEs along with other criteria that the City Manager deems proper:

Name of Bidder: \_\_\_\_\_

*If you find it helpful, feel free to attach pages to explain your answers. How many pages is your firm attaching to this questionnaire? \_\_\_\_\_*

*(Don't count the 2 pages of this questionnaire.)*

***If a yes or no answer is not appropriate, please explain the facts. All of the answers to these questions relate only to the time before your firm submitted its bid or proposal to the City. In other words, actions that your firm took after it submitted the bid or proposal to the City cannot be mentioned or used in any answers.***

**1. SOLICITING UBEs.**

(a) Did your firm solicit, through all reasonable and available means, the interest of all UBEs in the list provided by the City in the scope of work of the contract? ☐ **yes** ☐ **no**

In such soliciting, did your firm advertise? ☐ **yes** ☐ **no**

Are you attaching copies to this questionnaire, indicating the dates and names of newspaper or other publication for each ad if that information is not already on the ads? ☐ **yes** ☐ **no**

(b) In such soliciting, did your firm send written (including electronic) notices or letters? Are you attaching one or more sample notices or letters? ☐ **yes** ☐ **no**

(c) Did your firm attend the pre-bid conference? ☐ **yes** ☐ **no**

(d) Did your firm provide interested UBEs with timely, adequate information about the plans, specifications, and requirements of the contract? ☐ **yes** ☐ **no**

(e) Did your firm follow up with UBEs that showed interest? ☐ **yes** ☐ **no**

(f) With reference to the UBEs that your firm notified of the type of work to be subcontracted , did your firm tell them:

(i) The specific work your firm was considering for subcontracting? ☐ **yes** ☐ **no**

(ii) That their interest in the contract is being solicited? ☐ **yes** ☐ **no**

(iii) How to obtain and inspect the applicable plans and specifications and descriptions of items to be purchased? ☐ **yes** ☐ **no**

## 2. BREAKING DOWN THE WORK.

- (a) Did your firm select portions of the work to be performed by UBEs in order to increase the likelihood that the goals would be reached? ☐ **yes** ☐ **no**
- (b) If **yes**, please describe the portions selected. **ANSWER:**

## 3. NEGOTIATION.

In your answers to 3, you may omit information regarding UBEs for which you are providing a Letter of Intent.

- (a) What are the names, addresses, and telephone numbers of UBEs that you contacted?  
**ANSWER:**
- (b) Describe the information that you provided to the UBEs regarding the plans and specifications for the work selected for potential subcontracting. **ANSWER:**
- (c) Why could your firm not reach agreements with the UBEs that your firm made contact with? Be specific.  
**ANSWER:**

## 4. ASSISTANCE TO UBEs ON BONDING, CREDIT, AND INSURANCE.

- (a) Did your firm or the City require any subcontractors to have bonds, lines of credit, or insurance?  
☐ **yes** ☐ **no** (Note: In most projects, the City has no such requirement for *subcontractors*.)
- (b) If the answer to (a) is **yes**, did your firm make efforts to assist UBEs to obtain bonds, lines of credit, or insurance?  
☐ **yes** ☐ **no** If **yes**, describe your firm's efforts. **ANSWER:**
- (c) Did your firm provide alternatives to bonding or insurance for potential subcontractors?  
☐ **yes** ☐ **no** If **yes**, describe. **ANSWER:**

5. **GOODS AND SERVICES.** What efforts did your firm make to help interested UBEs to obtain goods or services relevant to the proposed subcontracting work? **ANSWER:**

## 6. USING OTHER SERVICES.

- (a) Did your firm use the services of the City to help solicit UBEs for the work? ☐ **yes** ☐ **no**  
Please explain. **ANSWER:**
- (b) Did your firm use the services of available minority/women community organizations, minority and women contractors' groups, government-sponsored minority/women business assistance agencies, and other appropriate organizations to help solicit UBEs for the work? ☐ **yes** ☐ **no**  
Please explain. **ANSWER:**

# Exhibit B

## UBE Listing

Company Name	Contact Name	Address	City, State	Zip	Phone	Email	Hub Certification
AlphaGraphics Cary - N. Raleigh	Eric Webb	301 Ashville Ave	Cary, NC	27518	919-233-7710	ewebb@alphagraphics.com	HA
Brandilly Marketing & Creative	Kemah Washington	1053 E Whitaker Mill Road	Raleigh, NC	27604	919-278-7896	kemah@brandilly.com	B
FRESHDESIGNZ, LLC	Demarcus A Williams II	PO Box 80562	Raleigh, NC	27623	919-818-6799	demarcus@freshdesignz.net	B
GeoCore Creative, Inc.	Grace Kanoy	141 Sallie Drive	Thomasville, NC	27360	336-479-5319	grace@geocorefilms.com	AA
Incomplex Creative	Shonté Hodnett	7082 Blue Springs Street	Gibsonville, NC	27249	336-266-1630	hello@incomplexcreative.com	B
Kompleks Creative	Tobias Rose	106 W Parrish St.	Durham, NC	27701	919-598-0908	tobias@komplekscreative.com	B
Pivot Point Media	Guilford Fitts	1107 Wells Street	Durham, NC	27707	919-824-7988	gil@pivotpoint-media.com	B



# Exhibit C

## Model Services Contract

### CONTRACT FOR

This contract is dated, made, and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the City of Durham ("City"), a N. C. municipal corporation, and [name of firm] ("Contractor"),  
[Indicate type of entity, for instance:

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.].

#### Sec. 1. Background and Purpose.

Sec. 2. Services and Scope to be Performed. Presumption that Duty is Contractor's. The Contractor shall: In this contract, "Work" means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor's duties to the City that arise out of this contract. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

#### Sec. 3. Reserved.

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 5. Contractor's Billings to City. Compensation. The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City: such information as may be reasonably requested by the City. [City staff - Add any special requirements or detail needed in the invoices.\*\*] Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

The City shall pay the Contractor for the Work as follows: [City staff - Describe the timing of payments, how amounts are calculated, etc. List the kinds of expenses, if any, that the City will reimburse.\*\*]. The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section. [The total dollar amount to be paid under this contract by the City to the Contractor shall not exceed \$(insert amount).]

Sec. 6. Prompt Payment to Subcontractors. (a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 8<sup>th</sup> day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham.

(b) If the individual assigned to administer this contract for the City (in this section, titled "Prompt Payment to Subcontractors," he or she will be referred to as the "Project Manager") determines that it is appropriate to enforce subsection (a) in this manner, the City may withhold from progress or final payments to the Contractor the sums estimated by the Project Manager to be

- (i) the amount of interest due to the Subcontractor under subsection (a), and/or
- (ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the City to the Contractor.

This subsection (b) does not limit any other rights to withhold payments that the City may have.

(c) Nothing in this section (titled "Prompt Payment to Subcontractors") shall prevent the Contractor at

the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

(d) The Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

Sec. 7. Insurance.

Sec. 8. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule required by this contract, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 9. Exhibits. The following exhibits are made a part of this contract

Exhibit A [*Insert title of exhibit*] containing [*insert number*] page(s).

Exhibit B [*Insert title of exhibit*] containing [*insert number*] page(s).

In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Sec. 10. Notice.

(a) In General. This subsection (a) 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 (b) must also be complied with.

(b) Additional Notice by Fax or Email. In addition to complying with subsection (a), 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.

(c) 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 (a) and (b), 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.

(d) 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.

(e) 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 (a) and subsection (b) have been complied with.

(f) 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.

(g) Addresses. Subject to change pursuant to subsection (d), the addresses for these notices, are:

To the City:

[Insert name and department]

City of Durham

101 City Hall Plaza

Durham, NC 27701-3329

The fax number is (919)\_\_\_\_\_.

Email:

To the Contractor:

[Insert name and address]

The fax number is \_\_\_\_\_.

Email:

Sec. 11. Indemnification.

Contents

Applicability and Interpretation of Parts; Survival	Part I
Definitions	Part II
Standard Indemnification	Part III
Restriction regarding Indemnitees' Negligence	Part IV
Restriction regarding Fault	Part V
Restriction regarding Negligence	Part VI
Liability When at Fault	Part VII

Part I (Applicability and Interpretation of Parts; Survival). Note: Subsections (a)-(d) of this Part state which Parts of this Section 11 apply. When Parts apply, it is according to their terms and conditions.

- (a) If this contract is a construction agreement or a design professional agreement, all seven Parts apply.
  - (b) If this contract is neither a construction agreement nor a design professional agreement, then only Parts I, II, and III apply.
  - (c) Parts IV, V, VI, and VII do not affect an insurance contract, workers' compensation, or any other agreement issued by an insurer; and those Parts do not apply to lien or bond claims asserted under Chapter 44A of the N.C. General Statutes.
  - (d) When Part IV, Part V, or Part VI or any combination of those Parts applies, they apply to every provision in this contract outside of Section 11 that would require the Contractor to indemnify, hold harmless, or defend Indemnitees.
  - (e) To the extent of any conflict, this Part I controls the other Parts of this Section 11.
  - (f) Parts I, II, IV, V, VI, and VII are not to be construed in favor or against any party as the drafter. The preceding sentence is not intended to imply how the remainder of this Section 11 or of this contract is to be construed.
  - (g) Parts IV, V, VI, and VII apply to this section and all other sections of this contract regardless of whether the section in question is titled "indemnification," "warranty," or otherwise, and any clause that purports to contain requirements contrary to Parts IV, V, VI, and VII shall be construed consistently with those Parts.
  - (h) This Section 11 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.

Part II (Definitions). These definitions apply to this Section 11 unless otherwise stated.

Contractor – Each party to this contract except the City of Durham.

Construction agreement -- any promise or agreement in, or in connection with, a contract or agreement relative to the design, planning, construction, alteration, repair, or maintenance of a building, structure, highway, road, appurtenance, or appliance, including moving, demolition, and excavating connected therewith.

Defend – In Part I, Part VI, and Part VII, "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. In Part III, "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, during, and after the court or tribunal has reached a final determination of fault.

Derivative parties -- with respect to a party, any of that party's subcontractors, agents, employees, or other persons or entities for which the party may be liable or responsible as a result of any statutory, tort, or contractual duty.

Design professional -- a person or entity who is licensed under and provides professional services regulated by Chapters 83A, 89A, 89C, 89E, or 89F of the N. C. General Statutes.

Design professional agreement -- any promise or agreement in, or in connection with, a contract or agreement with a design professional to provide design professional services.

Design professional services -- a service or work performed by a design professional for which licensure is required under Chapters 83A, 89A, 89C, 89E, or 89F of the N. C. General Statutes.

Fault -- a breach of contract; negligent, reckless, or intentional act or omission constituting a tort under applicable statutes or common law; or violations of applicable statutes or regulations.

Indemnitees -- City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.

Subcontractor -- any person or entity, of any tier, providing labor or material through the Contractor for use on the project at issue in the applicable construction agreement or design professional agreement.

Part III (Standard Indemnification). (a) To the maximum extent allowed by law, 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 "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) "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.

Part IV (Restriction regarding Indemnitees' Negligence). This contract shall not require the Contractor 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.

Part V (Restriction regarding Fault). 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.

Part VI (Restriction regarding Negligence). 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 alleged 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.

Part VII (Liability When at Fault). It is agreed without limitation that nothing in this contract shall be interpreted to exclude from any indemnity or hold harmless provisions enforceable under Parts IV and V 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.

Sec. 12. Trade Secrets; Confidentiality. The request for proposals (RFP) section titled "Trade Secrets and Confidentiality" shall apply to any Trade Secrets disclosed to the City during the process leading to the parties' entering into this Contract (including all of the Contractor's responses to the RFP). This section (titled "Trade Secrets; Confidentiality") 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. For purposes of this contract, the word "candidate" in the RFP section just cited shall mean the "Contractor."

Sec. 13. Reserved

Sec. 14. State Law Provisions.

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.

Sec. 15. Miscellaneous.

(a) Choice of Law and Forum; Service of Process. (i) 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 and not the United Nations Convention on Contracts for the International Sale of Goods. 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. The preceding two sentences do not apply to actions to enforce a judgment entered in actions heard pursuant to this subsection (i). (ii) If the Contractor is an artificial person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. The Contractor hereby appoints as one of those agents the person it designates to receive notice pursuant to section 10 (Notice). If the Contractor fails to appoint a person to receive such notice or the person cannot be served using reasonable diligence, the Contractor appoints the Durham City Clerk as Agent for Service of Process. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor shall instruct each Agent for Service of Process that when the agent receives the process, summons, or complaint, the agent shall promptly send it to the Contractor using a means for giving notice under this contract, provided that when the City Clerk is the agent, the City shall issue such instructions. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina by filing with the office of the N. C. Secretary of State and that registered agent can be found with due diligence at the registered office.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, 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.

(c) 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.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment. Successors and Assigns. Without the City's written consent, the Contractor 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 Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EBOP. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article 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 Contractor's alleged violations of its obligations under Article III

of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(i) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(j) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar day. (8) The word "Work" is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

(k) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(l) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

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

ATTEST:

CITY OF DURHAM

\_\_\_\_\_

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

preaudit certificate, if applicable \_\_\_\_\_