

This contract is dated, made, and entered into as of the _____ day of _____, 20____, by and between the City of Durham (“Owner”), a N. C. municipal corporation, and _____ (“Contractor”), [Indicate type of entity, for instance:

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

Sec. 1. Background and Purpose. The City is soliciting a person or firm to provide utility locate services for the City of Durham. The proposed project is intended to support City Staff in the administration of the services as utility companies install utilities throughout the City. Due to the volume of requests being received by the utility companies, the City of Durham cannot complete all locate requests within the appropriate time.

Sec. 2. Services and Scope to be Performed. The Consultant will provide adequate staffing for the following activities:

(a) Project Management Plan

Contractor will be responsible for providing qualified and appropriately trained employees to perform utility locating services which follow the NC state regulations stated in General Statute 87: Underground Utility Safety and Damage Prevention Act.

Contractor will provide all equipment necessary to complete the work required for this project. These employees will use a Vivax Metrotech vLoc Pro 2 Transmitter & Receiver (or equivalent) to use as their primary locating instrument. Contractor also has Vivax Metrotech VM560 Transmitters & Receivers that can be assigned as back-up instrumentation as the work conditions dictate.

Contractor locators will also be equipped with name badge, smart-phones (with data services), a laptop or tablet computer, a work vehicle with proper safety lighting and vehicle identifier displaying it use for locating services, Personal Protection Equipment (PPE) suitable for their work assignments, pin-flags, and pre-approved utility marking paint.

Water and Sewer Utility Location – Regular Hours Locating

Contractor shall have Locator staff who locates water and sewer lines, services, valves, manholes and meters prior to and during construction using state-of-the-art technologies for underground detection and location. This task will include the following procedures:

- In performing the work, the Contractor staff will utilize Owner GIS data, as built record drawings, and other support documents provided by the Owner.
- The location of the utilities will follow the existing work flow and protocol utilized by the Owner’s utility location staff, and will be highly coordinated with the ongoing utility location services provided by Owner’s Staff.
- A monthly report spreadsheet will be submitted for payment each month. This monthly report will include the number of tickets and hour worked for each locator.
- For regular hours, the locate coordinator will send a DAILY email to Tony Haithcock at Michael.Haithcock2@DurhamNC.gov with the number of tickets assigned to each locator.
- Contractor shall be ready to provide anywhere from 1 to 3 locators to work on the day following a request from the Owner.

- The Owner will require attendance at an initial training session and may require attendance at additional staff meetings or field meetings.
- Contractor's Locators will have approximately two business days to complete the requested work (ie: locate tickets received in email by 7AM Monday morning need to be complete and closed out in the 811 system by 5 PM Tuesday evening).
- Login information for the 811 system will be provided by the Owner. Any locate that cannot be completed needs to be reported to Owner staff by noon the day it is due.
- Contractor's locators are expected to work a typical 8 hour day with a 1 hour lunch. Each locator will be required to achieve the same number of locates as Owner's staff would provide. *Typically this is between 10 and 30 locate tickets per day (involving multiple locates per ticket) depending on difficulty and length of assignment.*

Water and Sewer Utility Location – After-Hours Locating

There will be some days where after hours or weekend work will be required for After-Hours locates. This task will include the following procedures:

Timeframes

- Contractor will provide a single locator will be on-call for After-Hours locates for a 7-day period beginning Friday at 5:00 PM through 6:00 AM (or start of standard workday) for weekdays and the full 48 hour period for weekends. Holidays are included in this cycle.
- Contractor will provide a monthly schedule of staff being used for the after-hours schedule and standard locates.
- Time billed for after-hours locates will only be actual hours worked (ie if no after-hours calls come in, no time will be billed).

Response Time

- When a call is received for an emergency locate, the Contractor will first determine if the utilities belong to the Owner. If they do not, the ticket can be closed.
- If they do, the Contractor staff will determine if the issue can be resolved over the phone.
- The After-Hours locator will have 3 hours to respond to any After-Hours locate request.
- Time worked begins once the call is answered. No After-Hours locates will be sent over email.

Employee Expectations

- The After-Hours locator will be readily available whenever a call is received.
- The After-Hours locator cannot be impaired by alcohol or prescription substances.
- The intent of the Owner is to directly forward any after-hours requests directly to the Contractor staff email and phone number provided with the monthly schedule for that week.

Locating Standards

All locators provided to the Owner should follow the regulations stated in General Statute 87: Underground Utility Safety and Damage Prevention Act. All equipment necessary to complete the work shall be provided by the Consultant including, but not limited to, transportation (with all proper safety measures and an identifier stating it is for location services), name badge, communication devices, location equipment, paint (Seymour Aerosol

Spray Paint meets APWA standards – Green fluorescent model number 20-668 and Precaution Blue – model number 20- 653 or approved equivalent), and personal protection equipment.

Service Interruption

If service is interrupted in Owner owned infrastructure (limited to water lines, sewer lines, force main lines and storm drainage systems) during construction on a section located for the ST-300 project and the Contractor is found to be negligent, then Contractor will be responsible for the cost of repairs, to the extent caused by the negligence of Contractor. This responsibility applies only to the location of Owner owned infrastructure (as listed above). Consequently, negligence in performance is defined as Contractor not locating an existing facility in the field within industry standard tolerances based on the contract’s Scope of Services in Section 2.

Contractor has no responsibility for non-Owner owned infrastructure.

If there is an interruption to the services of Owner owned infrastructure, Contractor will be involved in the design of remedies and be present, at its own expense, during implementation of emergency repair.

Unless Contractor, in its professional judgement, should know or should have known, it is not responsible for any damage to:

- Owner owned infrastructure not shown or shown incorrectly in the Owner’s GIS data
- Owner owned infrastructure marked properly within industry standards
- Events that could not have been reasonably anticipated during review or locating of the Owner owned infrastructure (ie: if water meter or sewer cleanouts are visible, the services shall be marked even in the absence of Owner GIS data). In cases where Owner GIS data is incorrect, Contractor will contact the locate supervisor for further instructions.

Notwithstanding the definition of Professional Negligence provided in Section 11(c) below, unless the Consultant, in its professional judgement, should know or should have known, it is not responsible for any damage to:

- City owned infrastructure not shown or shown incorrectly in the City’s GIS data
- City owned infrastructure marked properly within industry standards
- Events that could not have been reasonably anticipated during review or locating of the City owned infrastructure (i.e. if water meter or sewer cleanouts are visible, the services shall be marked even in the absence of City GIS data). In cases where City GIS data is incorrect, the Consultant will need to contact the locate supervisor for further instructions.

In this contract, “Work” means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor’s duties to the City that arise out of this contract. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

Sec. 3. Compensation Amount and Schedule: The City shall pay the Consultant an amount not to exceed \$_____ for the Work and can be paid monthly over the life of the contract. The City shall not be obligated to pay the Consultant any payments, fees, expenses, or compensation other than those

authorized by this section.

(a) Upon award of the Contract, the Contractor will receive a Notice to Proceed to develop a comprehensive *P6* Schedule. Subsequent to completion and City approval of the *P6* Schedule, the Contractor will receive a Notice to Proceed for Locate Services. No work shall commence without receiving the Notice to Proceed for Locate Services from the City.

Prior to preparation of the *P6* Schedule, the Contractor shall provide a proposed Organization Breakdown Structure (OBS) and Work Breakdown Structure (WBS) to the City for review, comment, and approval. The WBS shall reflect each of the Contract pay items.

The WBS and overall project schedule in *P6* shall be linked to the Contract as established in

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

Sec. 5. Contractor's Billings to City. Compensation. The Contractor shall send invoices to the City on a monthly or bi-monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City: such information as may be reasonably requested by the City. All payment requisition(s) shall be prepared using the City's PDRX web-based program. Within 60 days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

The City shall pay the Contractor for the Work as follows:

- (a) Locates during standard work hours
- (b) After-hours locates
- (c) No Monthly Minimum

The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section.

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

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

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

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

(c) Nothing in this section (titled "Prompt Payment to Subcontractors") shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

(d) The Project Manager may require, as a prerequisite to making progress or final payments, that

the Contractor provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

Sec. 7. Insurance. Consultant agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following coverage's and limits. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Consultant is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Consultant under this Contract. All insurance companies must be authorized to do business in North Carolina and have no less than an A VIII rating or better.

- 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) Automobile Liability – Limits of no less than \$1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. In the event Consultant does not own automobiles, Consultant agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract and/or are brought on a City of Durham site
- c) Workers' Compensation & Employers Liability – Consultant agrees to maintain Worker's Compensation Insurance in accordance with North Carolina General Statute Chapter 97 and with limits of no less than \$1,000,000 each accident, each employee and policy limit.
- d) 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. Consultant 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.
- e) Professional Liability - Consultant agrees to maintain Professional Liability Insurance with limits no less than \$1,000,000, covering claims arising out of professional architect, engineers and surveyors services performed in connection with this contract.
- f) 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'.
- g) 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 Dept./Engineering
101 City Hall Plaza, Ste. 3100
Durham, NC 27701

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

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

- (a) Exhibit "A" Scope of Services and Statement of Fees Letter containing ____ page(s).

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

Sec. 10. Notice. (a) This subsection (a) pertains to all notices related to or asserting default, breach of contract, claim for damages, suspension or termination of performance, suspension or termination of contract, and extension or renewal of the term. All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or

certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City (Owner):

ATTN: Thomas Wilcoxson
City of Durham
Department of Public Works/Engineering
101 City Hall Plaza, Ste. 3100
Durham, NC 27701-3329
The fax number is (919) 560-4316
Email: Thomas.Wilcoxson@durhamnc.gov

To the Contractor:

[Contractor]
Attn:
Address Line 1
Address Line 2
The fax number is
Email:

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given and sent at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 11. Indemnification. (a) Indemnification for Charges Arising from Professional Services. To the maximum extent allowed by law, Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of Contractor's performance of Professional Services under this Contract, but only to the extent such Charges are caused by the Professional Negligence of Contractor or its subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In

performing its duties under this subsection (a), Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

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

(c) **Definitions.** As used in subsections “a” and “b” above and “d” below -- “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within “Charges” are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). “Indemnitees” means City and its officers, officials, independent contractors, agents, and employees, excluding Contractor. “Professional Services” means the performance of a particular, discrete act, which is required by North Carolina state law to be performed by an engineer, architect, landscape architect, or land surveyor licensed by the State of North Carolina. “Professional Negligence” means failure of Contractor to comply with the professional standard of care used by professionals on similar projects, whether such projects can be found locally, regionally or nationally in the performance or non-performance of professional services hereunder.

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

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

(f) **Limitations of Contractor's Obligation.** Subsections “a” and “b” above shall not require Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 12. Trade Secrets; Confidentiality. The request for proposals (RFQ) section titled “Trade Secrets and Confidentiality” shall apply to any Trade Secrets disclosed to the City during the process leading to the parties’ entering into this Contract (including all of the Contractor’s responses to the RFQ). This section (titled “Trade Secrets; Confidentiality”) shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. For purposes of this contract, the word “candidate” in the RFQ section just cited shall mean the “Contractor.”

Sec. 13. Termination for Convenience (“TFC”). (a) *Procedure.* Without limiting any party’s right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations.* Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City’s instructions as to which subcontracts to terminate. (c) *Payment.* The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City’s decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after

TFC, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Sec. 14. State Law Provisions.

(a) 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.

(b) 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.

Sec. 15. Miscellaneous

(a) Choice of Law and Forum; Service of Process. (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

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

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

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

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

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

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

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

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

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

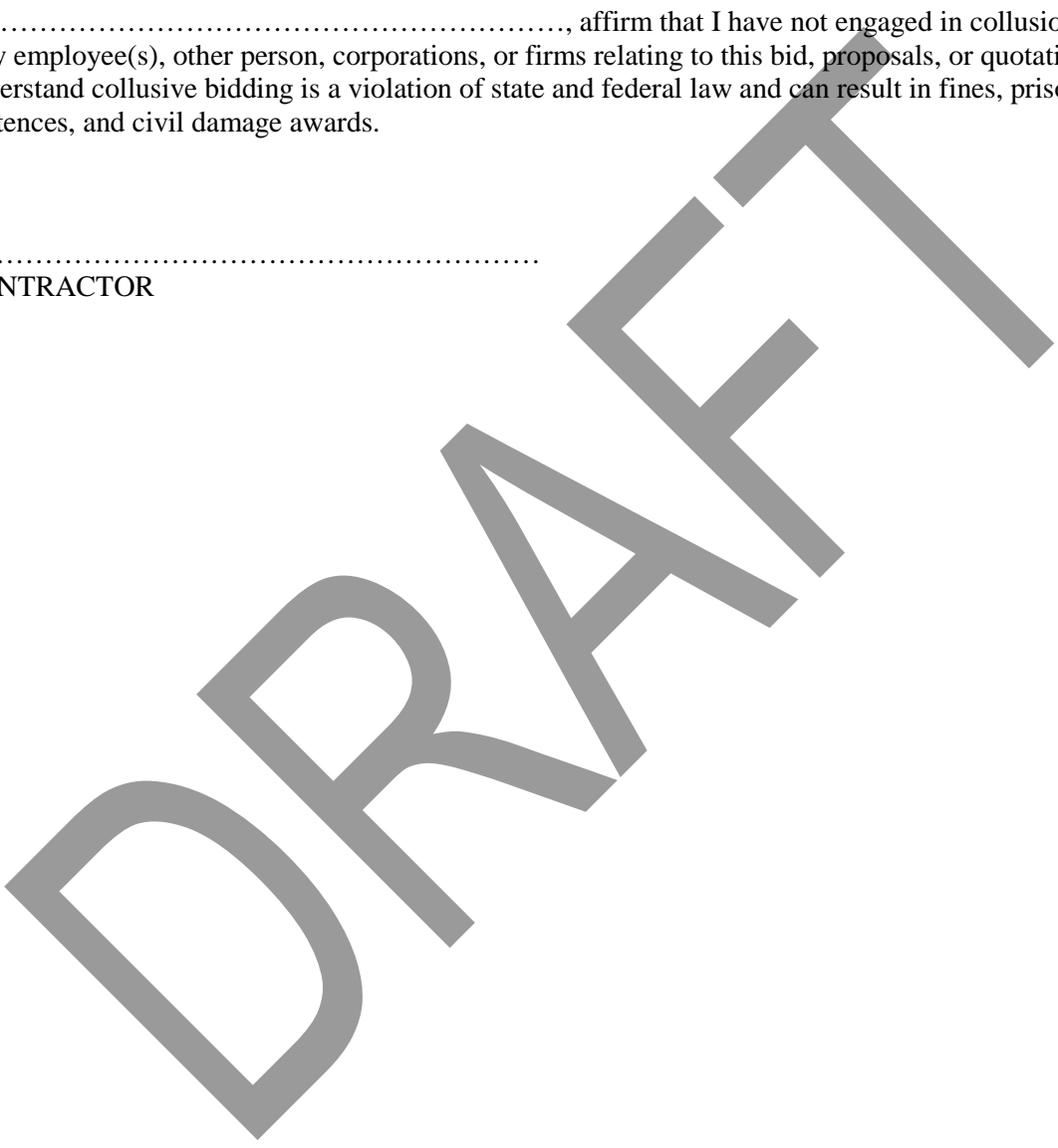
(l) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

NON-COLLUSION STATEMENT BY CONTRACTOR

The City of Durham prohibits collusion, which is defined as a secret agreement for a deceitful or fraudulent purpose.

I,, affirm that I have not engaged in collusion with any City employee(s), other person, corporations, or firms relating to this bid, proposals, or quotations. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

.....
CONTRACTOR



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

ATTEST: CITY OF DURHAM

_____ By: _____

preaudit certificate, if applicable _____

CONSULTANT

ATTEST:

_____ By: _____
_____ Title: _____

_____ Secretary

(Affix Corporate Seal)

State of _____ ACKNOWLEDGMENT BY CORPORATION

County of _____

I, _____, notary public, certify that _____ personally appeared before me this day and stated that he or she is _____ President of _____, a corporation, and that by authority duly given and as the act of the corporation, he or she signed the foregoing contract or agreement with the City of Durham and the corporate seal was affixed thereto. This the ____ day of _____, 20____.

My commission expires:

_____ Notary Public