

DURHAM



1869
CITY OF MEDICINE

REQUEST FOR QUALIFICATIONS (RFQ)

RFQ No. SD-2017-01

Stormwater Professional Services

Date Issued: December 27, 2016
Addendum No. 1: January 9, 2017

Contents

1	REQUEST FOR QUALIFICATIONS (RFQ) INSTRUCTIONS	2
1.1	PUBLIC NOTICE.....	2
1.2	SCOPE OF WORK.....	3
1.3	RFQ SCHEDULE AND PACKAGE SUBMISSION.....	5
1.4	ADDENDA.....	6
1.5	EVALUATION CRITERIA & PROCESS	6
1.6	PROPOSAL FORMAT.....	7
1.7	PROPOSAL CONTENT – STATEMENT OF QUALIFICATIONS.....	7
2	REPRESENTATIONS, CONDITIONS, AND OTHER REQUIREMENTS	12
2.1	COMMUNICATIONS	12
2.2	DUTIES AND OBLIGATIONS OF FIRMS IN THE RFQ PROCESS	12
2.3	NO COLLUSION, BRIBERY, LOBBYING OR CONFLICT OF INTEREST.....	12
2.4	TRADE SECRETS AND CONFIDENTIALITY.....	12
2.5	CANDIDATE TO BEAR EXPENSE; NO CLAIMS AGAINST CITY.....	14
2.6	ADVERTISING	14
2.7	COMPENSATION.....	14
2.8	LICENSURE	14
2.9	VENDOR REGISTRATION WITH CITY OF DURHAM	15
2.10	SUBCONTRACTING.....	15
2.11	EXCEPTIONS	15
2.12	PROHIBITED INTEREST	15
2.13	FINANCIAL CAPACITY; INSURANCE REQUIREMENTS	15
2.14	OWNERSHIP OF WORK PRODUCTS.....	15
2.15	CITY RIGHTS AND RESERVATIONS	15
2.16	CONTRACT.....	16
2.17	CITY OF DURHAM SMALL LOCAL BUSINESS ENTERPRISE PROGRAM	17
2.18	CITY OF DURHAM EQUAL BUSINESS OPPORTUNITY PROGRAM	17
2.19	VALUES OF CITY OF DURHAM REGARDING TREATMENT OF EMPLOYEES OF CONTRACTORS	17
2.20	NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT	18
2.21	IRAN DIVESTMENT ACT CERTIFICATION.....	18
2.22	E-VERIFY REQUIREMENTS.....	18
	FORM 1 – KEY TEAM MEMBER MATRIX	19
	FORM 2 – NON-COLLUSION AFFIDAVIT.....	24
	EXHIBIT A – MASTER SERVICES AND SUPPLEMENTAL SERVICES AGREEMENTS	A
	EXHIBIT B – UNDERUTILIZED BUSINESS ENTERPRISE (UBE) LISTING	B
	EXHIBIT C – PROFESSIONAL SERVICES FORMS.....	C

1 REQUEST FOR QUALIFICATIONS (RFQ) INSTRUCTIONS

1.1 Public Notice

The City of Durham (City) plans to contract with several firms to provide Stormwater Professional Services (Services) for Various Stormwater Projects (Projects). The City is seeking firms whose combination of experience and expertise will provide timely, professional services to the City.

The number of firms selected will be determined by the City after the RFQ process is completed. The Public Works Department intends that the RFQ process will result in the execution of master services agreements (MSAs) and supplemental services agreements (SSAs) between the City and an unspecified number of firms.

The selected firms will comprise the on-call list (List). The List will be maintained by the Public Works Department. After execution of MSAs with the selected firms, the List of the selected firms will be randomized before determining the order of selecting firms for negotiating SSAs as work becomes available. The first proposed project will be offered to the initial firm on the randomized List. If the firm declines the project, it will be offered to the next firm on the List until the project is awarded and an SSA is negotiated. The next proposed project will be offered to the next available firm on the List. Once all of the firms on the List have been utilized for a project (or they have declined a project), the next project will be offered to the initial firm on the List, and so on. The intent of this process is to offer a roughly equal number of projects to each of the firms on the List over the life of the MSAs.

Projects to be performed under SSAs are intended to have fees totaling up to \$100,000. The City Manager will be authorized to execute SSAs in this range of fees. In the event that a project has an anticipated fee above \$100,000, the City Council is required to authorize the SSA.

The MSA contract length will be three years, with an option for the City to continue services for one additional year. The City reserves the right to cancel an MSA at any time. Selected firms that do not meet the City's performance expectations, routinely decline opportunities to participate in projects offered, or lose significant internal expertise submitted with their original proposal may be subject to having their MSA cancelled.

Information related to this solicitation, including any addenda, will be posted to the City's project web page at <http://durhamnc.gov/2978>. For questions related to this RFQ, contact:

Dana Hornkohl, P.E., CFM, Project Manager
City of Durham, Public Works Department
101 City Hall Plaza Durham NC 27701-3329
Phone: (919) 560-4326, ext. 30246
Fax: (919) 560-4316
E-mail: Dana.Hornkohl@DurhamNC.gov

1.2 **Scope of Work**

The City of Durham anticipates selecting one or more firms to provide these services for one or more projects to be defined in the SSAs. MSAs shall be for a three year period, with an option to extend the contract for an additional year. SSAs may be negotiated for multiple projects at once. Upon satisfactorily completing an SSA, the City may negotiate additional SSAs.

All methods shall be in accordance with the City of Durham Reference Guide for Development as well as the references listed below. Construction drawings shall be prepared using the most current version of AutoCAD.

- City of Durham
 - [Reference Guide for Development](#)
 - [Water & Sewer Specifications](#)
- North Carolina Division of Water Resources
 - [Stormwater Design Manual](#)
- North Carolina Division of Energy, Mineral and Land Resources
 - [Erosion and Sediment Control Planning and Design Manual](#)
 - [Dam Operation, Maintenance, and Inspection Manual](#)
- North Carolina Department of Transportation (NCDOT)
 - [Standard Specifications](#)
 - [Standard Drawings](#)

1.2.1 **Unspecified Stormwater Infrastructure Projects**

Stormwater infrastructure projects will include, but are not limited to, projects based on drainage areas that involve differing land uses. Drainage systems may include closed and open systems. The purpose of the projects may be rehabilitation, replacement, or improvement. The drainage areas may be a portion of a watershed or an entire watershed. Large culvert system design may require geotechnical and structural expertise. The following are representative examples of project requirements:

- Existing condition analysis
- Storm drainage system alternative analysis and recommendations
- Storm drainage system design
- Regional storm drainage system analysis
- Construction documents (plans, technical specifications, bid tabulations, and cost estimates)

1.2.2 **Unspecified Stormwater Quality Projects**

Stormwater quality projects will include, but are not limited to, projects based on proposed stormwater control measures, stream stabilizations, and stream restorations identified in the City's watershed planning processes. The following are representative examples of project requirements:

- Stormwater control measure (SCM) feasibility study, recommendations, and design

- Channel stabilization
- SCM retrofitting
- SCM rehabilitation
- Stream restoration
- Construction documents (plans, technical specifications, bid tabulations, and cost estimates)
- Operations and maintenance manuals for SCMs
- Development and implementation of ecological and water quality monitoring plans

1.2.3 Support Services

- Surveying
 - Boundary
 - Topographic
 - As-built
 - Easement and property acquisition
- Floodplain
 - Flood study
 - No-impact certification
 - Conditional letter of map revision (CLOMR)
 - Letter of map revision (LOMR)
- Structural
 - Bridge and culvert inspection
 - Culvert structural design
 - Control structural design
- Dam Safety Analysis
 - Dam inspection
 - Dam rehabilitation
 - Dam classification
 - Breach Analysis
 - Emergency action plans
- Geotechnical
 - Subsurface investigations and reports
 - Construction testing
- Environmental
 - Sediment and erosion control
 - Illicit discharge detection and elimination
 - Wetland and stream determination
 - Wetland and stream permitting and mitigation
 - United States Army Corps of Engineers (USACE)
 - North Carolina Division of Water Resources (NCDWR)
 - Environmental site assessment (ESA)
 - Phase I
 - Phase II
- City/County/State Permitting
 - Site plan

- Construction document
- Sediment and erosion control
- Floodplain development permit
- Utility coordination
- Railroad agency coordination and permitting
- North Carolina Department of Transportation (NCDOT) coordination and permitting
- Public Information
 - Meetings
 - Outreach Materials
 - Publications, display boards, videos
- Procurement and Construction Administration
 - Bid phase oversight
 - Construction administration

1.3 RFQ Schedule and Package Submission

Provided below is the anticipated schedule of events. The City reserves the right to adjust the schedule and to add/remove specific events to meet the unique needs of this Project.

Advertisement of RFQ:	Tuesday, December 27, 2016
Pre-Submittal Meeting**:	Tuesday, January 10, 2017, 1:00 PM City of Durham 101 City Hall Plaza Third Floor Durham NC 27701-3329
Deadline for Questions:	Monday, January 23, 2017, 5:00 PM
Due Date and Time for Proposals:	Tuesday, January 31, 2017, 2:00 PM City of Durham 101 City Hall Plaza Third Floor Durham NC 27701-3329
Evaluation Meeting:	Tuesday, February 14, 2017 (anticipated)
Interviews:	Week of February 20, 2017 (anticipated)
Selection Announcement:	Monday, February 27, 2017 (anticipated)

**Attendance at the Pre-Submittal Meeting is strongly encouraged, but is not mandatory.

Proposals shall be enclosed in a sealed envelope or package, addressed to the City of Durham. The name and address of the prospective firm, the RFQ Number (SD-2017-01) and RFQ Title (Stormwater Professional Services), shall be placed on the outside of the package. All items required for a responsive Proposal shall be included. It is the sole responsibility of the proposer to ensure that the Proposal package is received no later than the established due date and time at the proper location. Proposals received after the due date and time will not be considered. Proposals submitted by facsimile or other electronic means will not be accepted. To avoid delivery-related complications, please consider submitting your Proposal package at least an hour prior to the deadline.

Submit/Deliver to: City of Durham, Public Works Department
Third Floor Customer Service Desk
101 City Hall Plaza
Durham NC 27701-3329
Attention: Dana P. Hornkohl, P.E., CFM

1.4 Addenda

In order to clarify or modify any part of this RFQ, addenda may be issued and posted at the City's project web page at <http://durhamnc.gov/2978>.

Any requests for information or clarification shall be submitted in writing to the project manager listed in this RFQ by the deadline for questions.

1.5 Evaluation Criteria & Process

If an award is made, it is expected that the City's award will be to the candidate(s) whose qualifications best meet the requirements of the project(s) described in this RFQ and that are in the best interest of the City. The evaluation criteria are intended to be used to make a recommendation to the City Manager or the City Council who will award the contract, but who is not bound to use these criteria or to award on the basis of the recommendation. The City reserves the right to change the criteria and to otherwise vary from this procedure as it determines to be in the City's interest.

Firms will not be considered unless the following minimum qualifications are met:

- Firm(s) must be properly registered with the Office of the Secretary of State of North Carolina;
- Firm(s) must to properly registered with the North Carolina Board of Registration for Professional Engineers and Land Surveyors; and
- Firm(s) must employ at least one (1) North Carolina Registered Professional Engineer in responsible charge of the work anticipated as a result of this solicitation.

Evaluation criteria are listed below in relative order of importance:

- Qualifications, certifications, and abilities of key staff identified in the Proposal package, as demonstrated by performance/role in projects of a similar nature;
- Experience of firm providing similar services for similar projects;
- Location of office where work will be performed;
- Familiarity with the Durham, NC region permitting processes, local ordinances, and demonstrated ability to use modeling techniques provided in the City of Durham Reference Guide for Development and/or methodologies of a similar nature;
- Firm's approach to providing quality services for stormwater projects;
- Depth of team and ability to respond to urgent requests;
- Proposed utilization of or good faith efforts towards the utilization of firms certified as Underutilized Business Enterprises (UBEs) by the City;
- Proposal package responsiveness, appearance and presentation.

The City will appoint an evaluation committee whose responsibilities will include performing independent technical evaluations of each proposal and making selection recommendations based on the evaluation criteria provided above. Evaluations will focus on identifying the relative strengths, weaknesses, deficiencies and risks associated with each Proposal. Interviews with firms may be held at the discretion of the evaluation committee. The City reserves the right to obtain clarification or additional information with any firm in regards to its proposal.

Firms who submit proposals will be notified of the selection results. Final recommendation of any selected firm is subject to the approval of City Council or City officials.

1.6 Proposal Format

Interested firms shall submit ten (10) bound original proposals, including all required forms and one (1) CD or USB-drive containing a digital copy of the complete proposal package in PDF format. Please begin the file name of your pdf copy with the lead firm's name.

Proposals are limited to a maximum of fifteen (15) single-sided numbered pages. Required forms, resumes, tabs/dividers, and coversheet do not count toward the page limit.

Proposals shall be printed on 8-1/2" x 11" paper; although pages containing organizational charts, matrices, or large diagrams may be printed on 11" X 17" paper in order to preserve legibility (provided they have been z-folded). Type size shall be no smaller than 12 points for narrative sections, but may be reduced for captions, footnotes, etc. as required while maintaining legibility. Divider pages are not included in the page counts. Submissions that do not conform to the requirements listed herein may be removed from consideration at the sole discretion of the City of Durham.

Please submit packages comprised of materials that are easily recyclable or reusable.

1.7 Proposal Content – Statement of Qualifications

Proposals shall be arranged as follows:

1.7.1 Coversheet: General Information

- A. Provide a description of the company that will enter into the contract(s) with the City, including origin, background, current size, financial capacity, available resources, general organization, and company headquarters. Identify the name and title of the person authorized to enter to the contract(s) with the City.
- B. Describe your interest in this Project and the unique advantage your firm and team brings.
- C. State any conflicts of interest your firm or any key team member may have with this Project.
- D. Describe any unresolved claims, disputes, and/or current litigation with the City of Durham or any other entity.
- E. Describe any claims, disputes, and/or litigation with the City of Durham or any other entity that have been resolved or settled within the past five (5) years.

- F. The coversheet should include the following statements.
- A. The undersigned, whose title and position with the candidate are stated next to or beneath his or her signature, has the authority to submit this proposal (including this cover letter) on behalf of the candidate in response to the City of Durham's Request for Qualifications.
 - B. Unless otherwise clearly stated in this response to the RFQ, our proposal accepts the terms and conditions stated in the RFQ, including the description of services to be performed and the provisions of the contract to be signed.
- G. The coversheet should contain one of the following two paragraphs A or B. If (i) the cover letter lacks both paragraph A and paragraph B, or (ii) the cover letter contains paragraph A but fails to comply with the instructions in the section of the RFQ titled "Trade Secrets and Confidentiality," the City may treat everything it receives from the candidate as not trade secret or confidential, and the City may disclose to the public everything it receives from the candidate.
- A. With respect to all trade secrets that the candidate may submit to the City in connection with this proposal or the contract, if the contract is awarded to the candidate, the candidate shall comply with the section of the RFQ titled "Trade Secrets and Confidentiality," including all of its subsections, including the subsection titled "Defense of City." The candidate acknowledges that the City will rely on the preceding sentence.
- or-
- B. The candidate is not submitting any trade secrets to the City in connection with this proposal or the contract; if the contract is awarded to the candidate, the candidate will not submit any trade secrets to the City in connection with this proposal or the contract. The candidate acknowledges that the City will rely on the preceding sentence.
- H. The coversheet should list the last addendum that the City issues for this RFQ, with the following statement.
- A. The undersigned candidate has read all the addendums issued by the City for this RFQ, through and including Addendum No. _____ .

1.7.2 Tab 1: Qualifications, certifications, and abilities of key staff identified in the proposal, as demonstrated by performance/role in projects of a similar nature

- A. Provide an organizational chart which clearly identifies the key members of the project team. Subconsultants should be included. Specifically identify the individual(s) who will likely serve as project manager(s). Please provide the following information for the project manager(s) and key team members:
 - Name and title;
 - Name of company employing project manager for each past project listed;

- Address;
 - Phone number;
 - E-mail address;
 - Project responsibilities; and
 - Role in and name of similar past projects.
- B. Describe any previous collaboration(s) between key team members, the responsibilities of each team member during these collaborations, and the project(s) outcome. Cite any significant achievements reached as a result of this collaboration. Discuss the successes of the team collaboration, any design or constructability related problems encountered, and methods used to mitigate issues.
- C. Resumes may be submitted for each proposed key team member. Resumes will not be counted towards the page limit.

1.7.3 Tab 2: Experience of the firm providing similar services for similar projects

- A. List a maximum of five (5) relevant, similar projects, either currently in progress or having been completed in the past five (5) years, including any projects with the City, containing work demonstrating the skills and abilities of the key team members, as follows:
- List only projects involving the key team members or subcontractors proposed for this Project.
 - List projects in date order with newest projects listed first and include the following:
 - Brief project description;
 - Dates and times the project services were performed;
 - Owner's representative having knowledge of the firm's work, include the contact name, phone, e-mail, address;
 - Provide the initial award of contract amount, the final contract amount (include any and all change orders) and the total time period to complete the work. Please note whether contract work was completed on time and/or within budget.
 - Name of key team member(s) involved; including any changes to the project team and/or key team member(s) after project initiation, and if the key team member(s) completed the project. Include the project's current status if it is not yet completed. If experience for a key team member is listed from a previous employer, fully disclose with what firm the work was performed.
 - A list highlighting those skills demonstrated by key team member(s);
 - Discuss the methods, approach and controls used on the project in order to complete it in an effective, timely, economical and professional manner. If services included construction drawings, discuss the percentage that the engineer's construction cost estimate was within the bid award amount and final construction amount. Include an explanation for any differentials greater than 10%; and
 - Whether or not the project was involved in any construction claims, how they were resolved, and what the role of the key team members was for resolution.

1.7.4 Tab 3: Familiarity with the Durham NC region permitting processes, local ordinances, and demonstrated ability to use modeling techniques provided in the City of Durham Reference Guide for Development and/or methodologies of a similar nature

- A. List a maximum of five (5) relevant, similar projects, either currently in progress or having been completed in the past five (5) years, including any projects with the City, containing work demonstrating the use of the modeling techniques provided in the City of Durham Reference Guide for Development, or use of similar techniques, as follows:
- List only projects involving the firms, key team members or subcontractors proposed for this Project. If experience for a key team member is listed from a previous employer, fully disclose with what firm the work was performed.
 - List projects in date order with newest projects listed first and include the following:
 - Brief project description;
 - Dates and times the project services were performed;
 - Owner's representative having knowledge of the firm's work, include the contact name, phone, e-mail, address;
 - Contract dollar amount and total time period involved;
 - Discuss whether the projects were completed on time and on budget;
 - Discuss the methods, approach and controls used on the project in order to complete it in an effective, timely, economical and professional manner. If services included construction drawings, discuss the percentage that the engineer's construction cost estimate was within the bid award amount and final construction amount. Include an explanation for any differentials greater than 10%; and
 - Whether or not the project was involved in any construction claims, how they were resolved and what the role of the key team members was for resolution.

1.7.5 Tab 4: Engineering firm's approach to providing quality professional services for stormwater projects

- A. Discuss the firm's understanding of each type of project, the project objectives, and describe the proposed project approach to deliver the Services in an effective, timely and professional manner. Outline the project plans, structure and services to be provided and how and when these services shall be provided. This description should fully and completely demonstrate the firm's intended methods for servicing the requirements of all aspects of all types of projects set forth herein.
- B. Describe your firm's project management and quality control procedures.
- C. Describe the team's approach to addressing constructability of projects and providing accurate estimates for projects designed by the firm.
- D. Describe any support needed from City staff in order to execute the Services.

1.7.6 Tab 5: Depth of team and ability to respond to urgent requests

- A. Discuss your team's ability to handle multiple concurrent projects in terms of equipment, staff availability, and scheduling capacity.

- B. Discuss your team’s ability to respond to an urgent request and provide a physical presence at the project site within the following time intervals: 1 hour, 3 hours, and 6 hours.

1.7.7 Tab 6: City of Durham Equal Business Opportunity Program (EBOP) for Underutilized Business Enterprises (UBEs)

- A. No Underutilized Business Enterprise (UBE) goals are identified for this Proposal. However, the City of Durham Equal Opportunity/Equity Assurance Department may choose to set goals for the individual projects that will be performed once the successful teams have been selected. If goals are set for an individual professional services project they will be 8% for minority owned firms and 6% for women owned firms.
- B. Complete the [Professional Services Forms](#) for your firm and team (see Exhibit C). The Participation Documentation form (page 6), Employee Breakdown (page 7), and a Letter of Intent to Perform as a Sub-Consultant (one for each sub-consultant, page 8) should be completed and included in your Proposal. Blanks requiring a percentage or monetary estimation of subcontractor participation may be left blank.
- C. A listing of UBE firms that may be able to provide professional services related to this RFQ is included in Appendix B.
- D. Discuss your team’s ability to meet the goals listed above if they are required for an individual project.
- E. Identify outreach efforts that have already been conducted in connection with this RFQ.
- F. Identify anticipated scopes of work to be performed by UBEs during Projects.
- G. Specific questions concerning these EBOP requirements may be directed to Angela Henderson of the City of Durham Equal Opportunity/Equity Assurance Department at (919) 560-4180, Angela.Henderson@DurhamNC.gov, or fax: (919) 560-4513.

For more information on the City of Durham’s Equal Business Opportunity Program, refer to Section 2, paragraph 2.18, of this RFQ.

1.7.8 Tab 7: Required Forms

Forms 1 and 2 provided with this RFQ shall be completed and submitted with the proposal. Required Forms will not be counted towards the page limit.

2 REPRESENTATIONS, CONDITIONS, AND OTHER REQUIREMENTS

2.1 Communications

All communication of any nature with respect to this RFQ shall be addressed to the project manager identified earlier in this RFQ. With the exception of communications with the project manager and City of Durham Equal Opportunity/Equity Assurance Department staff for this RFQ, prospective firms and their staffs are prohibited from communicating with elected City officials, City staff, and any selection committee member regarding this RFQ or submittals from the time the RFQ was released until the selection results are publicly announced. Violation of this provision may lead to disqualification of the firm's proposal for consideration.

2.2 Duties and Obligations of Firms in the RFQ Process

Interested firms are expected to fully inform themselves as to all conditions, requirements and specifications of this RFQ before submitting a proposal. Firms must perform their own evaluation and due diligence verification of all information and data provided by the City. The City makes no representations or warranties regarding any information or data provided by the City. Firms are expected to promptly notify the City in writing to report any ambiguity, inconsistency or error in this RFQ. Failure to notify the City accordingly will constitute a waiver of claim of ambiguity, inconsistency or error.

2.3 No Collusion, Bribery, Lobbying or Conflict of Interest

By responding to this RFQ, the firm shall be deemed to have represented and warranted that the proposal is not made in connection with any competing firm submitting a separate response to this RFQ, and is in all respects fair and without collusion or fraud. Furthermore, the firm certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the foregoing has bribed or lobbied, or attempted to bribe or lobby, an officer or employee of the City in connection with this RFQ.

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

2.4 Trade Secrets and Confidentiality

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

Definitions. In this section (Trade Secrets and Confidentiality) – The term “candidate” includes the candidate as contractor (that is, after it is a party to a contract with the City). The term “trade secret” means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:

- a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and

- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The existence of a trade secret shall not be negated merely because the information comprising the trade secret has also been developed, used, or owned independently by more than one person, or licensed to other persons.

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

- a) Designation of Confidential Records. To the extent that the candidate wishes to maintain the confidentiality of trade secrets contained in materials provided to the City, the candidate shall prominently designate the material with the words “trade secrets” at the time of its initial disclosure to the City. The candidate shall not designate any material provided to the City as trade secrets unless the candidate has a reasonable and good-faith belief that the material contains a trade secret. When requested by the City, the candidate shall promptly disclose to the City the candidate’s reasoning for designating material as trade secrets; the candidate may need to label parts of that reasoning as trade secrets. In providing materials to the City, the candidate shall make reasonable efforts to separate those designated as trade secrets from those not so designated, both to facilitate the City’s use of the materials and to minimize the opportunity for accidental disclosure. For instance, if only a sentence or paragraph on a page is a trade secret, the page must be marked clearly to communicate that distinction. To avoid mistake or confusion, it is generally best to have only trade secret information on a page and nothing else on that page.

To the extent authorized by applicable state and federal law, the City shall maintain the confidentiality of records designated “trade secrets” in accordance with this section. Whenever the candidate ceases to have a good-faith belief that a particular record contains a trade secret, it shall promptly notify the City.

- b) Request by Public for Access to Record. When any person requests the City to provide access to a record designated as a trade secret in accordance with subsection (a) above, the City may
 - 1) decline the request for access,
 - 2) notify the candidate of the request and that the City has provided, or intends to provide, the person access to the record because applicable law requires that the access be granted, or
 - 3) notify the candidate of the request and that the City intends to decline the request.

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

- c) Defense of City. If the City declines the request for access to a record designated as trade secrets in accordance with subsection (a), then, in consideration of the promises

in (b) above and for considering the candidate's proposal, the candidate agrees that it shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of the City's non-disclosure of the records. In providing that defense, the candidate shall at its sole expense defend Indemnitees with legal counsel. The legal counsel shall be limited to attorneys reasonably acceptable to the City Attorney.

Definitions. As used in this subsection (c), "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, fines, penalties, settlements, expenses, attorneys' fees, and interest. "Indemnitees" means the City, and officers, officials, independent contractors, agents, and employees, of the City. "Indemnitees" does not include the candidate. The City may require the candidate to provide proof of the candidate's ability to pay the amounts that may reasonably be expected to become monetary obligations of the candidate pursuant to this section. If the candidate fails to provide that proof in a timely manner, the City shall not be required to keep confidential the records whose non-disclosure gives rise to the potential monetary obligation. Nothing in this agreement shall require the City to require any person (including the City itself) to be placed in substantial risk of imprisonment, of being found by a court to be in contempt, or of being in violation of a court order. This subsection (c) is separate from and is to be construed separately from any other indemnification and warranty provisions in the contract between the City and the candidate.

2.5 Candidate to Bear Expense; No Claims against City

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

2.6 Advertising

In responding to this RFQ, proposer agrees not to use the results therefrom as part of any commercial advertising without prior written approval of the City of Durham.

2.7 Compensation

Compensation for an SSA will be negotiated on a project by project basis. The maximum contract cost for project services performed under an individual SSA is intended to be up to \$100,000. The City Manager is authorized to execute SSAs in this range of fees. In the event that a project has an anticipated fee above \$100,000, the City Council is required to authorize the SSA.

2.8 Licensure

The City may reject proposals from any person, firm, or corporation that does not comply with State required licensure for engineering, architecture, land surveying, or other relevant disciplines.

2.9 Vendor Registration with City of Durham

The selected firm and subcontractors must be registered in the City's vendor registration system in order to receive payment for services and/or supplies provided under any City contract.

2.10 Subcontracting

If a selected firm chooses to subcontract any portion of the work, the City may require the contractor to provide additional forms for the purpose of documenting the use of subcontractors on City projects.

2.11 Exceptions

Any and all exceptions to the RFQ must be listed on an item-by-item basis and cross-referenced with the RFQ document. If there are no exceptions, proposer must expressly state that no exceptions are taken.

2.12 Prohibited Interest

No contract will be awarded to any firm or corporation for a period of one year after they have employed any exempt management employee directly from City employ, provided, however, that this provision will not apply in the event the employee so hired is not involved in any way with work being performed by the firm or corporation for the City.

2.13 Financial Capacity; Insurance Requirements

The selected firm must have the financial capacity to undertake the work and assume associated liability. The selected firm will be required to provide certificates of insurance evidencing coverage for professional liability in the minimum amount of \$1,000,000; automobile liability in the minimum amount of \$1,000,000; commercial general liability in the minimum amount of \$1,000,000; and workers' compensation insurance as required by North Carolina statutes.

2.14 Ownership of Work Products

The City shall have exclusive ownership of all intellectual property rights in all designs, plans and specifications, documents and other work product prepared by, for, or under the direction of the selected firm pursuant to any contract under this RFQ (collectively, the "Intellectual Property"), including without limitation the right to copy, use, disclose, distribute, and make derivations of the Intellectual Property for any purpose or to assign such rights to any third party. The Intellectual Property shall be prepared in the City's name and shall be the sole and exclusive property of the City, whether or not the work contemplated therein is performed. The City will grant the firm a royalty-free, non-exclusive license to use and copy the Intellectual Property to the extent necessary to perform the contract.

2.15 City Rights and Reservations

The City expects to select one or more firms, but reserves the right to request substitutions of any key team member, including staff and subcontractors. The City reserves the right to contact any firm/team for any additional information including but not limited to experience, qualifications, abilities, equipment, facilities, and financial standing. The City reserves the right to modify any part of this RFQ as issued with an addendum. The City, at its sole discretion, reserves the right to reject any or all responses to the RFQ, to cancel the RFQ, to re-advertise for

new RFQ responses either with identical or revised specifications, or to accept any RFQ response, in whole or part, deemed to be in the best interest of the City. The City reserves the right to waive technicalities and informalities.

A response to this RFQ shall not be construed as a contract, nor indicate a commitment of any kind.

The City of Durham reserves the sole right to award a contract or contracts to the most qualified firm(s) on the basis of best overall proposal that is most advantageous to the City. The City of Durham also reserves the right to make multiple awards, based on experience and qualifications if it is deemed in the City's best interest.

- A. The City of Durham reserves the right to reject any or all proposals.
- B. Notwithstanding anything to the contrary in this document or in any addendums to this document, unless the contrary provision refers specifically to this provision, the City reserves the right
 - i. to negotiate changes of any nature with any candidate with respect to any term, condition, or provision in this document and/or in any proposals, whether or not something is stated to be mandatory and whether or not it is said that a proposal will be rejected if certain information or documentation is not submitted with it, and
 - ii. to enter into an agreement for some or all of the work with one or more persons, firms, or corporations that do not submit proposals. For example, all deadlines are for the administrative convenience or needs of the City and may be waived by the City in its discretion. This subparagraph B applies to the entire RFQ, including the UBE portions.
- C. Where the City asks or tells candidates to do stated things, such as that a proposal should follow a stated format or that the candidate should do stated things in seeking the contract, the City may reject a proposal because it does not comply with those requests, so the candidate is adding to its risk of rejection by non-compliance. Still, the City may, in its discretion, waive non-compliance. This subsection (C) does not limit subsections (A) and (B).
- D. Of course, once a contract is signed, the parties to the contract may enforce the contract according to its terms as allowed by applicable law.

All deadlines are for the administrative convenience or needs of the City and may be waived by the City in its discretion.

2.16 Contract

The contents of this RFQ and all provisions of the successful proposal deemed responsive by the City of Durham may be incorporated, either in whole or in part, into an MSA and become legally binding when approved and executed by both parties. Contents of the MSA may contain changes from the City of Durham's perspective as a result of the RFQ process and proposal(s) received. The final negotiated MSA may include the scope of services as outlined in this RFQ along with the successful firm's submittal and any additions or deletions made at the discretion of the City as a result of the RFQ process.

Proposers will use the City of Durham professional services contract attached to this RFQ as Exhibit A – Master and Supplemental Services Agreements. Selected consultants unwilling or unable to sign the attached contracts will be considered non-responsive.

The contract length for the MSAs will be three years, with an option for the City to continue services for an additional year. If services are continued, all MSAs will be extended for an additional year. The Director will base the decision to continue services on the immediate need for assistance with stormwater projects and staffing levels.

2.17 City of Durham Small Local Business Enterprise Program

When it is found that at least three small local firms may compete for certain City work, competition may be restricted to small local business enterprises (SLBEs). The SLBE program can apply to engineering and surveying services up to \$100,000. If a contract is placed in the program, only firms certified by Equal Opportunity/Equity Assurance Department to be SLBEs may compete.

2.18 City of Durham Equal Business Opportunity Program

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. For more information about the City of Durham Equal Business Opportunity Program visit the Equal Opportunity/Equity Assurance Department web page at <http://durhamnc.gov/606>.

2.19 Values of City of Durham regarding Treatment of Employees of Contractors

A. Statement of City EEO Policy

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

1. not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
2. take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. This action includes employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
3. state, in solicitations or advertisement for employees, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
4. include this Statement of City EEO Policy in every purchase order for goods to be used in performing City contracts and in every subcontract related to City contracts.

B. **Livable Wage**

The City of Durham desires that firms doing business with the City pay their workers an hourly wage while working on City contracts such that, if annualized, a person working 40 hours per week will earn enough money to support a family of four above the poverty level, as poverty is defined by the United States Census Bureau. Currently, that wage is \$12.53 per hour. That wage is adjusted annually, and the wage as adjusted will be posted on the City's Purchasing Division web page (<http://durhamnc.gov/bids.aspx>). The City's desire is that firms pay the wage as adjusted from time to time.

2.20 Notice under the Americans with Disabilities Act

A person with a disability may receive an auxiliary aid or service to effectively participate in city government activities by contacting the ADA Coordinator, voice (919) 560-4197, fax (919) 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.

Aviso bajo el Acto de Americanos Discapacitados – Una persona con una discapacidad puede recibir asistencia o servicio auxiliar para participar efectivamente en actividades del gobierno de la ciudad con ponerse en contacto con el Coordinador de ADA, buzón de voz (919) 560-4197, fax (919) 560-4196, TTY (919) 560-1200, o ADA@durhamnc.gov, lo más antes posible pero no menos de 48 horas antes del evento o fecha indicada.

2.21 Iran Divestment Act Certification

Any selected firm shall certify that, if it submitted a successful proposal for this contract, then as of the date it submitted the proposal, the firm was not identified on the Iran List. If it did not submit a proposal for this contract, the firm shall certify that as of the date that this contract is entered into, the firm is not identified on the Iran List. It is a material breach of contract for the firm to be identified on the Iran List during the term of this contract or to utilize on this contract any subconsultant that is identified on the Iran List. In this Iran Divestment Act Certification section -- "firm" means the person entering into this contract with the City of Durham; and "Iran List" means the Final Divestment List – Iran, the Parent and Subsidiary Guidance– Iran list, and all other lists issued from time to time by the N.C. State Treasurer to comply with G. S. 147-86.58 of the N.C. Iran Divestment Act.

2.22 E-Verify Requirements

The MSA and SSA contract agreements are subject to the following 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.

Form 1 – Key Team Member Matrix

(attach additional sheets as necessary)

KEY TEAM MEMBERS	Key Team Member 1	Key Team Member 2	Key Team Member 3
Firm Name			
Professional Certifications/Licenses (Certification/License Number(s))			
Relevant Academic Degree(s)			
Proposed Role/Function for Projects	Project Manager		
Office Location (City, State)			
Number of Years with Current Firm			
Number of Years of Relevant Design Experience			
Number of Years of Relevant Construction Experience			
List Current Relevant Projects, both for the City and for other Clients			
Project:			
Project:			
Project:			
Project:			
Project:			
Project:			

Provide the Number of Years of Experience/Number of Projects			
KEY TEAM MEMBERS	Key Team Member 1	Key Team Member 2	Key Team Member 3
Firm Name			
Unspecified Stormwater Infrastructure Projects			
Existing condition analysis			
Storm drainage system alternative analysis and recommendations			
Storm drainage system design			
Regional storm drainage system analysis			
Construction documents (plans, technical specifications, bid tabulations, and cost estimates)			
Unspecified Stormwater Quality Projects			
Stormwater control measure (SCM) feasibility study, recommendations, and design			
Channel stabilization			
SCM retrofitting			
SCM rehabilitation			
Stream restoration			
Construction documents (plans, technical specifications, bid tabulations, and cost estimates)			
Operations and maintenance manuals for SCMs			
Development and implementation of ecological and water quality monitoring plans			

Provide the Number of Years of Experience/Number of Projects			
KEY TEAM MEMBERS	Key Team Member 1	Key Team Member 2	Key Team Member 3
Firm Name			
Support Services: Surveying			
Boundary			
Topographic			
As-built			
Easement and property acquisition			
Support Services: Floodplain			
Flood study			
No-impact certification			
Conditional letter of map revision (CLOMR)			
Letter of map revision (LOMR)			
Support Services: Structural			
Bridge and culvert inspection			
Culvert structural design			
Control structural design			
Support Services: Dam Safety Analysis			
Dam inspection			
Dam rehabilitation			

Provide the Number of Years of Experience/Number of Projects			
KEY TEAM MEMBERS	Key Team Member 1	Key Team Member 2	Key Team Member 3
Firm Name			
Dam classification			
Breach Analysis			
Emergency action plans			
Support Services: Geotechnical			
Subsurface investigations and reports			
Construction testing			
Support Services: Environmental			
Sediment and erosion control			
Illicit discharge detection and elimination			
Wetland and stream determination			
Wetland and stream permitting and mitigation			
Environmental site assessment (ESA)			
Support Services City/County/State Permitting			
Site plan			
Construction document			
Sediment and erosion control			
Floodplain development permit			

Provide the Number of Years of Experience/Number of Projects			
KEY TEAM MEMBERS	Key Team Member 1	Key Team Member 2	Key Team Member 3
Firm Name			
Utility coordination			
Railroad agency coordination and permitting			
North Carolina Department of Transportation (NCDOT) coordination and permitting			
Support Services: Public Information			
Meetings			
Outreach Materials			
Support Services: Procurement and Construction Administration			
Bid phase oversight			
Construction administration			

Form 2 – Non-Collusion Affidavit

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

(insert name of candidate)

(signature of individual)

ACKNOWLEDGMENT

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

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

Place where acknowledgment occurred: County of _____, State of _____

Notary's residence: County of _____, State of _____

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

This the _____ day of _____, 20 ____.

Notary Public

My commission expires:

Exhibit A – Master Services and Supplemental Services Agreements

**CITY OF DURHAM, NORTH CAROLINA
MASTER SERVICES AGREEMENT FOR STORMWATER PROFESSIONAL SERVICES
BETWEEN THE CITY AND [*CONSULTANT*]**

THIS AGREEMENT (hereafter, "Master Services Agreement" or "MSA") is made the [*date*] day of [*month*], 2017 by and between the City of Durham, Durham County, North Carolina (hereinafter called "City") and [*consultant*] for itself and its successors and assigns (hereinafter called "Consultant").

STORMWATER PROFESSIONAL SERVICES

WHEREAS, City desires to engage Consultant to provide On-Call Stormwater Professional Services related to the design, permitting, and construction of stormwater infrastructure projects, stormwater quality projects, and support services (hereafter "Services") as set forth herein and in accordance with Supplemental Services Agreements (hereafter "SSA"); and

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

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

SECTION I. EMPLOYMENT OF CONSULTANT

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

SECTION II. CONTENT AND EXECUTION OF SUPPLEMENTAL AGREEMENT

- A. Services to be provided shall be set forth in an SSA, and amendments to that agreement. The SSA may also include additional terms and conditions regarding payment and other matters necessary for the execution of particular projects. SSAs shall not vary the terms of this Agreement, except where this Agreement authorizes such variance, and shall be interpreted consistently with this Agreement. If there is a conflict between this Agreement and SSAs, this Agreement shall control.
- B. SSAs, and amendments to such agreements, where payment for the SSA, as amended, does not exceed \$100,000 may be negotiated and executed by the City Manager or his/her delegate consistent with the authority delegated by the Durham City Council. Certain modifications to the SSAs may also be made by the City of Durham's Public Works Department Director (hereafter "Director") or his designee as described in Section IIIB below. It is necessary to give the Director the authority to make minor modifications to SSAs because of manner in which projects change as the work is progressively completed, and the need for flexibility as a project unfolds. Changes falling outside of the aforementioned areas shall require formal amendment to

the SSA and shall be entered into and executed by the City Manager or his/her delegate as described above. SSAs exceeding \$100,000 shall require Council authorization.

SECTION III. RESPONSIBILITIES OF CONSULTANT AND CITY

A. CONSULTANT'S RESPONSIBILITIES

1. Reporting/Coordination. Consultant shall provide progress reports in a format acceptable to the City at intervals established in the SSA. At any time, upon request, the City shall be entitled to information regarding the status of the project. Consultant is responsible for coordinating its work with the City in such a manner so as to meet project deadlines.
2. Delays/Extensions. If delays to the completion date for the project or for tasks within the project that have individual deadlines result from circumstances that could not reasonably be foreseen by Consultant and which are beyond the reasonable control of the Consultant, one or more extensions of time may be granted, upon written request documenting the reasons for the request. The Director may, in his/her discretion, which shall be reasonably exercised, is authorized to grant such request if such request falls within the parameters set forth in Section IIIB below.
3. Responsibility for Services Performed. Consultant shall maintain an adequate professional staff within the State of North Carolina to render Services to the City. Consultant may use subcontractors to provide Services only if such subcontractors and the services to be performed are identified in either the Agreement or an SSA. Otherwise all services described in the SSA shall be rendered by Consultant's employees. Consultant is responsible for the professional quality, technical accuracy, and timely completion and submission of all Services performed under this Agreement and SSAs, and for the performance and payment of all subcontractors.
4. Professional Certifications/Endorsements. All final plans, documents, reports, studies, and other data or materials prepared by the Consultant will bear the endorsement of a person employed by Consultant or its approved subcontractors who shall be duly registered in the appropriate professional category for the work performed.
5. Ownership of Work Product. All plans, maps, documents, reports, studies, and/or other data and materials prepared or obtained under this Agreement and SSAs (hereafter "Work Product") shall be considered works made for hire and shall become the property of the City without restriction or limitation on their use. Such work product shall be made available, upon request, to the City at any time during the term of this Agreement and SSAs.
6. Retention of Records. Consultant shall maintain all books, documents, and papers pertaining to Services performed under this Agreement, and accounting records, and other records of costs incurred in performance of this Agreement and SSAs and shall make them available to the City upon request during the period of this Agreement and for three years after final payment is made. Records of costs incurred include the Consultant's general accounting records and the Project records, together with supporting documents and records of the Consultant and all subcontractors-performing work on the project, and all other records of the Consultant and subcontractors considered necessary by the City for a proper audit of project costs.
7. Meetings. Consultant shall meet with City representatives at mutually agreed upon times upon the City's request. Such meetings shall be held at locations designated by the City.
8. UBE Utilization. Consultant shall provide to the Director a UBE utilization report on an annual basis or at mutually agreed upon timeframe upon the City's request.

B. CITY'S RESPONSIBILITIES

1. Director Authority. The Director is authorized to take actions on behalf of the City with respect to performance of this Agreement and SSAs. His/her instructions, requests, and decisions on behalf of the City, where documented in writing, and not inconsistent with this Agreement or SSAs shall be binding. This authorization does not give the Director the authority to enter into SSAs or amendments to the Agreement or SSAs, other than as described in this Agreement. The Director may authorize and execute the following changes, if such are agreed to in writing by both parties: change the amount of payment for particular subtasks, if such changes do not alter the rate of compensation of Consultant or its subordinates, or increase the total compensation required for completion of the project as provided for in the SSA, or reduce the amount of work being performed by Consultant; refine or redistribute services where there is no change in the general amount, scope, or nature of the work to be performed on a project; and extend time for a project or portion thereof if the final completion date for the project is not extended by more than 25% of the time originally allotted for the project.
2. City Information. City shall provide existing data, plans, reports, and other information in possession of or under control of the City, which are necessary for Consultant's performance of Services and shall assist Consultant in obtaining other necessary information from City's files.
3. Notice of Inadequate Performance. City shall give prompt written notice to the Consultant if the City observes or otherwise becomes aware of any fault or defect in Consultant's conformance to this Agreement. Failure to give such notice shall not constitute a waiver of the City's right to require compliance with this Agreement or SSAs.

SECTION IV. PERIOD OF SERVICE

A. DURATION

This Agreement shall authorize SSAs to be executed for a three (3) year period from the date of execution of this Agreement. Any SSA executed within three years of execution of this Agreement shall be binding for the time period set forth therein, and this Agreement and such SSA, and amendments to such Agreements, shall be binding for the time period set forth in the SSA. Any SSA executed within this three year period may be amended for additional scope, fee, or time after the three year period has expired.

B. NOTICE TO PROCEED

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

SECTION V. COMPENSATION

A. GENERAL PROVISIONS/HOURLY RATE SCHEDULE

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

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

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

B. INVOICES/COSTS

1. Frequency/Detail. Invoices for all compensation owed in accordance with the SSA, including but not limited to hourly fees, lump sum payments, periodic payments, and all specifically identified, reimbursable costs and expenses shall be submitted to the City on a monthly basis, or on such other schedule as may be provided in the SSA. Invoices shall provide sufficient detail to process the invoice for payment and for a proper pre-audit and post-audit thereof in accordance with City standards. If Consultant has performed Services for which payment is not yet due, as, for example, when there is a limitation on the amount of periodic payments, or when compensation is not due until a particular task is completed, Consultant shall invoice the City only for those amounts owed under the provisions of the SSA, and shall show Services performed for which compensation is not yet owed separately from the amounts currently due.
2. Receipts. If an SSA specifically allows for basic incidental project expenses to be billed without receipts, these expenses may include but are not limited to local mileage, local and long distance telephone calls, fax expenses, photocopies, and other routine expenses normally sustained in the performance of engineering and planning work. If such expenses are specifically allowed, Consultant may include, without receipts, an amount equal to 6.5% of labor costs as an allocation for these expenses, without providing receipts for the expenses. A percentage amount for basic incidental project expenses shall not be allowed if compensation is through a set fee, whether paid at one time or in periodic payments. An SSA may also specifically allow for payment of unusual, non-routine direct expenses. In order to be eligible for reimbursement, such expenses must be identified in the SSA. Such expenses may include but not be limited to, mileage for travel to sites outside of a 75 mile radius of Durham (but not including mileage to and from Consultant's place of business to Durham), rental cars, permit fees, lodging, and meals. Where such expenses are eligible for reimbursement, the Consultant shall collect and maintain receipts for said expenses and furnish such receipts to the City with the periodic invoices submitted for Services. Reimbursement shall be provided per City guidelines. Travel, lodging, and meal costs shall be governed by City guidelines and restrictions regarding reimbursable costs for City employees.
3. Additional Guidelines Regarding Determination of Costs. Where reimbursement for costs is specifically allowed in the SSA, but the determination of such costs is not provided for in this Agreement or such SSA, or in the event of a dispute regarding costs not governed by this Agreement, the provisions of State law, City regulations or guidelines shall apply, with the limitation that the more restrictive of those regulations or guidelines will govern in case of inconsistency.
4. Disputed Items. In the event that Consultant's invoices and receipts are submitted in compliance with the requirements of this Agreement, if the City disputes any items in any invoices submitted by Consultant, City shall notify the Consultant within 60 days of receipt of any disputed item and request clarification and/or remedial action. If objections are not raised within 60 days of receipt of the invoice, the City's objections shall be waived, and the invoice shall be deemed due and owing. After this point, Consultant may include the disputed item(s) in its regular, periodic invoices or on a special invoice for the disputed item only.

C. PAYMENT

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

D. AUDIT OF RECORDS

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

SECTION VI. CITY POLICY STATEMENT AND EBOP

- A. 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.
- B. 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.

SECTION VII. INSURANCE COVERAGE AND INDEMNIFICATION

- A. Consultant agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following applicable coverage's and limits. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Consultant is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Consultant under this Contract.
- a. 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.
 - b. Umbrella or Excess Liability. Consultant 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.
 - c. Worker's Compensation & Employers Liability. Consultant agrees to maintain Worker's Compensation Insurance in accordance with North Carolina General Statute Chapter 97

and with Employer Liability limits of no less than \$1,000,000 each accident, each employee and policy limit. This policy must include a Waiver of Subrogation.

- d. Additional Insured. Consultant 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’.
- e. Certificate of Insurance. Consultant 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 Consultant’s insurer. If Consultant 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, Consultant 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, Public Works Department
Attention: Dana Hornkohl
101 City Hall Plaza
Durham, NC 27701

- f. All insurance companies must be authorized to do business in North Carolina and be acceptable to the City of Durham’s Risk Manager.

B. INDEMNIFICATION

- a. Indemnification for Charges Arising from Professional Services. To the maximum extent allowed by law, Consultant shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of Consultant’s performance of Professional Services under this Contract, but only to the extent such Charges are caused by the Professional Negligence of Consultant 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), Consultant 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, Consultant 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 Consultant 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), Consultant 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 Consultant. “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 Consultant to comply with the applicable standard of care to render Professional Services. That standard shall meet or exceed a national standard, unless a higher standard of care is applicable in the Durham community or similar communities.

- 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 Consultant under this contract.
- f. Limitations of Consultant's Obligation. Subsections “a” and “b” above shall not require Consultant 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.

SECTION VIII. GENERAL PROVISIONS

A. REUSE OF DOCUMENTS

Reuse by City of products and deliverables (final drawings, plans, calculations, specifications, studies, electronic data and information, software programs, etc.) furnished by Consultant is allowed. However, if such use is not for the specific project or uses described in the SSA, and if Consultant does not furnish a written verification that the products and deliverables can be reused for the City's other purposes, or does not adapt them for such purposes, then reuse is at the City's sole risk and without liability or legal exposure to the Consultant.

B. CHOICE OF LAW AND FORUM

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

C. SUCCESSORS AND ASSIGNS

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

D. MODIFICATIONS; ENTIRE AGREEMENT

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

E. NOTICES

Any notices to be given under this Agreement shall be given by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, addressed to Consultant at the name and address stated herein, and to City at the name and address stated below:

For the City:

City of Durham, Public Works Department
Attention: Dana Hornkohl
101 City Hall Plaza
Durham, NC 27701
Fax: (919) 560-4316
E-mail: Dana.Hornkohl@DurhamNC.gov

For the Consultant:

[consultant contact, address, fax, and e-mail]

F. DISPUTES

If both parties agree, Claims by the City or Consultant arising out of this Agreement or SSAs may be submitted to mediation in accordance with the dispute resolution process adopted by the State Building Commission pursuant to G. S. 143-135.26(11) and G. S. 143-128(F1) as a precondition to initiating litigation concerning the dispute. The amount of \$15,000 or more must be at issue before a party may require the other party to participate in the dispute resolution process. The costs of the dispute resolution process shall be divided between the parties to the dispute with at least one-third of the cost to be paid by the City, if multiple parties are involved and the City is a party to the dispute.

G. DISCLOSURE/PUBLICITY

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

H. WAIVER

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

I. NO THIRD PARTY RIGHTS

This Agreement is intended for the benefit of the City and the Consultant and not for any other person.

J. SEVERABILITY

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

K. PERFORMANCE OF GOVERNMENT FUNCTIONS

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

L. ASSIGNMENT, SUCCESSORS AND ASSIGNS

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

M. COMPLIANCE WITH LAW

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

N. 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.

O. IRAN DIVESTMENT ACT CERTIFICATION

The Contractor certifies that, if it submitted a successful bid for this contract, then as of the date it submitted the bid, the Contractor was not identified on the Iran List. If it did not submit a bid for this contract, the Contractor certifies that as of the date that this contract is entered into, the Contractor is not identified on the Iran List. It is a material breach of contract for the Contractor to be identified on the Iran List during the term of this contract or to utilize on this contract any subcontractor that is identified on the Iran List. In this Iran Divestment Act Certification section -- "Contractor" means the person entering into this contract with the City of Durham; and "Iran List" means the Final Divestment List – Iran, the Parent and Subsidiary Guidance– Iran list, and all other lists issued from time to time by the N.C. State Treasurer to comply with G. S. 147-86.58 of the N.C. Iran Divestment Act.

SECTION IX. CRITERIA FOR INACTIVE STATUS OR REMOVAL FROM ON-CALL LIST

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

1. If [*consultant*] loses technical expertise and does not replace that expertise within two (2) months, then the Consultant will be put on inactive status. Replacement of technical expertise will require written City approval to allow the firm to be reinstated on the "On-Call" List.
2. If [*consultant*] declines a specific project assignment two (2) consecutive times, then the Consultant may be put on inactive status. A written request from the inactive firm, providing

appropriate justification, will be required to seek reinstatement on the “On-Call” List. Written City approval will be required to allow the firm to be reinstated on the “On-Call” List.

Consultant may be removed from the “On-Call” List for any of the following reasons as determined by the City.

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

SECTION X. TERMINATION OF AGREEMENT

A. DEFAULT

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

B. TERMINATION FOR CONVENIENCE OF CITY

The City may terminate this Agreement or SSAs in whole or in part in writing, delivered by Certified Mail, Return Receipt Requested at any time the interest of the City requires such termination.

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

C. DELIVERY OF DOCUMENTS AFTER TERMINATION

Upon any termination, Consultant shall deliver or otherwise make available to City all documents, data, drawings, specifications, reports, estimates, summaries, and such other information and materials that have been created, in whole or in part, or accumulated by Consultant in performing this Agreement or SSAs.

D. CITY MAY COMPLETE WORK

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

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

ATTEST

CITY OF DURHAM

By: _____

Pre-Audit Certificate, if applicable _____

[CONSULTANT]

ATTEST

[Title (Name)]

Signature

By: _____
Secretary

(SEAL)

State of _____

ACKNOWLEDGMENT BY CORPORATION

County of _____

I, a notary public in and for the aforesaid county and state, certify that _____
personally appeared before me this day and stated that he or she is

(*strike through the inapplicable*) chairperson/ president/ chief executive officer/ vice-president/ assistant
vice-president/ treasurer/ chief financial officer of

[consultant], a corporation, and that by authority duly given and as the act of the corporation, he or she
signed, under seal, the foregoing contract or agreement with the City of Durham.

This the ____ day of _____, 20 ____ .

My commission expires:

Notary Public

**CITY OF DURHAM, NORTH CAROLINA
SUPPLEMENTAL SERVICES AGREEMENT NO. [NUMBER]
TO THE MASTER SERVICES AGREEMENT DATED [DATE]**

SECTION I. PURPOSE

The purpose of this Supplemental Services Agreement (hereinafter “SSA”) is for the Consultant, [consultant], to provide On-Call Stormwater Professional Services, as assigned, in accordance with the agreement titled, “CITY OF DURHAM, NORTH CAROLINA MASTER SERVICES AGREEMENT FOR STORMWATER PROFESSIONAL SERVICES BETWEEN THE CITY AND [CONSULTANT], dated [date] (hereinafter “Master Services Agreement” or “MSA”).

SECTION II. SCOPE

Consultant will perform Stormwater Professional Services on an as-needed basis upon receipt of request and assignment from the Public Works Department Director or his or her designated representative. The Consultant shall comply with all terms of the MSA, which agreement is incorporated into this SSA as if fully set forth verbatim herein. Duties will involve [general scope of services].

Services to be provided include, but are not limited to [specific scope of services].

Consultant and the City will mutually determine at time of assignment of individual tasks the Consultant personnel to be assigned, schedule, and deliverables.

SECTION III. SCHEDULE

Consultant shall perform tasks as expeditiously as practical and in conformance with schedules developed at the time of assignment of individual tasks and agreed upon by the City of Durham, Public Works Department and Consultant.

SECTION IV. PERIOD OF SERVICE

This SSA shall be for a period of from [date] to [date].

SECTION V. COMPENSATION

Consultant shall perform the services detailed in the scope described in Section II above on the basis of the hourly rate schedule contained in the MSA and attached hereto. Basic incidental project expenses will be billed in an amount equal to 6.5% of labor costs as an allocation without receipts in accordance with Section V.B.2 of the MSA. Non-routine direct expenses will be billed at actual cost and receipts will be provided.

Billing shall be on a monthly basis in conformance with Section V.B. of the MSA, and invoices for all compensation owed in accordance with this SSA shall be submitted to the City with sufficient detail to

process the invoice for payment and for a proper pre-audit and post-audit thereof in accordance with City standards. The total amount billed to the City under this Supplemental Agreement shall not exceed [amount] nor shall the Consultant incur costs above [amount] without the written permission of the City of Durham.

SECTION VI. INSURANCE COVERAGE AND INDEMNIFICATION

Consultant shall provide insurance coverage as provided for in Section VII of the MSA.

SECTION VII. OTHER SPECIAL TERMS

The City will provide the Consultant all pertinent information and data available to the City and deemed necessary to perform assigned tasks.

SECTION VIII: STATE LAW COMPLIANCE

1. 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.

2. IRAN DIVESTMENT ACT CERTIFICATION

The Contractor certifies that, if it submitted a successful bid for this contract, then as of the date it submitted the bid, the Contractor was not identified on the Iran List. If it did not submit a bid for this contract, the Contractor certifies that as of the date that this contract is entered into, the Contractor is not identified on the Iran List. It is a material breach of contract for the Contractor to be identified on the Iran List during the term of this contract or to utilize on this contract any subcontractor that is identified on the Iran List. In this Iran Divestment Act Certification section -- "Contractor" means the person entering into this contract with the City of Durham; and "Iran List" means the Final Divestment List – Iran, the Parent and Subsidiary Guidance– Iran list, and all other lists issued from time to time by the N.C. State Treasurer to comply with G. S. 147-86.58 of the N.C. Iran Divestment Act.

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

ATTEST

CITY OF DURHAM

By: _____

Pre-Audit Certificate, if applicable _____

[CONSULTANT]

ATTEST

[Title (Name)]

Signature

By: _____
Secretary

(SEAL)

State of _____

ACKNOWLEDGMENT BY CORPORATION

County of _____

I, a notary public in and for the aforesaid county and state, certify that _____
personally appeared before me this day and stated that he or she is

~~(strike through the inapplicable)~~ chairperson/ president/ chief executive officer/ vice-president/ assistant
vice-president/ treasurer/ chief financial officer of

[consultant], a corporation, and that by authority duly given and as the act of the corporation, he or she
signed, under seal, the foregoing contract or agreement with the City of Durham.

This the _____ day of _____, 20 _____ .

My commission expires:

Notary Public

CONFIDENTIAL

Hourly Rates

[*consultant*]

Date: [*date*]

Exhibit B – Underutilized Business Enterprise (UBE) Listing

Company Name	Contact Name	Address	City, State	Zip	Phone	Email	Hub Certification	Commodity In Search Criteria
A1 Consulting Group, Inc.	Goel, Vinnie	117 International Drive	Morrisville, NC	27560	919-469-4800	vgoel@a1cons.com	AA	Engineering Services, Professional; Environmental and Ecological Services
AeroRaq Engineering Inc	Bailey, Hakeem	8511 Davis Lake Parkway	Charlotte, NC	28269	704-469-8463	hakeembaily@aeroraq.com	B	Engineering Services, Professional
AGRA ENVIRONMENTAL, INC.	shah, raj	p.o.box 5611	Cary, NC	27512	(919)858-5350	rbshah@agraenvironmental.com	AA	Environmental and Ecological Services
BBFoster Consulting, PC	Foster, Ph.D., PE, Bellandra	2618-A Battleground Avenue	Greensboro, NC	27408	336-355-7897	bbf@bbfosterconsulting.com	B	Engineering Service
BREE & ASSOCIATES, INC.	Lancaster, Robert	3434 Edwards Mill Road	Raleigh, NC	27612-4276	(919)469-3330	bree@breeassociates.com	B	Engineering Services, Professional
CALYX Engineers + Consultants	Heath, Jill	6750 Tryon Road	Cary, NC	27518	(919)836-4800	cstarr@CALYXengineers.com	W	Engineering Services, Professional
Capstone Civil Group, PA	Brown, Jr., Charles	7807 Pelican Court	Charlotte, NC	28227	980-938-6770	cbrown@capstonecivilgroup.com	B	Engineering Services, Professional
CES Group Engineers, LLP	Heleine, Judy	274 N Hwy 16	Denver, NC	28037	(704)489-1500	jheleine@ces-group.net	W	Engineering Services, Professional
CH ENGINEERING, PLLC	chambliss, maha	3220 Glen Royal Road	Raleigh, NC	27617	(919)788-0224	mchambliss@ch-engr.com	W	Engineering Services, Professional; Environmental and Ecological Services
Chester Engineers (North Carolina), Inc.	Craig, Darnetta	717 Green Valley Road	Greensboro, NC	27408	336-544-4820	dcraig@chesterengineers.com	B	Engineering Services, Professional; Environmental and Ecological Services
CLH Design PA	Larouche, Roxanne	400 Regency Forest Drive	Cary, NC	27518	(919)319-6716	rlarouche@clhdesignpa.com	W	Engineering Services, Professional
COASTAL ENGINEERING SURVEYING	GOMEZ, CARLOS	P.O. BOX 1129	KITTY HAWK, NC	27949	(252)261-4151	jalene@coastales.com	HA	
Collins Structural Consulting, PLLC	Collins, Scott	PO Box 539	Creedmoor, NC	27522	(919)724-9045	scollins@collinsstructural.com	HA	Environmental and Ecological Services
CONSULTECH ENVIRONMENTAL, LLC	SHAH, PRAGNA	P.O.BOX 5306	CARY, NC	27512	919-234-4238	prshah@consultechenv.com	AA	Miscellaneous Services, No. 1 (Not Otherwise Classified)
EEC, INC.	Shrimanker, Mike	8506 Six Forks Road	Raleigh, NC	27615	(919)846-1016	mshrimanker@eecincorporated.com	AA	Engineering Services, Professional
Falcon Engineering	Robertson, Margaret	1210 Trinity Road, Suite 110	Raleigh, NC	27615	(919)871-0800	mmansfield@falconengineers.com	W	Engineering Services, Professional; Environmental and Ecological Services;
FROEHLING & ROBERTSON INC	Schaefer, Daniel	310 Hubert Street	Raleigh, NC	27603	919-828-3441	jclingenpeel@fandr.com	AI	

Company Name	Contact Name	Address	City, State	Zip	Phone	Email	Hub Certification	Commodity In Search Criteria
Gardner & McDaniel, PA	Easterling, Susan	P.O. Box 51967	Durham, NC	27717	919-489-0926	susan@gmengrs.com	W	Environmental and Ecological Services
Highlands Env. Solutions, Inc.	Beaman, Lynne	8410-D Falls of Neuse Road	Raleigh, NC	27615	919-848-3155	lbeaman@hesnc.com	W	Engineering Services, Professional; Environmental and Ecological Services;
John Davenport Engineering	Davenport, John	305 W. 4th St	Winston Salem, NC	27101	336-744-1636	jdavenport@davenportworld.com	B	Engineering Service
Ken Bright Associates PLLC	Bright, Martha	2305 Carthage St.	Sanford, NC	27331	(919)776-3444	mabright@kenbrightengineering.com	HA	Engineering Services, Professional
Kennerly Engineering & Design	Kennerly, Nikole	193 Greenbriar Lane	Lexington, NC	27295	336-775-2118	nikole.kennerly@kennerlyengineering.com	W	Consulting Services
Kramer Engineering Services, PLLC	Kramer, Donna	100 S. Kramer St	Chapel Hill, NC	27516	919-933-3350	donnakramer@gmail.com	W	Engineering Services, Professional; Environmental and Ecological Services
Locklear, Locklear & Jacobs	Harris, Krystal	PO Box 3119	Pembroke, NC	28372	910-774-9306	Krystaladair57@gmail.com	AI	Engineering Services, Professional; Environmental and Ecological Services
MA ENGINEERING CONSULTANTS, INC.	Maniktala, Arvin	598 East Chatham Street	Cary, NC	27511	(919)297-0220	maec@maec.com	AA	
Planners for Environmental Quality, Inc	Kennedy, Inga	110 Orchard Street	Fairburn, GA	30213	(770)306-0100	inga@peqatl.com	B	
SEPI Engineering&Construction	Mcdonell, James	1025 Wade Ave	Raleigh, NC	27605	919-573-9955	jmacdonell@sepiengineering.com	W	
Simon Resources, Inc.	Simon, Karen	3946 Tonbridge Lane	Winston-Salem, NC	27106	336-749-1411	simonresrc@gmail.com	W	
Springleaf Strategies, LLC	Contre, Evelyn	P.O. Box 99101	Raleigh, NC	27624	(919)521-5210	econtre@springleafstrategies.com	W	Engineering Services, Professional
STEWART ENGINEERING INC	Stewart, Willy	421 Fayetteville St.	Raleigh, NC	27601	(919)380-8750	ppettit@stewartinc.com	HA	Engineering Services, Professional
The Harris Partners	Harris, Ross	Two New Bern Square	Greensboro, NC	27408	(336)908-7171	ross@theharrispartners.com	W	
Trimat Materials Testing, Inc.	Regimand, Simine	5900 Triangle Drive	Raleigh, NC	27617	(919)532-2211	cbacchi@trimattesting.com	AA	
Turner Land Surveying, PLLC	Turner, Elisabeth	PO Box 148	Swannanoa, NC	28778	919-827-0745	lissa@turnerlandsurveying.com	W	Engineering Services, Professional
Vert Structural, PC	Parker, Ashley	4007 Brownstone Court	Raleigh, NC	27609	919-449-6410	aparker@vertstructural.com	W	
Ward Consulting Engineers, P.C	Ward, Becky	4805 Green Road	Raleigh, NC	27616-2848	(919)870-0526	bward@wce-corp.com	W	
Westcott, Small & Associates,	Small, Tori	125 South Elm Street	Greensboro, NC	27401	336-310-1481	tsmall@wsaaeng.com	W	Engineering Services, Professional; Environmental and Ecological Services
Wetherill Engineering, Inc	Wetherill, Debora B.	1223 Jones Franklin Road	Raleigh, NC	27606-3312	(919)851-8077	dbw@wetherilleng.com	W	
Zapata Engineering, PA	McKeown, Patti	6302 Fairview Road	Charlotte, NC	28210-2244	(704)358-8240	pmckeown@zapatainc.com	HA	

Exhibit C – Professional Services Forms



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:**