



GENERAL SERVICES
CITY OF DURHAM

TITLE: REQUEST FOR LETTERS OF INTEREST
R. Kelly Bryant Bridge Trail, Durham, NC TIP EB-5720
Third Fork Creek Trail Phase II, Durham, NC TIP EB-5837

ISSUE DATE: August 27, 2018

LOI DEADLINE: September 27, 2018 – 5:00pm EST

ISSUING AGENCY: City of Durham

RFLOI AS AMENDED BY ADDENDA 1: 9/13/2018

The RFLOI that has been amended as shown below. Additions are highlighted in yellow, deletions have strikes.

RFLOI AS AMENDED BY ADDENDA : 9/19/2018

The RFLOI that has been amended as shown below. Additions are highlighted in green, deletions have strikes.

SYNOPSIS

The City of Durham is seeking Professional Engineering Design services for two separate trail projects under this RFLOI. **The City intends to contract with one firm by way of two separate contracts under this advertisement.** ~~The City reserves the right to contract with two firms or one firm for both projects under this advertisement. Firms may choose to submit for one or both projects under this RFLOI.~~ Both projects are dually funded with federal Transportation Alternative Program and City of Durham Capital Improvement Project dollars.

SUB CONSULTANTS ARE PERMITTED UNDER THIS CONTRACT

This contract will be partially reimbursed with Federal Highways Administration (FHWA) Federal-aid administered by the North Carolina Department of Transportation (NCDOT). The solicitation, selection, and negotiation of a contract shall be conducted in accordance with all NCDOT requirements and guidelines.

Prime firms shall demonstrate proficiency in the management of Federally Funded/Locally Managed projects as well as Durham City/County Site Plan, Construction Permit, and Floodplain Development Permit approvals. Submittal teams shall demonstrate previous experience in the planning, design, and construction of similar infrastructure projects.

The prime firm shall be pre-qualified by NCDOT to perform the following work codes:

- 316 Multi-Use Trail Design, Survey & Layout
- 434 Tier II Complete Hydrolic and Hydraulic Design
- 270 Utility Coordination

The following NCDOT pre-qualification work codes shall be held by either the prime firm or sub consultant firm(s):

013	Appraisals Review	192	Right of Way Appraisals
024	Bridges – Spans Under 200’	194	Right of Way Negotiators
032	Categorical Exclusions	199	Route Location Surveys
036	Community Impact Assessment		
070	Erosion and Sediment Control Design	207	Signal Design
132	Landscape and Streetscape Design	295	Structure Foundation Invest. & Design
155	Pavement Marking Plans	296	Retaining Wall Investigation & Design
171	Public Involvement		

All work codes listed are required and shall be listed on respective RS-2 forms.

LOI SUBMITTALS

LOIs shall be received by mail, hand-delivered, or electronically no later than:

~~September 27, 2018 – 5:00PM EST~~

October 4, 2018 – 5:00PM EST

Marked prominently on the outside of the envelope:

Letter of Interest
R. Kelly Bryant Bridge Trail & Third Fork Creek Trail Phase II
ATTN: Jessica Kemp

Mailed and hand-delivered:

General Services Department
2011 Fay Street
Durham, NC 27704

LOIs MUST be submitted in a sealed package and include the LOI in electronic form on either CD or memory stick.

Electronic delivery:

Jessica.Kemp@DurhamNC.gov

Required paper copies MUST ALSO be received by the LOI deadline.

Except as provided below, any firm wishing to be considered must be properly registered with the Office of the Secretary of State and with the North Carolina Board of Examiners for Engineers and Surveyors. Any firm proposing to use corporate subsidiaries or subcontractors must include a statement that these companies are properly registered with the North Carolina Board of Examiners for Engineers and Surveyors and/or the NC Board for Licensing of Geologists. The Engineers performing the work and in responsible charge of the work must be registered Professional Engineers in the State of North Carolina and must have a good ethical and professional standing. It will be the responsibility of the selected private firm to verify the registration of any corporate subsidiary or subcontractor prior to submitting a Letter of Interest. Firms which are not providing engineering services need not be registered with the North Carolina Board of Examiners for Engineers and Surveyors. Some of the services being solicited may not require a license. It is the responsibility of each firm to adhere to all laws of the State of North Carolina.

The selected prime(s) must have the financial ability to undertake the work and assume the liability. The prime firm(s) will be required to furnish proof of Professional Liability insurance coverage in the minimum amount of \$1,000,000.00. The firm(s) must have an adequate accounting system to identify costs chargeable to the project. See ATTACHMENTS for more information regarding insurance.

PROJECT SUMMARIES

R. Kelly Bryant Bridge Trail

This bicycle and pedestrian trail will be approximately 3 miles long. It will connect the existing Rocky Creek Trail on Dakota Street north to the Drew/Granby Park located on Drew Street in Durham. The trail will connect users to an existing trail network, NC Highway 55, the proposed Durham-Orange Light Rail Transit stop on Alston Avenue, Burton Park, Burton Elementary School, East End Park, Long Meadow Park, Eastway Elementary School, Drew/Granby Park, and surrounding neighborhoods. The trail will primarily be a wide, multi-use, ADA accessible sidewalk within the public Right of Way and will transition to bicycle lanes where necessary. The trail is anticipated to cross Holloway Street, Liberty Street, Taylor Street, Morning Glory Avenue, and Angier Avenue. A portion of this trail corridor will be in the FEMA regulated floodplain.

Design-to construction budget: \$3,250,000

Third Fork Creek Trail Phase II

This bicycle and pedestrian trail will be approximately 1.7 miles long. It will extend Phase I of the Third Fork Creek Trail that was built in 2009 and currently ends at Southern Boundaries Park. The new Phase II trail extension identified in the City's Trails and Greenways Master Plan will extend from Southern Boundaries Park north to the American Tobacco Trail connection at Otis Street. The new extension will connect users to an existing trail network, Cornwallis Road, Weaver Street Recreation Center, Weaver Street Park, and surrounding neighborhoods. The trail will be a wide, multi-use, ADA accessible sidewalk within the public Right of Way and boardwalks where necessary. The trail is anticipated to cross E. Cornwallis Road, Jesmond Street, E. Pilot Street, Wayne Circle, and E. Alton Street. A portion of this trail corridor will be in the FEMA regulated floodplain.

Design-to construction budget: \$2,240,000

SCOPE OF WORK

The City of Durham is soliciting proposals for the services of a firm or team to provide planning and engineering design services. **One firm will be selected to provide design services for both projects under two separate contracts.** ~~A firm may be selected to provide design for both projects under two separate contracts or just one project.~~ Designs will be prepared for the following projects:

TIP ID	TITLE	LIMITS
EB-5720	R. Kelly Bryant Bridge Trail	Dakota Street to Drew/Granby Park
EB-5837	Third Fork Creek Trail Phase II	Southern Boundaries Park to ATT at Otis St

The scope of work for each project includes, but is not necessarily limited to, the following tasks;

1) Design and Construction Plans

- a) Public Involvement: Create illustrative graphics of the project area and participate in community information sessions to receive feedback on potential routes, proposed roadway modifications, requested amenities, and final design plans.
- b) Plans will meet graphic and content convention of NCDOT and:
 - i) Guide for the Planning, Design, and Operation of Pedestrian Facilities published by the American Association of State Highway and Transportation Officials (4th edition, 2012)
 - ii) 2018 NCDOT Standard Specifications and Special Provisions for Roads and Structures
 - iii) 2018 NCDOT Roadway Standard Drawings
 - 1. <https://connect.ncdot.gov/resources/Specifications/Pages/default.aspx>
 - iv) City of Durham Public Works Department – Construction Standards, Specifications & Standard Details (July 1, 2018)
 - 1. <http://durhamnc.gov/3626/Construction-Standards>
 - v) NCDOT Bicycle & Pedestrian Projects resources
 - i. Bicycle & Pedestrian Project Development & Design Guidance
 - ii. Policies & Guidelines
 - iii. Complete Streets
 - 2. <https://connect.ncdot.gov/projects/BikePed/Pages/default.aspx>
- c) Field Survey: Provide a topographic field survey including drainage that will enter the project area and existing overhead and subsurface utilities. All data shall be prepared in AutoCAD Civil3D using the drawing standards, assemblies, and layering convention as proscribed by the City of Durham Public Works Design and Land Survey Groups.
- d) Design Drawings: All data shall be prepared in AutoCAD Civil3D using the drawing standards, assemblies, and layering convention as proscribed by the City of Durham Public Works Design and Land Survey Groups.
- e) Utility Conflicts: Identify utilities that will be required to be moved in order to accommodate trail projects. This task may include utility coordination and relocation prior to NCDOT Right of Way Certification approval.
- f) Easements: Identify permanent and temporary construction easement needs. This task will include conducting surveys, appraisals, and preparing plats and legal descriptions for signature and recording.

- g) Stormwater Assessment: Determine if the existing stormwater infrastructure needs modification to maintain storm water flow lines.
 - h) Engineer's Estimate: Cost estimates will be kept up to date throughout the life of the project. Estimates will include quantity take offs, line item costs, and easement acquisition costs. Estimates are to be provided with every design submittal (Preliminary Plans, Intermediate Plans, and Final Plans/Specifications/Estimate).
- 2) Environmental Documentation – All federally-funded projects must comply with the National Environmental Policy Act (NEPA). All applicable state and local agency approvals will be the responsibility of the selected design firm. This may include 401/404 permits, Nationwide permits, CLOMR/LOMR, Floodplain Development permits, Categorical Exclusion approval, and any other Agency approval that may have jurisdiction.
 - 3) Permits – Obtain all permit approvals necessary from state and local agencies.
 - 4) Utility Conflicts – Identify all above ground and subsurface infrastructure conflicts and assist the City with relocation as deemed necessary to achieve NCDOT Right of Way Certification approval.
 - 5) Right of Way Certification – Obtain Right-of-Way plats generated for acquisition needed (with parcels and owners identified) ready for recording.
 - 6) Bidding – Deliver a Final Plans/Specifications/Estimate package for Formal bid advertisement. Participate in the City-lead Pre-Bid Meeting and addenda as needed. Create a Bid Tab and vet bids.

PROPOSED CONTRACT TIME

While a fixed schedule is not being provided, the City of Durham desires to move expeditiously towards construction. Submittals shall describe a proposed schedule for the project(s) and how the consultant plans to meet this/these schedule(s). Sufficient time should be given to evaluating existing conditions, design requirements, community engagement, final route selection, permit approvals, design approvals, easement acquisitions, and bidding. The City and selected prime(s) will discuss the contract period during negotiations.

PROPOSED CONTRACT PAYMENT TYPE

It is the City's intention to use the contract template in the ATTACHMENTS section for both projects. After selections are made, the City will negotiate fair and reasonable compensation with the selected prime firm(s). Compensation will include negotiation of profit as a separate element of price as per 2 CFR 200.323(b). If the compensation amount cannot be successfully negotiated, the City will begin compensation negotiations with the next firm in line, and so on.

The proposed method of payment for this contract is a Lump Sum basis. Progress payments will be made on a monthly or every other month basis.

SUBMITTAL FORMAT

Provide Seven (7) unbound copies and one electronic copy in PDF format of your submittal **are required. Email submittals are optional.** Limit responses to twenty or fewer double-sided pages

(40 pages of content) with font no less than 10pt. City and NCDOT required forms are permitted to exceed the page limit. In keeping with the City's conservation effort, you are asked to print the full submittal on recyclable, normal stock, white, office paper without a plastic binding or a plastic cover.

SELECTION PROCESS

See the SUBMISSION SCHEDULE section for key dates. The following is a general description of the selection process:

- Interested firms are strongly encouraged to attend the optional Pre-Submittal meeting. Meeting minutes will not be provided.

Tuesday, September 4th 2018, 1:00pm

General Services Department
2011 Fay Street
Durham, NC
Training Room 141

- Questions regarding the RFLOI and projects may be submitted outside of the Pre-Submittal meeting in writing to Jessica.Kemp@durhamnc.gov through the question end date. See the QUESTIONS section for information regarding addenda.
- In order to be considered for selection, consultants must submit Letters of Interest by the specified deadline.
- The City of Durham's Selection Committee will review Letter of Interest packages and firms will be ranked for each project.
- The City of Durham's Selection Committee MAY choose to shortlist a minimum of three (3) firms to be interviewed.
- All firms who submitted LOIs will be notified whether or not they were selected. Firms may request a brief feedback phone call.

SMALL PROFESSIONAL SERVICE FIRM PARTICIPATION

NCDOT encourages the use of Small Professional Services Firms (SPSF). Small businesses determined to be eligible for participation in the SPSF program are those meeting size standards defined by Small Business Administration (SBA) regulations, 13 CFR Part 121 in Sector 54 under the North American Industrial Classification System (NAICS). The SPSF program is a race, ethnicity, and gender neutral program designed to increase the availability of contracting opportunities for small businesses on federal, state or locally funded contracts. SPSF participation is not contingent upon the funding source.

The Firm, at the time the Letter of Interest is submitted, shall submit a listing of all known SPSF firms that will participate in the performance of the identified work. The participation shall be submitted on the NCDOT's Sub consultant Form RS-2. See ATTACHMENTS for the forms.

The SPSF must be qualified with the NCDOT to perform the work for which they are listed.

Real-time information about firms doing business with the NCDOT and firms that are SPSF certified through the Contractual Services Unit is available in the Directory of Transportation Firms. The Directory can be accessed on the NCDOT's website at [Directory of Firms](#) - Complete listing of Prequalified Consultants.

The listing of an individual firm in the NCDOT's directory shall not be construed as an endorsement of the firm.

After reviewing qualifications, if firms are equal on the evaluation review, then those qualified firms with proposed SPSF participation will be given priority consideration.

PREQUALIFICATION

The NCDOT maintains on file the qualifications and key personnel for each approved discipline, as well as any required samples of work. Each year on the anniversary date of the company, the firm shall renew their prequalified disciplines. If your firm has not renewed its application as required by your anniversary date or if your firm is not currently prequalified, please submit an application to the NCDOT **prior to LOI submittal**. An application may be accessed on the NCDOT's website at [Prequalifying Private Consulting Firms](#). **Firms will need to be prequalified at the time of contracting.** Having data on file with the NCDOT eliminates the need to resubmit data with each Letter of Interest.

The NCDOT is committed to providing opportunity for small and disadvantaged businesses to perform on its contracts through established Department goals. The Firm, sub consultant and sub firm shall not discriminate on the basis of race, religion, color, national origin, age, disability or sex in the performance of this contract.

PROJECT GOALS

There are no NCDOT assigned goals for this project; however, there are City of Durham goals as determined by the Department of Equal Opportunity/Equity Assurance (EOEA) Equal Business Opportunity Program.

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 Professional Service goals for this project are 8% M/UBE and 6% W/UBE.

The City has provided a listing of HUB firms that can be used to meet project goals. The listing is not inclusive of all UBE firms that could participate on the project. Bidders may also use the following to meet participation requirements:

1. HUB certified by the NC Department of Administration
2. "Minority" or "Women" certified by the NCDOT – see [Directory of Firms](#)

3. 8(a) certified by the US Small Business Administration

In accordance with City Ordinance, all LOI submissions are required to provide information requested in the Professional Services Forms package included in the with this request see ATTACHMENTS. 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 Interest to Perform as a Sub-consultant documents are required of all proposers in addition to required NCDOT RS-2 forms. In lieu of the Employee Breakdown, contractors may submit a copy of the current EEO-1 form (corporate basis).

If goals are not met by the selected firm, a good faith audit will be conducted by EOEA.

All questions about Professional Services Forms should be referred to Eric Miller, Department of Equal Opportunity/Equity Assurance at (919) 560-4180.

LOI SUBMISSION CONTENT

Write the following prominently on the outside of the envelope:

**Letter of Interest for:
R. Kelly Bryant Bridge Trail & Third Fork Creek Trail Phase II
ATTN: Jessica Kemp**

The LOI must include the following content:

Cover Letter

- 1) Name of Prime firm
- 2) Name, address, phone number, and e-mail of the prime consultant's contact person.
- ~~3) Indicate which of the two projects your firm is interested in, or both.~~
- 4) Statement of whether the prime firm is prequalified with NCDOT for required work codes **or date of a specific NCDOT prequalification work code application;**
- 5) Statement of whether the subconsultant firms are prequalified with NCDOT for remaining work codes; and
- 6) A summation of information contained in the Letter of Interest.

Chapter 1 - Qualifications, Experience, and Workload

This chapter should elaborate on the general information presented in the introduction, to establish the credentials and experience of the Prime consultant and subcontractors to undertake this type of project.

- 1) Provide an Organizational Chart of the project team that will be assigned to this project including at least one staff for each: Project Management, Civil Engineering, Structural Engineering, Stormwater Engineering, Geotechnical Engineering, Landscape Architecture, and Surveying. ~~If your firm is interested in both projects,~~ **Provide an Organizational Chart for each project.**

- 2) Provide concise resumes for each of the key team members including roles and responsibilities they will have with this project. Include general qualifications, licenses and/or relevant certifications and professional registrations, and the number of years with current and previous firms. Only list prime and subconsultant staff that will be assigned to this for each project.
- 3) Provide a Capacity Chart/Graph for key team members and their availability throughout the proposed project period. ~~If your firm is interested in both projects,~~ Provide a Capacity Chart/Graph for each project.
- 4) Provide experience illustrating the team's capabilities for managing the assessment of existing conditions, design, permitting, community engagement, and schedule/budget management. Include any team member specialized/innovative software and technology skills that will be used to accomplish the scope of work.

Chapter 2 - Related Work History

This chapter should elaborate on specific project examples to build confidence in the team's ability to successfully execute projects. A single project may satisfy multiple criteria below, but at least 5 project examples total from the categories below should be included and at least 3 should be complete.

- 1) Indicate any previous project experience working for the City of Durham as a consultant within the past five (5) years. Brief project summaries should include tasks performed, project budget, primary City Project Manager name and contact information, team members who worked on the project and their role, and whether the project was completed on time and on budget, and errors and omissions rate for completed projects expressed as a percentage of the construction contract value. If key team members worked for a firm at the time they gained experience with review/approval processes named in the SYNOPSIS section of this RFLOI, state firm name, project name, and year.
- 2) Provide a minimum of two (2) projects managed by the prime firm with Federal funding administered by a Local Government in North Carolina. Brief project summaries should include tasks performed, project budget, Owner's Project Manager and contact information, project TIP number, and whether the project was completed on time and on budget, and errors and omissions rate for completed projects expressed as a percentage of the construction contract value. As federal funding administration varies widely from state to state, North Carolina projects administered by NCDOT are preferred but not required.
- 3) Provide a minimum of three (3) projects managed by the prime firm with a similar scope of work (examples: greenway trails, bike lanes, boardwalks, alternative transportation projects, etc.). Indicate if any of the subconsultants proposed on this current LOI project team worked on these projects. Brief project summaries should include tasks performed, project budget, Owner's Project Manager Name and contact information, whether the project was completed on time and on budget, and errors and omissions rate for completed projects expressed as a percentage of the construction contract value.

Chapter 3 - Project Approach and Schedule

This chapter should elaborate on your team's proposed to approach the project and schedule. ~~If your firm is interested in both projects,~~ **Provide a Project Approach and Schedule for each project.**

- 1) Include a discussion of proposed methodologies, techniques, and procedures for each phase of the project and your proposed approach to community engagement.
- 2) Describe the hierarchy of project management and subconsultant tasks.
- 3) Provide a detailed description of how your firm proposes to approach this project with an emphasis on how you will assure document quality and cost management and key milestones.
- 4) Include a description of how technology will be used to communicate, plan, organize, design, and manage the project.
- 5) Provide a critical path type project schedule from design Notice to Proceed through Bidding. The schedule should take into consideration experience on other federally funded projects managed by a Local Government and administered by NCDOT ~~in North Carolina~~ **or another government entity.**

Firms submitting LOIs are encouraged to carefully check them for conformance to all requirements stated above.

QUESTIONS

All questions concerning this RFLOI should be directed to Jessica Kemp at jessica.kemp@durhamnc.gov. Responses will be issued in the form of an addendum available to all interested parties.

Interested parties should send an email request to be placed on a project correspondence list to ensure receipt of RFLOI updates.

Questions must be submitted no later than September 14, 2018, 5:00pm EST

The final addenda will be issued by September 19, 2018.

This RFLOI and all Addenda will be posted on the NCDOT page for [Consultant Advertisements](#) (Type: LGA)

SELECTION CRITERIA

All firms who meet qualification requirements and submit complete Letters of Interests by the stated deadline will be considered. In selecting a firm/team, the Selection Committee will consider the following:

- 40% Experience working on Federally Funded projects ~~administered by NCDOT and managed by a Local Government in North Carolina~~ **administered by NCDOT and managed by a Local Government in North Carolina**. Demonstrated greenway trail design experience with emphasis on unique stormwater and floodplain constraints.

- 25% Management, Team Organization, Key Team Members, and Project Approach. Overall understanding of objectives and constraints. Proposed QA/QC program, use of technology, and community engagement.
- 15% Experience achieving concurrence and regulatory approvals from State and Local agencies; NCDOT, USACE, NCDEQ, Durham City/County Planning, etc.
- 15% Demonstrated ability to meet reference project schedules and budgets. Low rate of design errors and omissions.
- 5%: Other factors as determined by the Selection Committee (Examples: references, presentation quality, responsiveness, etc.)

DISCRETION OF THE CITY

- 1) The City of Durham reserves the right to reject any or all proposals.
- 2) 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 2) applies to the entire RFLOI.
- 3) 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 3) does not limit subsections 1) and 2).
- 4) Once the contract is executed, the parties to the contract may enforce the contract according to its terms as allowed by applicable law.

SUBMISSION SCHEDULE

RFLOI Release	August 27, 2018
Pre-Submittal Meeting	September 4, 2018 – 1:00pm EST
Deadline for Questions	September 14, 2018 – 5:00pm EST
Issue Final Addendum	September 19, 2018
Deadline for LOI Submission	September 27, 2018 – 5:00pm EST October 4, 2018 – 5:00pm EST
Review and Selection:	
Shortlist Announced (optional)	October 10–12, 2018 October 17–19, 2018
Interviews (optional)	October 17–19, 2018 October 22–26, 2018
Firm Selection and Notification	October 22–26, 2018 October 29-31, 2018

Estimated Contracting Schedule:

Scoping meeting – Contractor, City, and NCDOT	November 2018
Contract negotiation	November 2018
NCDOT concurrence	December 2018
City Council Work Session	January 2018
City Council Meeting	January 2019
Contract execution	February 2019
Notice to Proceed	February 2019

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 RFLOI process or did not submit a proposal that complied with the RFLOI. 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.

STATE TREASURE'S LISTS- 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.

NOTICE UNDER ADA

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, as soon as possible but no later than 48 hours before the event or deadline date.

(Spanish) 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, lo más antes posible pero no menos de 48 horas antes del evento o fecha indicada.

VALUES OF CITY OF DURHAM REGARDING TREATMENT OF EMPLOYEES OF FIRMS

- 1) 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:
- 2) not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
- 3) 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.
- 4) 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.
- 5) 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.
- 6) 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 \$14.15 per hour through June 30, 2018, and \$15.00 per hour for July 1, 2018 – June 30, 2019. The City will re-set the rate for the period after June 30, 2019.

ATTACHMENTS

*Required to be completed, signed, and included in the LOI submittal package.

- 1) *NCDOT Prime Consultant RS-2 Form (rev 1/14/08)
- 2) *NCDOT Prime Sub consultant RS-2 Form (rev 1/15/08, one per each sub)
- 3) City of Durham EOEA Professional Services forms
 - a) *Participation Documentation Form
 - b) *Employee Breakdown Form (or EEO-1 Report)
 - c) *Letter of Intent to Perform as a Sub-Consultant (one per each sub)
- 4) Historically Underutilized Business list
- 5) City of Durham Insurance Requirements
- 6) City of Durham contract template for professional design services with FHWA funding
- 7) Pre-Submittal Meeting sign in sheet

ADDITIONAL INFORMATION

Corrected link to the Dropbox file:

<https://www.dropbox.com/sh/5d55m4qklmvtm59/AAD6rVuwruegbfEJBQU3SEZXa?dl=0>

**NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
PRIME CONSULTANT
TO BE USED WITH PROFESSIONAL SERVICES CONTRACT ONLY
RACE AND GENDER NEUTRAL**

TIP No. and/or Type of Work (Limited Services)

(Consultant/Firm Name and Federal Tax Id)

<i>SERVICE / ITEM DESCRIPTION</i>		<i>Anticipated Utilization</i>
TOTAL UTILIZATION:		
RECOMMENDED BY:		
CONSULTANT:		
*BY:		
TITLE:		
SPSF Status:	Yes <input type="checkbox"/>	No <input type="checkbox"/>

“PRIME CONSULTANT” (FORM RS-2)
RACE AND GENDER NEUTRAL

Instructions for completing the Form RS-2:

1. Complete a Prime Consultant Form RS-2 for the prime consultant firm.
2. Insert TIP Number and /or Type of Work (Limited Services)
3. Complete the Consultant/Firm name and Federal Tax ID Number for the primary firm information.
4. Enter Service/Item Description – describe work to be performed by the Prime Firm
5. Enter Anticipated Utilization – Insert dollar value or percent of work to the Prime Firm
6. *Signature of the Prime Consultant **is required** on each RS-2 Form to be submitted with the Letter of Interest (LOI) to be considered for selection
7. Complete “SPSF Status” section - Check the appropriate box regarding SPSF Status, check Yes if SPSF or No if not SPSF

**NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
SUBCONSULTANT
TO BE USED WITH PROFESSIONAL SERVICES CONTRACT ONLY
RACE AND GENDER NEUTRAL**

TIP No. and/or Type of Work (Limited Services)

(Consultant/Firm Name and Federal Tax Id)

(Subconsultant/Firm Name and Federal Tax Id)

<i>SERVICE / ITEM DESCRIPTION</i>	<i>Anticipated Utilization</i>
	TOTAL UTILIZATION:
SUBMITTED BY: SUBCONSULTANT:	RECOMMENDED BY: CONSULTANT:
*BY:	*BY:
TITLE:	TITLE: <input style="width: 50px;" type="text"/>
SPSF Status: Yes <input type="checkbox"/> No <input type="checkbox"/>	

“SUBCONCONSULTANT” (FORM RS-2)
RACE AND GENDER NEUTRAL

Instructions for completing the Form RS-2:

1. Complete a Subconsultant Form RS-2 for each Subconsultant firm to be utilized by your firm.
2. Insert TIP Number and /or Type of Work (Limited Services)
3. Complete the Consultant/Firm name and Federal Tax ID Number for the primary firm information.
4. Complete the Subconsultant/Sub Firm name and Federal Tax ID Number for the sub firm information.
5. Enter Service/Item Description – describe work to be performed by the Sub Firm
6. Enter Anticipated Utilization – Insert dollar value or percent of work to the Subconsultant/Sub Firm
7. *Signatures of both Subconsultant and Prime Consultant **are required** on each RS-2 Form to be submitted with the Letter of Interest (LOI) to be considered for selection
8. Complete “SPSF Status” section - Subconsultant shall check the appropriate box regarding SPSF Status, check Yes if SPSF or No if not SPSF

In the event the firm has **no** subconsultant, **it is required that this be indicated on the Subconsultant Form RS-2 form by entering the word “None” or the number “ZERO” and signing the form.**



CITY OF DURHAM EQUAL BUSINESS OPPORTUNITY PROGRAM

PROFESSIONAL SERVICES FORMS

Revised 03/2016



Phone: 919-560-4180
Facsimile: 919-560-4513

Street Address:
101 City Hall Plaza (Annex)
Durham, North Carolina 27701

The Department of Equal Opportunity/Equity Assurance
Good Things Are Happening In Durham

CITY OF DURHAM EQUAL BUSINESS OPPORTUNITY PROGRAM

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 Equal Opportunity/Equity Assurance Director shall determine participation goals based upon the availability of minority and women business enterprises (MWBES) 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 Equal Opportunity/Equity Assurance 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.

SELECTION 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 Equal Opportunity/Equity Assurance 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 Equal Opportunity/Equity Assurance 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 Equal Opportunity/Equity Assurance 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)**

**Names of all firms
Project (including
prime and
subconsultants/sub
- contractors)**

Location

**UBE
Firm
Yes/No**

**Nature
of
Participation**

**% of Project
Work**

		Yes () No ()		
		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 ATTACH COMPUTERIZE FORM
EMPLOYEE BREAKDOWN**

(EEO-1 Report may be submitted in lieu of this form.)

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	M— a — l — e — s					F — e — m — a — l — e — s				
				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	M— a — l — e — s					F — e — m — a — l — e — s				
				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													

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 subcontractant _____

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? _____ questionnaire.)

(Don't count the 2 pages of this

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:**

R. KELLY BRYANT BRIDGE TRAIL & THIRD FORK CREEK TRAIL PHASE II - HUB CERTIFICATION LIST 8.2018

Company Name	Contact Name	Address	City, State	Zip	Phone	Email	Hub Certification
A1 Consulting Group, Inc.	Goel, Vinnie	117 International Drive	Morrisville, NC	27560	919-469-4800	vgoel@a1cons.com	AA
Accelerate Engineering, PLLC	Teng, Zhaolong	875 Walnut Street, Suite 316	Cary, NC	27511	919-263-5678	Gavin.Teng@AccelerateEng.com	AA
AVCON, INC. Engineers & Planners, Inc.	Kriss, Meghann	5555 E. Michigan St.	Orlando, FL	32822	407-599-1122	mkriss@avconinc.com	AA
Baseline Mobility Group, Inc.	Rahman, Mushtaqur	10030 Green Level Church Rd	Cary, NC	27519	919-452-5188	m.rahman@baselinemobility.com	AA
BBFoster Consulting, PC	Foster, Ph.D., PE, Bellandra	2618-A Battleground Avenue	Greensboro, NC	27408	336-355-7897	bbf@bbfosterconsulting.com	B
BREE & ASSOCIATES, INC.	Lancaster, Robert	3434 Edwards Mill Road	Raleigh, NC	27612-4276	919-469-3330	bree@breeassociates.com	B
Capstone Civil Engineering, Inc.	Brown, Charles	7807 Pelican Court	Charlotte, NC	28227	980-938-6770	cbrown@capstonecivilcompanies.com	B
CES Group Engineers, LLP	Heleine, Judy	274 N Hwy 16	Denver, NC	28037	704-489-1500	jheleine@ces-group.net	W
CH ENGINEERING, PLLC	Chambliss, Maha	3220 Glen Royal Road	Raleigh, NC	27617	919-788-0224	mchambliss@ch-engr.com	W
CLH Design PA	Richards, Melissa	400 Regency Forest Drive	Cary, NC	27518	919-319-6716	mrichards@clhdesignpa.com	W
COASTAL ENGINEERING SURVEYING	GOMEZ, CARLOS	P.O. BOX 1129	KITTY HAWK, NC	27949	252-261-4151	jalene@coastales.com	HA
CriTek Engineering Group, P.C.	Crite, Dawayne	1 Centerview Drive	Greensboro, NC	27407	336-348-1889	info@critekgroup.com	B
Ecological Engineering, LLP	Sauls, Lane	1151 SE Cary Parkway	Cary, NC	27518	919-557-0929	isauls@ecologicaleng.com	W
ENVIRONMENTAL SERVICES INC	Robinson, Sarah	7220 Financial Way, Suite 100	Jacksonville, FL	32256	904-470-2200	ctaylor@esinc.cc	W
Falcon Engineering	Robertson, Margaret	1210 Trinity Road	Cary, NC	27513	919-871-0800	mmansfield@falconengineers.com	W
Friction Shift Projects, LLC	Carter, Kristy	55 Maney Avenue	Asheville, NC	28804	828-776-7374	kristy@frictionshift.com	W
FROEHLING & ROBERTSON INC	Schaefer, Daniel	310 Hubert Street	Raleigh, NC	27603	919-828-3441	dschaefer@fandr.com	AI
Hearns Real Estate Solutions	Hearns, Marvin	9541 Kings Parade Blvd	Charlotte, NC	28273	704-469-9242	marvin@hearnsres.com	B
John Davenport Engineering	Davenport, John	119 Brookstone Ave.	Winston-Salem, NC	27101	336-744-1636	jdavenport@davenportworld.com	B
Ken Weeden & Associates, Inc.	Weeden, Kenneth	P.O. Box 3113	Wilmington, NC	28406	910-762-6297	kenneth-weeden@kwplanning.com	B
Kennerly Engineering & Design	Kennerly, Nikole	12133 N NC Hwy 150	Winston-Salem, NC	27127	336-775-2118	nikole.kennerly@kennerlyengineering.com	W
Locklear, Locklear & Jacobs, PLLC	Harris, Krystal	PO Box 3119	Pembroke, NC	28372	910-774-9306	Krystaladair57@gmail.com	AI
MA ENGINEERING CONSULTANTS, INC.	Manikala, Arvin	598 East Chatham Street	Cary, NC	27511-6956	919-297-0220	maec@maec.com	AA
Mekuria Engineering, Inc.	Mekuria, Belayneh	P O Box - 10505	Raleigh, NC	27605	919-539-6070	Bmekuria@nc.rr.com	B
MLA Design Group	Miller, Ash	120 Club Oaks Court, Suite 100	Winston-Salem, NC	27104	336-251-2460	ash@milleria.com	AA
Morton & Morton Design Service	Morton, Jeanell	4700 Homewood Ct. Suite 200	Raleigh, NC	27609	919-882-6066	jdmorton@nc.rr.com	W
NTU Mobile Monitoring and Consulting, Inc	McCaleb, Melanie	PO Box 40788	Raleigh, NC	27629-0788	(919)412-7537	melanie@ntuinc.com	W
NXL Construction Services, Inc.	Ripka, Emily	114 E. Cary Street	Richmond, VA	23219	804-644-4600	eripka@nxl.com	HA
O. R. Colan Associates, LLC	Shelton, John	7005 Shannon Willow Road	Charlotte, NC	28226	704-944-1391	jshelton@orcolan.com	W
Oak City Acquisitions and Land Developme	Evans, Ronald	1305 E. Millbrook Rd	Raleigh, NC	27609	919-427-1403	oakcityald@gmail.com	B
Piedmont, REALTORS	Watson, Cory	329 Sherbrook Dr	High Point, NC	27262	(336)819-1041	cwatson@northstate.net	B
Premier Design Builders, Inc.	Witherspoon, John-Troy	214 East Mountain Street, Suite 100	Kernersville, NC	27284	(336)992-8720	jt@premierdesignbuilders.com	B
Public Participation Partners	Robinson, Simone	PO Box 32160	Raleigh, NC	27622	919-704-5357	srobinson@pppconsulting.net	B
SageDesign PLLC	Burroughs, Sara	228 North Front Street	Wilmington, NC	28401	(910)232-3878	sara@sagedesign.us	W
SEPI Engineering&Construction	Macdonell, James	1025 Wade Ave	Raleigh, NC	27605	919-747-5833	jmacdonell@sepiengineering.com	W
Simon Resources, Inc.	Simon, Karen	3946 Tonbridge Lane	Winston-Salem, NC	27106	336-749-1411	simonresrc@gmail.com	W
Site Design Studio, PLLC	Gilliland, Julie	10-D South Main Street	Weaverville, NC	28787	828-484-8225	julie@sds-la.com	W
Slade Land Use, Environmental, and Trans	Slade, L'Tryce	1500 First Avenue North	Birmingham, AL	35203	205-413-4685	ltryce@gmail.com	B
STEWART ENGINEERING INC	Nels, Kasia	421 Fayetteville Street, Suite 400	Raleigh, NC	27601	919-866-4714	knels@stewartinc.com	HA
Stewart, Martin & McCoy	McCoy, Kirk	3604 Shannon Road	Durham, NC	27707	919-425-5856	kirk@stewart-martin.com	B
Susan M. Hatchell	Hatchell, Susan	711 W. North Street	Raleigh, NC	27603	919-838-9600	Susan@SusanHatchell.com	W
The Bernard Johnson Group, Inc.	Johnson, Bernard	4215 Spring St., Ste. 311	La Mesa, CA	91941	619-466-7800	bjohnson@thebjgroup.com	B
The Schneider Corporation	Carpenter, Thomas	8307 University Executive Park Dr	CHARLOTTE, NC	28262	704-697-5914	tcarpenter@schneidercorp.com	W
Three Oaks Engineering	Young, Suzanne	324 Blackwell Street	Durham, NC	27701	919-423-9413	suzanne.young@threeoaksengineering.com	W
Toole Design Group, LLC	Boehmer, Amy	8484 Georgia Avenue	Silver Spring, MD	20910	301-927-1900	marketing@tooledesign.com	W
Vistabution, LLC	Mann, Clarence	8315 Six Forks Road	Raleigh, NC	27615	919-844-9375	cmann45@bellsouth.net	B
Ward Consulting Engineers, P.C	Ward, Becky	4805 Green Road	Raleigh, NC	27616-2848	919-870-0526	bward@wce-corp.com	W
Wendy Miller Landscape Architecture, PLL	Miller, Wendy	946 Marguerite Drive	Winston-Salem, NC	27106	336-416-5372	wendy@millerbarefoot.com	W
Westcott, Small & Associates,	Small, Tori	125 South Elm Street	Greensboro, NC	27401	336-310-1481	tsmall@wsaaeng.com	W
Wetherill Engineering, Inc	Wetherill, Debora B.	1223 Jones Franklin Road	Raleigh, NC	27606-3312	919-851-8077	dbw@wetherilleng.com	W
Zapata Incorporated	Cline, Melvin	6302 Fairview Road	Charlotte, NC	28210-2244	704-358-8240	mcline@zapatainc.com	HA

CITY OF DURHAM

INSURANCE REQUIREMENTS

The firm must have the financial ability to undertake the work and assume the liability. The selected firm(s) will be required to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following coverage's 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. All insurance companies must be authorized to do business in North Carolina and have no less than an A VIII rating or better.

- 1) **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 or Cross Liability.
- 2) **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 Contractor does not own automobiles, 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 separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract and/or are brought on a City of Durham site.
- 3) **Umbrella or Excess Liability** – 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. Contractor agrees to endorse City of Durham 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.
- 4) **Workers' Compensation & Employers Liability** – Contractor agrees to maintain Worker's Compensation Insurance in accordance with North Carolina General Statute Chapter 97 and with limits of no less than \$1,000,000 each accident, each employee and policy limit.
- 5) **Professional Liability**- Contractor agrees to maintain Professional Liability Insurance with limits no less than \$1,000,000, covering claims arising out of professional architect, engineers and surveyors services performed in connection with this contract.
- 6) **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'.
- 7) **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
General Services Department
101 City Hall Plaza
Durham, NC 27701

CONTRACT FOR [*descriptive title to be inserted**]

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. [*Several sentences are usually enough. Don’t put sentences here if you want to be able to enforce them. You have all the other sections of the contract for enforceable sentences.**]

Sec. 2. Services and Scope to be Performed. Presumption that Duty is Contractor’s. The Contractor shall [*state the services to be provided and the schedule for those services.**]. 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. [*If applicable, you can add a sentence to this effect*: 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 8th 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. [*City staff –to be filled in. Consult Risk Management.**]

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. [*City staff – Regarding the first sentence of this section: It is possible that - - and acceptable if -- the schedule is not called "schedule." The schedule may be scattered about the contract. Try to indicate where the schedule is; an improved sentence might read: If the Contractor fails to perform the Work in accordance with the schedule required by this contract, including the schedule required by section __, 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.**]

Sec. 9. Exhibits. The following exhibits are made a part of this contract: [*If none, write "None." Try to put your requirements, etc. into Section 2 and Section 3 of this contract, or in other appropriate places in this contract, instead of in exhibits. Unless what you want to say is really long, don't use an exhibit. It's easier to keep track of text that is in the middle of the contract and even makes it easier to number the pages. Heavy use of exhibits probably goes back to pre-computer days, when it was hard to cut and paste.**]

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.

(a) Indemnification for Charges Arising from Professional Services. To the maximum extent allowed by law, Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of Contractor's performance of Professional Services under this Contract, but only to the extent such Charges are caused by the Professional Negligence of Contractor or its subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection (a), Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

(b) Indemnification for Charges Not Arising from Professional Services. To the maximum extent allowed by law, Contractor shall defend, indemnify, and save harmless Indemnitees from and against all other Charges (not covered in subsection (a)) that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection (b), Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

(c) Definitions. As used in subsections "a" and "b" above and "d" below -- "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 attorneys' 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). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding Contractor. "Professional Services" means the performance of a particular, discrete act, which is required by North Carolina state law to be performed by an engineer, architect, landscape architect, or land surveyor licensed by the State of North Carolina. "Professional Negligence" means failure of Contractor to comply with the professional standard of care used by engineers on similar projects, whether such projects can be found locally, regionally or nationally in the performance or non-performance of professional services hereunder.

(d) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract.

(e) 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 Contractor under this contract.

(f) Limitations of Contractor's Obligation. Subsections "a" and "b" above shall not require 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.

Sec. 12. Trade Secrets; Confidentiality. (*Intentionally omitted*).

Sec. 13. Termination for Convenience ("TFC"). (a) *Procedure.* Without limiting any party's right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations.* Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions

and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate. (c) *Payment.* The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

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. Ownership of Work Products.

(a) The Contractor hereby assigns to the City, without reservation, all copyrights in all Work-related documents, including sketches, models, photographs, data sets, source code and scripts, and other Work-related expressions created by the Contractor. Among those documents are certain "Work Product," including Work-related deliverables, programs, applications, reports, design drawings, and construction documents. The City's obligation to pay the Contractor is expressly conditioned upon the Contractor's obtaining a valid written comprehensive assignment of copyrights from its subcontractors in terms identical to those that obligate the Contractor to the City as expressed in this subsection, which copyrights the Contractor, in turn, hereby assigns to the City. The City, in return, hereby grants the Contractor and its subcontractors a revocable, nonexclusive license to reproduce the documents for purposes relating directly to the Contractor's performance of its obligations under this Contract for the Contractor's archival records, and for the Contractor's reproduction of drawings and photographs in the Contractor's marketing materials. This nonexclusive license shall terminate automatically upon the occurrence of either a breach of this Contract by the Contractor or the accused commission by the Contractor of a tort or a crime affecting the City or the Work or upon termination of this Contract. This nonexclusive license is granted to the Contractor alone and shall not be assigned by the Contractor to any other person or entity, except that the non-exclusive license granted in this Contract to the Contractor for purposes of the Contractor's performance hereunder may be sub-licensed to the Contractor's subcontractors (with the same limitations). Subject to the foregoing, this nonexclusive license shall terminate automatically upon a Contractor'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 Contractor or designer, the Contractor shall not be responsible for that misuse. If the City uses the Work Products for purposes including additions to and modifications of the Work, and for other projects, the City shall indemnify the Contractor for losses, including reasonable attorneys' fees, suffered by the Contractor 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 Contractor 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 Contractor's name and seal from the documents (where permitted or required by law).

(c) Except for the licenses granted in this Section 14, no other license or right shall be deemed granted or implied under this Contract. No other Work-related data, expression, or documents may be reproduced by the Contractor or its subcontractors for any other purposes without the express written permission of the City.

(d) If the City subsequently reproduces Work-related documents or creates a derivative work based upon Work-related documents created by the Contractor, 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 Contractor and its subcontractors.

Sec. 16. Standard of Care. The standard of care for all professional engineering and related services performed or furnished by Contractor under this Agreement 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. Contractor makes no warranties, express or implied, under this Agreement or otherwise, in connection with Contractor's services. Subject to the foregoing standard of care, Contractor and its consultants 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. The Contractor warrants the accuracy of Contractor's representations made to City as to Contractor's qualifications and experience during the process in which the City selected the Contractor. The Contractor represents that it is registered, licensed, and authorized to practice engineering in North Carolina.

Sec. 17. Dispute Resolution and Compensation for Contractor's Errors.

(a) Dispute Resolution -- The City and Contractor agree to negotiate each dispute between them in good faith during the 30 days after providing the other party with a notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the City and Contractor may agree to mediation. If mediation is used and is unsuccessful, then the parties may exercise their rights at law. If, however, such dispute arises after the City has engaged a general contractor for construction work and during the construction administration phase, if any, the City and Contractor may avail themselves of the dispute resolution process adopted by the State Building Commission pursuant to G.S. § 143-128(f1).

(b) Compensation for Contractor Design Errors -- If (i) the Contractor creates plans or specifications containing an error that causes actual construction of a portion of the work that needs to be changed solely because of the Contractor's error, and, (ii) the City elects to apply this Section 17(b), the Contractor shall pay the City all costs of correcting the error, including an amount to compensate the City for time spent by City's employees because of the error without regard to what other services those employees might have done for the City had the error not occurred.

(i) (Unforeseen Conditions) An error shall not be grounds for payment under this Section 17(b) if the error occurred because of physical conditions were:

- not in fact known to the Contractor,
- not in fact known to the Contractor's consultants,
- not readily apparent to the Contractor, and
- not readily apparent to the Contractor's consultants.

(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 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 City during that fiscal year.

(iii) (Limits on Double Payments) If this Section 17(b) is applied to compensate the City for an error, the Contractor 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 Section 17(b) shall not affect liability to the Contractor 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.)

(iv) (Limit on Use of Payment against Contractor) A payment by the Contractor pursuant to this Section 17(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 Section 17(b) is not applied by the City so as to compensate the City for an error, this Section 17(b) shall not be used to construe this Agreement so as to reduce any remedy that is available to the City because of that error. For example, to the extent an error is not compensated for because of the amount exceeds the insurance deductible, the City will not be deemed to have waived a claim for any damages arising from the error.

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. 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 subsection (i) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural 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. 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 will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such 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.

(I) 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 _____

[Notes to City staff on Appendix EE (Model services contract)–

1. TFC. See Section 12, the Termination for Convenience (TFC) clause. Decide whether the contract should contain that clause. You may find that a TFC clause makes the contract less attractive to firms. If you delete it, do so in a way that it reads "Sec. 12. Reserved."

For a discussion of the pros and cons of a TFC clause, see Green Book Awakens (GBA) Section 480 (Terminating without cause or for convenience).

2. Headers and footers. Place a header or footer on each page of this contract (putting it on page 1 is at your option) to the following effect:

[Insert the name of the contract] between the City of Durham and [name of Contractor], page [insert page number]

3. City's signature. For the City's signature form, see GBA Section 902 (Getting contracts signed by the contractor and the City). The City signature form that appears at the end of the above contract is the one used nearly all the time. If that is the one that you will use: to keep it spaced properly, leave it in Times New Roman with a font size of 10, and keep it (the ATTEST line and the preaudit line) together, on the same page. It's fine if it shares a page with the contract.

4. Contractor's signature and acknowledgment. For the Contractor's signature and notarization forms, see GBA Appendixes BB and CC. Write the Contractor's name in both forms.

5. IDAC List. Be sure the Contractor is not on the Final Divestment List on the N. C. State Treasurer's web page at

<https://www.nctreasurer.com/inside-the-department/OpenGovernment/Pages/Iran-Divestment-Act-Resources.aspx>

6. Iran and Israel statutes. See Green Book Awakens section 437.

7. Instructions to City staff. In this contract, I inserted a number of instructions in italics, placed in brackets. Those are instructions for you! When do you delete them from this contract?

- (a) Before you send the RFP out to potential candidates or posting it on the City's Internet site, in most cases you should delete all the instructions that end with one asterisk (*) along with this set of instructions.
- (b) As to any instruction that ends with two asterisks (**) -- if you can comply with the instruction before sending the RFP out or posting it, you should delete that instruction. If you cannot comply with the instruction yet, you can keep it in the contract as a reminder to yourself.
- (c) As to instructions that don't end with any asterisks -- leave them in the RFP that you send out and post on the Internet. Once you select the contractor and work out the details of the deal, you will be able to comply with those instructions, at which time you'll delete those remaining instructions. That means that when it's time for the contract to be signed, all the instructions will be deleted.

End of Appendix EE]

EXHIBIT _____
Clauses for Contracts involving Federal Financial Assistance
CCFFA
(3 pages)

(A) Cumulative Nature of These Clauses; Conflicts with Other Clauses. It is intended that the clauses in this document, Clauses for Contracts involving Federal Financial Assistance (“CCFFA”), are to be in addition to other clauses in this contract. The clauses in this CCFFA will control in case of conflict with other clauses in this contract except for those additional clauses, if any, provided in this contract at the direction of the federal awarding agency or pass-through agency; clauses provided by such direction will control over this CCFFA. A termination for convenience clause or termination for cause clause elsewhere in this contract (not in this CCFFA) will control over the termination for convenience clause or termination for cause clause, respectively, in this CCFFA.

(B) Termination.

- (1) Termination for Cause; Default.** Each of the following is included as an example of a default by the contractor under this contract:
- (i) The contractor made a false statement or omitted information in the proposal or bid, such that if the City had known of its falsity or of the facts before contract award, there would have been a reasonable possibility that the City would not have made the award to the contractor;
 - (ii) The contractor fails to observe or perform one or more of its contractual duties, and the failure continues 15 days after the City gives written notice describing the failure in reasonable detail; however, if failure requires performance that cannot by its nature be completed within such 15-day period, the failure does not constitute a default for purposes of this subsection “ii” as long as the contractor begins curing the failure to perform one or more of its contractual duties before or during the 15-day period and diligently and continuously carries out the cure to completion;
 - (iii) The contractor files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent, or files a petition or answer seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the federal bankruptcy act or any other applicable laws, or seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the contractor, the contractor’s interest in this contract, or of any substantial part of its property;
 - (iv) A proceeding against the contractor seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the federal bankruptcy act or any other applicable law is not dismissed within 60 days after its commencement;
 - (v) A trustee, receiver, or liquidator of the contractor, the contractor’s interest in this contract, or of any substantial part of its property, is appointed, and the appointment is not vacated or stayed within 30 days; or
 - (vi) A levy under execution or attachment is made against the contractor or any of its property and the execution or attachment is not vacated or removed by court order, bonding, or otherwise within 60 days.
- (2) Termination for Cause; City’s Remedies on Default.** Upon the contractor’s default, the City is entitled to all remedies lawfully available, including all of the following to the extent they are applicable:
- (i) The City may proceed with remedies available under any performance bond, letter of credit, or other security.
 - (ii) The City may proceed with legal action, including obtaining damages and specific performance.
 - (iii) The City may give written notice stating that the contract or the services of the contractor shall terminate on the date described in such notice. Such termination shall not be deemed to impliedly renounce, discharge, or waive any remedy, including claims in damages for breach.
- (3) Termination for Convenience (“TFC”).** (a) *Procedure.* Without limiting any party’s right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations.* Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section, if any, of this contract titled Trade Secrets and Confidentiality or addressing either of those subjects, shall remain in force. At the time of TFC or as soon afterwards as is practical, the contractor shall give the City all Work, including partly completed Work. In case of TFC, the contractor shall follow the City’s instructions as to which subcontracts to terminate. (c) *Payment.* The City shall pay the contractor an equitable amount for the costs and charges that accrue because of the City’s decisions with respect to the subcontracts, but excluding profit for the contractor. Within 20 days after TFC, the City shall pay the contractor one hundred dollars as a TFC fee and shall pay the contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Note on subsections (C) – (J). In subsections (C) – (J) below, where an obligation must be imposed on any subcontractors, changes in language may be made in the subcontract as shall be appropriate to properly identify the parties and their obligations.

(C) Equal Employment Opportunity. During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting or administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include this Equal Employment Opportunity provision, including the provisions of paragraphs (1) through (8), in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the administering agency or the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- (9) Subcontracts. Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause(s) in each of its nonexempt subcontracts.
- (10) Inclusion of the equal opportunity clause(s) by reference. The equal opportunity clause(s) may be included by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Director of OFCCP may designate.
- (11) Incorporation by operation of the order. By operation of the order, the equal opportunity clause(s) shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.

(D) Davis Bacon Act and Copeland Anti-Kickback Act. (1) If this contract is a prime construction contract in excess of \$2,000, and if federal program legislation requires a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144,

and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction,") this Davis Bacon Act and Copeland Anti-Kickback Act clause applies to this contract. (2) In accordance with the statute, the contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in the wage determination made by the Secretary of Labor. In addition, the contractor is required to pay wages not less than once a week. By signing this contract, the contractor accepts the wage determination. (3) The contractor must comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall not induce, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). If this contract is in excess of \$100,000 and involves the employment of mechanics or laborers, the contractor must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). If the Act, as supplemented by said regulations applies to this contract, then under 40 U.S.C. 3702 of the Act, the contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award applicable to this contract meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient enters into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act and the Federal Water Pollution Control Act, as amended. If this contract or the subgrant is in excess of \$150,000, the contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The contractor and subcontractors of all tiers shall include the substance of this section in every subcontract so that it will be binding upon subcontractors of all tiers, with a clause requiring subcontractors of all tiers to include the substance of this section in every lower tier subcontracts. The contractor shall be responsible for compliance by subcontractors of all tiers with the substance of this section.

(I) Byrd Anti-Lobbying Amendment, CONTAINING CERTIFICATION BY CONTRACTOR AND

SUBCONTRACTORS OF ALL TIERS. Unless this is a contract for which such certifications are not required by 31 U.S.C. 1352 (the Byrd Anti-Lobbying Amendment) or 2 CFR 200 Appendix II, every contractor and subcontractor of every tier certifies, by signing a contract containing this section, to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also immediately disclose to the City of Durham any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. If requested by the City, each tier shall promptly complete, sign under oath, and return to the City the forms the City will provide regarding the tier's lobbying or the tier's use or non-use of Federal funds relevant to this paragraph. Such disclosures are forwarded from tier to tier up to the non-Federal award. The contractor and subcontractors of all tiers shall include the substance of this section in every subcontract so that it will be binding upon subcontractors of all tiers, with a clause requiring subcontractors of all tiers to include the substance of this section in every lower tier subcontract. The contractor shall be responsible for compliance by subcontractors of all tiers with the substance of this section.

(J) Procurement of Recovered Materials. The contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(End of Clauses for Contracts involving Federal Financial Assistance) 07098t18rw

EXHIBIT _____
Clauses for Professional Services Contracts involving Assistance from FHWA
CPSCA-FHWA
(3 pages)

(A) Cumulative Nature of These Clauses; Conflicts with Other Clauses. It is intended that the clauses in this document, Clauses for Professional Services Contracts involving Assistance from the Federal Highway Administration (“CPSCA-FHWA”) through the North Carolina Department of Transportation (NCDOT), are to be included with the CCFFA clauses when (i) FHWA funding is the source of federal assistance and (ii) the contract involves professional design related services. As with the CCFFA clauses, these CPSCA-FHWA clauses are to be in addition to other clauses of this contract and will control in case of conflict with other clauses.

(B) Notice of contracting agency requirements and regulations pertaining to reporting.

- (1) When payments are made to subcontractor(s) and/or subfirm(s), including material suppliers, Firms at all levels (contractor, subcontractor, or second tier subcontractor) shall provide the City’s Project Manager responsible for the administration of this contract with an accounting of said payments. This accounting shall be furnished to the City’s Project Manager for any given month by the end of the following month. Failure to submit this information accordingly may result in (i) withholding of money due in the next partial pay estimate; or (ii) removal of an approved contractor from the prequalified bidders list or the removal of other entities from the approved subcontractor list. The accounting shall list for each payment made to a subcontractor (s) and/or subfirm(s) the following:

NCDOT Project Number

Payer Contractor Name and Federal Taxpayer ID

Receiving subcontractor or Material Supplier and Federal Taxpayer ID

Amount of Payment

Date of Payment

This document shall be on the Department’s Subcontractor Payment Information Form.

- (2) A responsible fiscal officer of the payee contractor, subcontractor, or second tier subcontractor who can attest to the date and amounts of the payments shall certify that the accounting is correct. A copy of an acceptable report may be obtained from the City’s Project Manager.

(C) Contracting agency requirements and regulations pertaining to copyrights and rights in data.

- (1) All tracings, documents, technical reports, charts, plans, drawings, specifications, photographic negatives, survey notes, computations, and maps and other data prepared or obtained under the terms of the contract (hereinafter referred to as “Work Product”) shall be delivered to and become the property of the City without restriction or limitation on their use. The contractor hereby assigns to the City, without reservation, all copyrights in all project-related Work Product. The City’s obligation to pay the contractor is expressly conditioned upon the contractor’s obtaining a valid written comprehensive assignment of copyrights from its subcontractors in terms identical to those that obligate the contractor to the City as expressed in this subsection, which copyrights the contractor, in turn, hereby assigns to the City. The City, in return, hereby grants the contractor and its subcontractor a revocable, nonexclusive license to reproduce the Work Product for purposes relating directly to the contractor’s performance of its obligations under this contract for the contractor’s archival records, and for the contractor’s reproduction of drawings and photographs in the contractor’s marketing materials. This nonexclusive license shall terminate automatically upon the occurrence of either a breach of this contract by the contractor or the accused commission by the contractor of a tort or a crime affecting the City or the project. This nonexclusive license is granted to the contractor alone and shall not be assigned by the contractor to any other person or entity, except that the non-exclusive license granted in this contract to the contractor for purposes of the contractor’s performance hereunder may be sub-licensed to the contractor’s subcontractors (with the same limitations). Subject to the foregoing, this nonexclusive license shall terminate automatically upon a contractor’s assignment of this nonexclusive license to another or its attempt to do so.
- (2) To the extent that liability arises from misuse of the Work Product by the City or another contractor or designer contracted by the City, the contractor shall not be responsible for that misuse. If the City uses the Work Product for other purposes including additions to and modifications of the work performed for this project, or other projects, the City shall indemnify the contractor for losses, including reasonable attorneys’ fees, suffered by the contractor as a result of the negligent use of the Work Product for such other purposes. If the Work Product is used for other

purposes, the City shall see that they are modified (i) to indicate that the contractor 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 contractor's name and seal from the documents (where permitted or required by law).

(D) Access to Records and Reports; Retention of Records

- (1) The contractor agrees to permit, and require its subcontractors to permit, the U.S. Secretary of Transportation, and the Comptroller General of the United States, and, to the extent appropriate, the State of North Carolina, the City or their authorized representatives, upon their request to inspect all project work records, documents, papers, materials, payrolls, and other data, and to audit the books, records, and accounts of the contractor and its subcontractors pertaining to the project, as required by 49 U.S.C. § 5325(g).
- (2) The contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after that the City makes final payment and all other pending matters are closed, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the Comptroller General, granting federal agency, state agency, City or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto.

(E) Disadvantaged Business Enterprise (DBE) assurance, as specified in 49 CFR 26.13(b). The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of U.S. Department of Transportation-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

(F) Determination of allowable costs in accordance with the Federal cost principles. The contractor agrees to comply with established principles and standards for determining costs incurred under the contract pursuant to the cost principles established for state and local governments pursuant to OMB Circular A-87 Revised.

(G) Standard of care; errors and omissions.

- (1) **Standard of Care.** The standard of care for all professional services performed or furnished by Contractor 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. Contractor makes no warranties, express or implied, under this contract or otherwise, in connection with contractor's services. Subject to the foregoing standard of care, contractor and its subcontractors 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. The contractor warrants the accuracy of contractor's representations made to City as to contractor's qualifications and experience during the process in which the City selected the contractor. The contractor represents that it is registered, licensed, and authorized to practice engineering in North Carolina.
- (2) **Compensation for errors and omissions.** If (a) the contractor 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 contractor's error or omission, and, (b) the City elects to apply this Section G.2, the contractor shall pay the City all costs of correcting the error or omission, including an amount 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 Section G.2 if the error or omission occurred because of physical conditions that were: (a) not in fact known to the contractor; (b) not in fact known to the contractor's subcontractors; (c) not readily apparent to the contractor; and (d) not readily apparent to the contractor's subcontractors.
 - (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 Section G.2 is applied to compensate the City for an error or omission, the contractor 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 Section G.2 shall not affect liability to the contractor 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 Contractor) A payment by the contractor pursuant to this Section G.2 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 Section G.2 is not applied by the City so as to compensate the City for an error or omission, this Section G.2 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.

(G) Conflicts of Interest.

- (1) The contractor does hereby certify that they have not entered into and, during the lifetime of the contract, will not enter into any agreement with a third-party affording the contractor, or any subcontractors 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 contractor 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 contractor will not employ or allow manufacturers or their representatives or agents to write, plan, draw, or make specifications for such public works.
 - (iii) The contractor 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 and NCDOT.
- (2) The contractor shall comply with all applicable conflicts of interest laws including N.C.G.S. § 133-32 and 23 C.F.R. § 1.33.

(End of Clauses for Professional Services Contracts involving Assistance from FHWA) 07.16.2018fl



GENERAL SERVICES

CITY OF DURHAM

RFLOI Pre-Submittal Meeting

R. Kelly Bryant Bridge Trail & Third Fork Creek Phase II Trail

September 4, 2018 1:00 PM

Name	Firm	Email	Opt in to addenda emails?
ROBERTO CANALES	LJB, INC	rcanales@LJBINC.com	
Graham Burns	McAdams	gburns@McAdamsco.com	X
REGGIE SCALES	CLARK PATTERSON LEE	RSCALES@CPLTEAM.COM	YES
MATT JONES	HORVATH ASSOCIATES	MATT.JONES@HORVATHASSOCIATES.COM	✓
Mike Repsh	Alta Planning + Design	mikerepsh@alta planning .com	✓
Sarah Thornton	" "	Sarahthornton@alta planning .com	X
SREEKANTH "SUNNY" NANDAGERI	AECOM	SREEKANTH.NANDAGERI@AECOM.COM	✓
Brian Alexander	AECOM	brian.alexander@aecom.com	✓



GENERAL SERVICES

CITY OF DURHAM

RFLOI Pre-Submittal Meeting
R. Kelly Bryant Bridge Trail & Third Fork Creek Phase II Trail
September 4, 2018 1:00 PM

Name	Firm	Email	Opt in to addenda emails?
JONATHAN HEFNER	WETHERILL	jhefner@wetherillleg.com	YES
Rachel Fleming	MBP	rfleming@mbpce.com	Yes
Tom Goodwin	Gannett Fleming	tgoodwin@gfnet.com	Yes

