



CITY OF
DURHAM

REQUEST FOR QUALIFICATIONS (RFQ)

RFQ No. WQ-2020-01

**Water Quality Pollutant Source Tracking in
Sandy Creek Tributary A and Warren Creek**

Date Issued: December 11, 2019
Submittals are due by 3:00 p.m. on Thursday, January 30, 2020

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10. Issue Date of RFQ.

December 11, 2019

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

Direct questions and concerns to the following.

ATTN: Mr. J.V. Loperfido
Public Works Department
101 City Hall Plaza, Ste. 3100
Durham NC 27701-3329
Phone: (919) 560-4326, ext. 30311
E-mail: John.Loperfido@DurhamNC.gov

If you have concerns about this RFQ that you believe are not being addressed by the project manager, please contact the following.

ATTN: Paul Wiebke
Public Works Department
101 City Hall Plaza, Ste. 3100
Durham NC 27701-3329
Phone: (919) 560-4326
E-mail: Paul.Wiebke@DurhamNC.gov

DESCRIPTION OF PROJECT AND NATURE OF RFQ

30. Project Description.

The City of Durham's Stormwater and GIS Services Division of the Public Works Department is seeking professional services to perform environmental monitoring and laboratory analysis of samples in two streams: Sandy Creek Tributary A and Warren Creek. In Sandy Creek Tributary A, the goal of this work is to identify the cause of low dissolved oxygen concentrations present in the creek and to develop a preliminary solution to remedy this issue. In Warren Creek, the goal of this work is to identify the location and sources of water quality pollution hot spots and develop recommendations of future work to improve water quality. Water and sediment sample analyses should be conducted by a laboratory certified by the NC Division of Water Quality (NC DWQ) to perform these analyses. This project is anticipated to occur during a two-year period.

The Stormwater and GIS Services Division actively conducts long-term ambient water quality monitoring and implements special monitoring studies that contribute to compliance requirements of the City's National Pollution Discharge Elimination System (NPDES) Stormwater Permit. This monitoring has revealed water quality concerns in two creeks located within the City of Durham: Sandy Creek Tributary A and Warren Creek. Data collected in both creeks reveal water quality concerns with the source of these issues currently unknown.

Low dissolved oxygen concentrations have been observed in Sandy Creek Tributary A. A seasonal trend has been observed with relatively lower dissolved oxygen concentrations and percent saturation observed during warmer summer months and higher dissolved oxygen concentrations and percent saturation observed during cooler winter months. The City of Durham collects water quality grab samples from Sandy Creek Tributary A that have been analyzed for a range of standard parameters (e.g., nutrients, biochemical oxygen demand, chloride) and metals (e.g., copper, zinc). These data are available at the City of Durham Water Quality Data Web Portal (<http://www.durhamwaterquality.org/>). Preliminary analysis of these data has not indicated a primary cause of the low dissolved oxygen concentrations. Field inspections for illicit discharges have also been inconclusive in identifying a primary cause of low dissolved oxygen concentrations in Sandy Creek Tributary A.

The observed area of concern extends along Sandy Creek Tributary A from a point where a storm drainage network daylight (35.961190, -78.960992) to a culvert located under University Drive (35.957308, -78.965777). Along this section of stream, dissolved oxygen concentrations (and percent saturation) have been observed, during baseflow, to sharply decrease from approximately 8 mg/L at the upstream location to less than 1 mg/L at University Drive over the approximately 2,000 linear foot section of stream. This issue of low dissolved oxygen concentrations could possibly extend further downstream but, data are not available to confirm this. The City seeks assistance with characterizing the problem, identifying the cause of low dissolved oxygen concentrations and developing a solution to remedy this issue in Sandy Creek Tributary A.

Water quality monitoring through the ambient monitoring program and special monitoring studies conducted as part of the Eno River Watershed Improvement Plan and Watershed Implementation Plan Data Collection (see links below) documented several potential toxicity concerns in Warren Creek. The Warren Creek watershed is located north of Interstate 85 and south of the Eno River in the City of Durham. Issues were identified in both water samples and stream sediment samples. Stream bed sediment sampling has revealed potentially high levels of metals (e.g., chromium) and polycyclic aromatic hydrocarbons (PAHs). While these preliminary data indicate problematic sediment quality, pollution sources cannot be identified based on the limited data available. Compounds present in the sediment could potentially serve as chronic toxic stressors to the aquatic habitat. Low dissolved oxygen concentrations (1.38 mg/L to 5 mg/L) and percent saturation values have been detected during routine ambient water quality monitoring during the months from June to November. During regular monitoring, high fecal coliform concentrations have also been detected. Additional samples and data collected throughout the watershed are needed to assess the extent and sources of sediment and water quality issues in Warren Creek, with a focus on potential toxicity issues.

Eno River Watershed Improvement Plan:

https://durhamnc.gov/DocumentCenter/View/25019/Final_Eno_WIP_Vol_II_Improvement_Plan_5Dec2018_textonly-

Eno River Watershed Implementation Plan Data Collection:

<https://durhamnc.gov/DocumentCenter/View/5748/EnoRiverRFPaddendum1f>

40. Scope of Work.

The City is soliciting a person or firm to provide the following.

40.1. Low dissolved oxygen concentration characterization and source determination in Sandy Creek Tributary A

The contractor is anticipated to characterize the low dissolved oxygen concentration issue in Sandy Creek Tributary A, determine a cause for this issue, and develop a strategy to improve dissolved oxygen conditions. The contractor is anticipated to:

- A. Summarize data collected from previous City of Durham monitoring efforts.
 - o Existing water quality data are primarily stored in the City's Water Quality Data Web Portal and a water quality investigations database.
- B. Water quality and sediment quality monitoring.
 - o Characterize the spatial extent of the problematic dissolved oxygen concentrations including up to two field visits. Field visits are to determine the spatial extent of low dissolved oxygen concentrations from Martin Luther King Jr. Parkway downstream to the confluence of Sandy Creek Tributary A with Sandy Creek and New Hope Creek during warmer summer months. Dissolved oxygen concentrations and other pertinent parameters (e.g., temperature, redox, etc) will likely be collected using handheld water quality multi-probes. Grab samples may also be collected and analyzed for 5-day BOD, NBOD, COD, at a laboratory certified by the NC Division of Water Quality (NC DWQ) to perform these analyses. A QAPP for sampling may be developed by the contractor with one round of review and comment provided by the City.
 - o Following initial sampling, additional investigations to identify or confirm causes of low dissolved oxygen in Tributary A may be proposed. The firm will consult with the City prior to implementing additional field investigations.
- C. Detailed field investigation of sources contributing to low dissolved oxygen concentrations.
 - o Conduct a detailed field investigation of sources contributing to low dissolved oxygen concentrations following characterization of the issue. Analyses and techniques possibly used could investigate: groundwater/surface water quality and quantity interactions, instream oxygen dynamics, instream hydraulics (e.g., infrared imaging, or other field methods). Limited desktop analysis (e.g., GIS) may be required to analyze watershed characteristics or water quality processes. An addendum to the QAPP may be developed by the contractor with one round of review and comment provided by the City.
- D. Develop strategies to improve low dissolved oxygen concentrations in Sandy Creek Tributary A. Strategies should include how the NPDES MS4 Permit required six minimum measures may be applied to address the cause of low dissolved oxygen. Strategies may also include additional NPDES permitting options, structural and non-structural stormwater control measures, stream restoration, or site remediation.

40.2. Location and source identification of potentially toxic pollution hot spots in Warren Creek

The contractor is anticipated to complete an investigation of the Warren Creek watershed that will include a synoptic sampling component and a more detailed follow-up sampling component. The contractor is anticipated to:

- A. Summarize data collected from previous City of Durham monitoring efforts.
 - o Existing water quality data are primarily stored in the City's Water Quality Data Web Portal and City reports.
- B. Conduct a watershed-wide synoptic sampling effort to locate pollution hot spots:
 - o Synoptic sampling during one event may include basic handheld water quality multi-probe monitoring and water and sediment sampling approaches. Water and sediment samples may be analyzed for metals (e.g., chromium, nickel),

- PAHs (e.g., benzo(a)anthracene, benzo(a)pyrene, chrysene, fluoranthene, phenanthrene), and constituents related to low dissolved oxygen and high fecal bacteria concentrations. Samples collected should be analyzed by a laboratory certified by NC DEQ to perform these analyses. A QAPP for sampling may be developed by the contractor with one round of review and comment provided by the City.
- Following initial sampling, additional investigations to identify sources of potentially toxic compounds (e.g., metals, PAHs) in the Warren Creek watershed may be proposed. The firm will consult with the City prior to implementing additional field investigations.
- C. Follow-up sampling to identify sources of potentially toxic pollutants
- Conduct more detailed follow-up sampling to the synoptic sampling event with additional sampling at pollution hot spots to identify the sources of pollutants that could be potentially toxic to aquatic life (e.g., metals and PAHs). Collection and laboratory analysis of samples may be for water and sediment samples. An addendum to the QAPP may be developed by the contractor with one round of review and comment provided by the City.
- D. Develop a strategy to address any potential toxicity concerns including identification and elimination of pollutant sources and actions that can be implemented under the NPDES MS4 Permit required six minimum measures. Strategies may also include additional NPDES permitting options, structural and non-structural stormwater control measures, stream restoration, or site remediation

40.3. Meetings

- A. Project kickoff meeting.
- Upon receiving Notice to Proceed, this meeting will be held to discuss project objectives, coordination, scheduling, and deliverables.
- B. Progress meetings
- 30-minute phone meetings will be conducted monthly to assess project results and to plan future activities.
- C. Assessment
- Upon completion of the monitoring and analysis, this meeting will be held to submit the final assessment report (including all deliverables and monitoring data).

40.4. Reporting and Deliverables

It is anticipated that the contractor will report project progress and results, digital site photos, and all water sampling data electronically (for example, by email, FTP, or CD) to the City's Project Manager. It is anticipated that the successful candidate will work cooperatively with the City in refining the scope and format of project reports and data. Deliverables from this project are anticipated to include two interim memos and two final reports. The two interim memos (i.e., one each for Sandy Creek Tributary A and Warren Creek) may document data analysis performed in Tasks 40.1A and 40.2A. The two final reports (i.e., one each for Sandy Creek Tributary A and Warren Creek) are anticipated to document observations, data, and analyses from Task 40.1, Task 40.2, and all subtasks. One round of city review and commenting is anticipated for each interim memo and each final report. Regular status update meetings will be conducted to communicate applicable investigation findings, project results and future steps with the City's Project Manager.

50. Compensation Amount and Schedule.

The City expects that the successful firm will be compensated for the work as described below.

- A. 40.1. Low dissolved oxygen concentration characterization and source determination in Sandy Creek Tributary A: Labor fee plus expense basis with a maximum labor fee.
- B. 40.2. Location and source identification of potentially toxic pollution hot spots in Warren Creek: Labor fee plus expense basis with a maximum labor fee.
- C. 40.3. Meetings: Labor fee plus expense basis with a maximum labor fee.
- D. 40.4. Reporting and Deliverables: Lump sum fee.
- E. 50.1. Project Management: Lump sum fee.

Valid expenses include reproduction, travel, and express delivery service.

Progress payments will be paid monthly for acceptable work and valid expenses. Payment will be made within 30-days of receipt of monthly invoice. Invoices shall include a breakdown of labor towards each section in the scope of work along with a description of the work completed.

60. Definitions in this RFQ: City, RFQ, Proposal, Candidate, Contractor, Should.

Unless the context indicates otherwise – (a) The expressions "RFQ," "this RFQ," and "the RFQ" refer to this document as it may be amended or updated. (b) "City" and "city" mean the City of Durham. (c) The "proposal" is the response of a person, firm, or corporation proposing to provide the professional services sought by this RFQ. (d) The word "Candidate" or "candidate" is the person, firm, or

corporation that submits a proposal or that is considering submitting a proposal. (e) The word “Contractor” or “contractor” is the person, firm, or corporation with which the City enters into a contract to provide the services sought by this RFQ. That is, “contractor” generally refers to a successful candidate that has obtained a fully executed contract with the City, while “candidate” is generally reserved to the stage before a contract has been signed. (f) The word “should” is used to tell candidates what the City thinks it wants and/or what the project manager thinks is best. Candidates that want to increase the likelihood of being selected will, in general, do what the RFQ says candidates “should” do, but failure to comply with all “shoulds” will not necessarily and automatically result in rejection.

70. Contract.

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

80. Trade Secrets and Confidentiality.

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

Definitions.

In this section (Trade Secrets and Confidentiality) –

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

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

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

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

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

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

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

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

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

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

(c) Defense of City. If the City declines the request for access to a record designated as trade secrets in accordance with subsection (a), then, in consideration of the promises in (b) above and for considering the candidate’s proposal, the candidate agrees that it shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of the City’s non-disclosure of the records. In providing that defense, the candidate shall at its

sole expense defend Indemnitees with legal counsel. The legal counsel shall be limited to attorneys reasonably acceptable to the City Attorney.

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

85. Reserved.

90. Bonds.

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

100. Insurance Requirements.

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

- 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 Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract and/or are brought on a City of Durham site.
- C. **Umbrella or Excess Liability** – Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest 'Each Occurrence' limit for required policies. Contractor agrees to endorse City of Durham as an 'Additional Insured' on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a 'Follow-Form' basis.
- D. **Worker's Compensation & Employers Liability** – Contractor 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.
- E. **Additional Insured** – Contractor agrees to endorse the City as an Additional Insured on the Commercial General Liability. The Additional Insured shall read 'City of Durham as its interest may appear'.
- F. **Certificate of Insurance** – Contractor agrees to provide City of Durham a Certificate of Insurance evidencing that all coverage's, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Contractor's insurer. If Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

City of Durham
ATTN: Mr. J.V. Loperfido
Public Works Department
101 City Hall Plaza, Ste. 3100
Durham, NC 27701
E-mail: John.Loperfido@DurhamNC.gov

All insurance companies must be authorized to do business in North Carolina with a Best rating A-VIII or higher.

110. Discretion of the City.

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

SCHEDULE

120. Schedule.

This schedule is the City's best estimate of the schedule that will be followed. If a component of this schedule from the beginning to receipt of proposals is delayed, the rest of the schedule will be shifted by the same number of days.

Advertisement of Request for Qualifications: December 11, 2019

Deadline for Questions: January 21, 2020, 3:00 PM

Pre-Submittal Conference Call: January 23, 2020 3:00 PM (Phone number 919-237-4293, code 650)

Last date and time for receipt of proposals: January 30, 2020, 3:00 PM

Submittal Evaluation Committee to complete its evaluation: 15-days after previous step.

Interviews: February 20-21, 2020

City Council authorizes the City Manager to execute the contract: 60-days after previous step.

City Manager and successful candidate execute contract: 14-days after previous step.

Notice to Proceed: 5-days after the previous step (anticipated April, 2020).

The City estimates the services to be complete by two years of the Notice to Proceed.

130. Keeping Proposals Open.

All proposals will remain open and valid for the City to accept for a period of 120-days after the deadline for submission of proposals. The Project Manager may release candidates from this obligation by a written letter that specifically refers to this paragraph if he or she determines that the candidate and/or the proposal will not meet the City's needs.

140. Deadline to Submit Proposals.

Candidates should see that their proposals are received at the following address by 3:00 PM, January 30, 2020:

ATTN: Mr. J.V. Loperfido
Public Works Department
101 City Hall Plaza, Ste. 3100
Durham NC 27701-3329

GETTING MORE INFORMATION ON THE PROJECT AND RFQ PROCESS

150. Questions.

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

160. Pre-submittal conferences, meetings, and site visits.

The City will conduct a pre-submittal conference call at 3:00 PM, January 23, 2020. The conference call can be attended at the following phone number: 919-237-4293. Use code 650, when prompted, to enter the call. Conference call attendees should already be familiar with this RFQ. Attendance is not required, but is included in the RFQ evaluation criteria.

170. Updates and revisions to RFQ.

If you have supplied the Project Manager with your preferred method of contact (e-mail, fax, etc.), updates to this RFQ ("addendums" or "addenda") will be sent to you in that manner. This RFQ and addendums are normally posted on the City's website, on the Purchasing Division's webpage (<http://durhamnc.gov/bids.aspx>). Check those webpages to see that you have received all addenda.

EVALUATION CRITERIA

180. Evaluation Criteria.

If an award is made, it is expected that the City's award will be to the candidate(s) that agrees to meet the needs of the City. A number of relevant matters will be considered, including qualifications and cost. The Evaluation Criteria are intended to be used to make a recommendation to the entity or person (the City Manager or the City Council) who will award the contract, but who are 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.

180.1 Understanding of the Project — 25 points.

Proposals will be evaluated against the questions set out below.

- (a) Has the proposal demonstrated an understanding of the importance of sediment and water quality constituents on the City's regulatory requirements?
- (b) Has the proposal demonstrated knowledge on how the issues described in Sandy Creek Tributary A and Warren Creek contribute to the health of stream aquatic habitats?
- (c) How well does the proposal describe possible sources/causes of pollution in Sandy Creek Tributary A and Warren Creek and identify potential barriers to determining these sources?
- (d) Adherence to the City's Underutilized Business Enterprise (UBE) program.

180.2 Team Member Qualifications — 35 points

Proposals will be evaluated against the questions set out below.

- (a) Does the proposed project team have expertise in conducting field work related to water and sediment quality issues (e.g., dissolved oxygen, metals, PAHs), stream toxicity issues, and fate and transport in stream systems?

- (b) Do proposed project team members have experience writing QAPPs for the collection and analysis of stream water and sediment sample data?
- (c) Does the proposed project team include personnel that can oversee the quality assurance aspects of the project to ensure high-quality environmental data are produced?
- (d) Has the proposed project team been appropriately staffed with key personnel that can be responsible for ensuring a quality and timely product?

180.3 Related Project Experience and Team Resources — 35 points.

Proposals will be evaluated against the questions set out below.

- (a) Do previous projects involve generation of stream water and sediment quality data and identify related pollution sources?
- (b) Do previous projects demonstrate successful design of stream water and sediment sampling strategies?
- (c) Does the proposal demonstrate access to the required equipment to collect and generate high-quality water and sediment data required for this project?
- (d) Does the proposed project team demonstrate the capability to measure hydrologic flows (e.g., groundwater), possibly needed for field work in Sandy Creek Tributary A?
- (e) Does the proposed project team include or plan to partner with a laboratory that is certified by NC DEQ to perform possible analyses required in the scope of work for this project?

180.4 Required Forms — 5 points.

Proposals will be evaluated as to whether the required forms were submitted including their completeness.

190-230. Reserved.

CONTENTS OF PROPOSAL

240. Contents of Proposal.

The proposal should include the following sections (tabs). Cover letter shall be a maximum of two single-sided pages in length. Tabs 1 through 4 shall be a maximum of fifteen (15) single-sided pages in total length. Required forms, resumes, and tabs/dividers do not count toward the page limit.

- A. **Cover Letter.** The proposal should contain a cover letter, signed by a principal of the candidate. The cover letter may be two pages and will not count towards the overall page limit. The cover letter should contain the following statements and information.
 - 1. Statement 1. 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.
 - 2. Statement 2. 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.
 - 3. Statement 3. This submittal is not an offer, and the candidate retains the right to decline to enter into a contract with the City for this project.
 - 4. Statement 4. The cover letter should contain one of the following two paragraphs A or B. If (i) the cover letter lacks both paragraph A and paragraph B, or (ii) the cover letter contains paragraph A but fails to comply with the instructions in the section of the 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.

5. Contact information. Include the candidate's name and address, and the contact information (name, mailing address, e-mail address, fax number, and telephone number) of the person whom the City should contact regarding the proposal.
 6. Legal Status of the Candidate and Signers. State the full, exact name of the candidate. State whether the candidate is an individual, corporation, limited partnership, general partnership, limited liability company, professional corporation, professional association, etc. If it is anything other than an individual or a general partnership, specify the State under which the entity is organized. If the State under which the entity is organized is not North Carolina, specify whether the candidate has received a certificate of authority from the N. C. Secretary of State to transact business in North Carolina. State whether the entity is in existence at the time the proposal is submitted, and if not, whether and when the candidate intends to officially form the entity. State the names and titles of the individuals who will sign the contract with the City.
 7. Conflict of Interest. If the candidate has any grounds to believe there could be a conflict of interest, such as that a City employee who is involved in awarding the contract has a connection with the candidate, please explain.
 8. Addendums. The cover letter should list the last addendum that the City issues for this RFQ, with the following statement, "The undersigned candidate has read all the addendums issued by the City for this RFQ, through and including Addendum No. ____." In that blank the candidate should list the number of the last addendum read.
- B. **Tab 1: Team Qualifications and Management.** Qualifications, certifications, and abilities of key staff identified in the proposal, as demonstrated by performance/role in projects of a similar nature.
1. 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) and the individual(s) who will likely be responsible for quality assurance. The availability to work on this project for each key member of the project team should be included.
 2. Provide one page resumes for all staff included on the organizational chart. Provide the following information on each resume. Resumes will not be counted towards the page limit.
 - Name and title;
 - Firm;
 - Location;
 - Role in and name of similar past projects;
 - Project responsibilities; and
 - Name of employing company for past projects listed if different from current firm.
 3. List the candidate's current licenses that are pertinent to this project.
 - The City may reject proposals from any candidate that does not hold licenses required by North Carolina laws to perform the contemplated work.
- C. **Tab 2: Team Experience.** 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 within North Carolina, containing work demonstrating the skills and abilities of the key team members, as follows:
1. List only projects involving the key team members or subcontractors proposed for this Project.
 2. 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.
 - Name of key team member(s) involved and any previous collaboration, achievements, and problem-solving conducted by key team members. If experience for a key team member is listed from a previous employer, fully disclose with what firm the work was performed.
- D. **Tab 3: Understanding of the Project.**
1. Discuss the firm's understanding of the project, the project objectives, and describe the proposed project approach to deliver the Services in an effective, timely and professional manner.
 2. Describe your firm's project management and quality control procedures.

3. Describe any support needed from City staff in order to execute the Services.
 4. Discuss how the team meets the Underutilized Business Enterprise (UBE) goals set in the RFQ.
 - Identify outreach efforts that were conducted in connection with this RFQ.
 - Identify the scope of work to be performed by UBEs during this project.
- E. **Tab 4: Required Forms.** Required forms listed below for Tab 4 will not be counted towards the page limit.
1. City of Durham, Equal Business Opportunity Program, Services Forms (see Exhibit A)
 2. Non-Collusion Affidavit (see Exhibit C)

250. Equal Business Opportunity Program (EBOP).

- A. It is the policy of the City to provide equal opportunities for City contracting for underutilized firms owned by minorities and women doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct present effects of past discrimination and to resolve complaints of discrimination. This policy applies to all professional services categories.
- B. The goals are 0% Minority/UBE and 6% Women/UBE. In accordance with the Ordinance, all proposers are required to provide information requested in the [Professional Services Forms](#) package included with this request (Exhibit A). Proposals that do not contain the appropriate, completed Professional Services Forms may be deemed non-responsive and ineligible for consideration. The UBE Participation Documentation, the Employee Breakdown and, the Letter of Intent to Perform as a Sub-consultant documents are required of all proposers. In lieu of the Employee Breakdown, contractors may submit a copy of the current EEO-1 form (corporate basis). The Request to Change UBE Participation and "UBE Goals Not Met/Documentation of Good Faith Efforts" forms are not applicable at this time.
- C. The Department of Equity and Inclusion is responsible for the Equal Business Opportunity Program. All questions about Professional Services Forms should be referred to Deborah Giles or other department staff at (919) 560-4180.

260. Reserved.

HOW TO SUBMIT A PROPOSAL

270. How to submit a proposal.

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

Write the following prominently on the outside of the envelope:

Water Quality Pollutant Source Tracking in Sandy Creek Tributary A and Warren Creek (RFQ: WQ-2020-01)

Proposals are to be received no later than January 30, 2020 at 3:00 PM. Proposals should not be made by e-mail or fax.

280. Format.

Interested firms shall submit two (2) 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.

Cover letter shall be a maximum of two single-sided pages in length. Tabs 1 through 4 shall be a maximum of fifteen (15) single-sided pages in total length. Required forms, resumes, and tabs/dividers 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.

290. Alternative Proposals.

Proposals that do not comply with the City's standards and expectations are discouraged.

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

No candidate will have any claims or rights against the City arising out of the participation by a candidate in the proposal process. No candidate will have any claims or rights against the City for the City's failure to award a contract to it or for awarding a contract to another person, firm, or corporation, regardless of whether the other person, firm, or corporation participated in the 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.

310. Reserved.

MISCELLANEOUS

320. Notice under the Americans with Disabilities Act.

A person with a disability may receive an auxiliary aid or service to effectively participate in city government activities by contacting the ADA Coordinator, voice (919) 560-4197, fax 560-4196, TTY (919) 560-1200, or ADA@durhamnc.gov, 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.

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

- A. **Statement of City EEO Policy.** The City of Durham opposes discrimination in employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Therefore, it desires that firms doing business with the City:
 1. not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
 2. take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. This action includes employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 3. state, in solicitations or advertisement for employees, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
 4. include this Statement of City EEO Policy in every purchase order for goods to be used in performing City contracts and in every subcontract related to City contracts.
- B. **Livable Wage.** The City of Durham desires that firms doing business with the City pay their workers a livable wage rate while working on City contracts. The livable wage rate is \$14.15 per hour through June 30, 2018, and \$15.00 per hour for July 1, 2018 – June 30, 2019. The City will re-set the rate for the period after June 30, 2019.

340. 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.

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

If the value of the contract is \$1,000 or more, the following applies unless the candidate otherwise states in its proposal: the candidate affirms (by submitting a proposal) that (1) its name does not appear on the list of companies that are engaged in a boycott of Israel developed by the N. C. State Treasurer under N.C.G.S. 147-86.81(a)(1) or on a list created by the Treasurer pursuant to N.C.G.S. 147-86.58 as a company engaging in investment activities in Iran, and (2) it has no reason to expect that its name will appear on either of those lists. Take notice that a contract between a company named on either list and the City may be void.

360. E-Verify Requirements.

The executed contract agreement is subject to the following E-Verify requirements.

- A. If the 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 the 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.

Exhibit A - City of Durham, Equal Business Opportunity Program, Procurement 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 ()		

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:**

Exhibit B – Underutilized Business Enterprise (UBE) Listing

Company Name	Contact Name	Address	City, State	Zip	County	Phone
A1 Consulting Group, Inc.	Goel, Vinnie	117 International Drive	Morrisville, NC	27560	WAKE	919-469-4800
AGRA ENVIRONMENTAL, INC.	SHAH, RAJ	p.o.box 5611	cary, NC	27512	WAKE	919-858-5350
Blue Stream Environmental	Lengyel, Lindsey	2591 King William Dr	Kernersville, NC	27284	FORSYTH	336-456-9365
BROOKS CONTRACTOR	Brooks, Judy	1195 Beal Rd	Goldston, NC	27252	CHATHAM	919-837-5914
C&C Lawn and Gardening Service	Carpenter, Janelle	776 Running brook lane	Rural Hall, NC	27045	FORSYTH	336-354-9154
CAROLINA ENVIRONMENTAL CONTRACTING, INC.	Cheatham, Joanne	150 PINE RIDGE ROAD	MOUNT AIRY, NC	27030	SURRY	336-320-3849
Clean Air Environmental, Inc	Tetreault, Angel	2455-B Spaugh Industrial Dr.	Winston-Salem, NC	27103	FORSYTH	336-768-4825
CLH Design PA	Richards, Melissa	400 Regency Forest Drive, Ste 120	Cary, NC	27518	WAKE	919-319-6716
CONSULTECH ENVIRONMENTAL, LLC	SHAH, PRAGNA	P.O.BOX 5306	CARY, NC	27512	WAKE	919-234-4238
Deborah M Brown Landscape Arch	Brown, Deborah	3005 Starmount Farms Drive	Greensboro, NC	27408	GUILFORD	336-851-1128
Dramby Environmental Consulting, INC	Dramby, Juanita	8801 Fast Park Drive Suite 301	Raleigh, NC	27617	WAKE	757-894-1673
ECO-CLEANING SERVICES OF RALEIGH	Allen, W.	1003 Mulford Court, Box 412	Knightdale, NC	27545	WAKE	919-610-3127
Ecological Engineering, LLP	Fleming, Jenny	1151 SE Cary Parkway, Ste. 101	Cary, NC	27518	WAKE	(919)557-0929
Elevated Environmental Corporation	Gower, Stephanie	1001 NE MARKET ST, STE B	REIDSVILLE, NC	27320	ROCKINGHAM	336-645-5049
Falcon Engineering	Robertson, Margaret	1210 Trinity Road, STE 110	Cary, NC	27513	WAKE	919-871-0800
FROEHLING & ROBERTSON INC	Schaefer, Daniel	310 Hubert Street	Raleigh, NC	27603	WAKE	919-828-3441
SEPI Engineering&Construction	Macdonell, James	1025 Wade Ave	Raleigh, NC	27605	WAKE	919-747-5833
Ward Consulting Engineers, P.C	Ward, Becky	4805 Green Road, Ste 100	Raleigh, NC	27616-2848	WAKE	919-870-0526
Wetherill Engineering, Inc	Wetherill, Debora B.	1223 Jones Franklin Road	Raleigh, NC	27606-3312	WAKE	919-851-8077

Exhibit C – Non-Collusion Affidavit

Exhibit C – Non-Collusion Affidavit

NON-COLLUSION AFFIDAVIT FOR WATER QUALITY POLLUTANT SOURCE TRACKING IN
SANDY CREEK TRIBUTARY A AND WARREN CREEK

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 D – Sample Model Services Contract

Sample Model Services Contract

CONTRACT FOR WATER QUALITY POLLUTANT SOURCE TRACKING IN SANDY CREEK TRIBUTARY A AND WARREN CREEK

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

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

Sec. 1. Background and Purpose. The City of Durham Stormwater & GIS Services Division of the Public Works Department is seeking services to perform environmental monitoring and laboratory analysis of samples in two streams: Sandy Creek Tributary A and Warren Creek. In Sandy Creek Tributary A, the goal of this work is to identify the cause of low dissolved oxygen concentrations present in the creek and to develop a preliminary solution to remedy this issue. In Warren Creek, the goal of this work is to identify the location and sources of water quality pollution hot spots and develop recommendations of future work to improve water quality.

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

Sec. 3. Reserved.

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

Sec. 5. Contractor’s Billings to City. Compensation. The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City: such information as may be reasonably requested by the City. Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

The City shall pay the Contractor for the Work as follows: [to be completed]. The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section. The total dollar amount to be paid under this contract by the City to the Contractor shall not exceed \$(insert amount).]

Sec. 6. Prompt Payment to Subcontractors. (a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 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. [to be completed]

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

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

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

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

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

Sec. 10. Notice.

(a) In General. This subsection (a) pertains to all notices related to or asserting default, breach of contract, claim for damages, suspension or termination of performance, suspension or termination of contract, and extension or renewal of the term. All such notices must be in writing and made by personal delivery, UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or certified United States mail, return receipt requested; in addition, subsection (b) must also be complied with.

(b) Additional Notice by Fax or Email. In addition to complying with subsection (a), the party giving notice or other communication shall also send it by fax or email if the other party has provided a valid, working fax number or email address.

(c) When Notice Period Is Less than 9 Days. If a required notice period is less than 9 days, the party shall also make reasonable attempts, before or promptly after giving written notice under subsections (a) and (b), to use a telephone to orally communicate the substance of the contents of the written notice. Communicating the substance of the contents by an in-person conversation will satisfy the preceding sentence.

(d) Change of Address; Discovery of Invalid Fax Number or Email Address. A change of address, fax number, email address, telephone number, or person to receive notice may be made by either party by notice given to the other party. At any time that a party discovers that the other party has provided it a fax number or email address that is not valid, the discovering party shall provide notice of the discovery to the other party, so that it can substitute a valid fax number or email address.

(e) Date Notice Deemed Given. If a notice is sent by United States mail, it is deemed complete upon actual delivery or on the third day following the day on which it is deposited with the United States Postal Service, whichever occurs first. Notice is deemed given when both subsection (a) and subsection (b) have been complied with.

(f) When Undeliverable Notice Is Deemed Sent. If a notice is undeliverable because the address or other information provided to the sender by the other party is incorrect, incomplete, or out of date, the notice will be deemed sent on the date that the sender attempts to deliver by fax or email, or the date it places the notice in the custody of UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or the U. S. Postal Service for certified United States mail, return receipt requested. If a fax is not received because the recipient's fax number is busy on three attempts to fax that are at least ten minutes apart during a 4-hour period, the fax will be deemed undeliverable.

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

To the City:
Public Works Department
City of Durham
101 City Hall Plaza
Durham, NC 27701-3329
The fax number is (919)_____.
Email:

To the Contractor:
[Insert name and address]
The fax number is _____.
Email:

Sec. 11. Sec. 11. Indemnification.

(a) (Definitions). These definitions apply to this Section unless otherwise stated.

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

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

Defend – to pay for or furnish counsel at the expense of the Contractor to defend any of the Indemnitees against claims alleged or brought against any of the Indemnitees by a third party alleged or brought in any court or other tribunal, including forms of alternative dispute resolution required by law or contract, before the court or tribunal has reached a final determination of fault.

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

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

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

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

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

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

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

(b) (Standard Indemnification). (i) The Contractor shall defend, indemnify, and hold harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or its derivative parties. In performing its duties under this subsection “i,” the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (ii) “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses. Included without limitation within “Charges” are (1) interest and reasonable attorney’s fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract.

(c) (Restriction regarding Indemnitees’ Negligence). This contract shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

(d) (Restriction regarding Fault). Nothing in this contract requires the Contractor to indemnify or hold harmless Indemnitees or any other person or entity against losses, damages, or expenses unless the fault of the Contractor or its derivative parties is a proximate cause of the loss, damage, or expense indemnified.

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

(f) (Liability when at Fault). It is agreed without limitation that nothing in this contract shall be interpreted to exclude from any indemnity or hold harmless provisions enforceable under subsection (c) and (d) any attorneys' fees, litigation or arbitration expenses, or court costs actually incurred by the City to defend against third party claims alleged in any court, tribunal, or alternative dispute resolution procedure required of the City by law or by contract, if the fault of the Contractor or its derivative parties is a proximate cause of the attorney's fees litigation or arbitration expenses, or court costs to be indemnified.

(g) (Insurance contracts and Bonds) This Section does not affect an insurance contract, workers' compensation, or any other agreement issued by an insurer; and those subsections do not apply to lien or bond claims asserted under Chapter 44A of the N.C. General Statutes.

(h) (Other Provisions) When this Section or any subsection or combination of subsections of this Section applies, it applies to every provision in this contract outside of this Section that would require the Contractor to indemnify, hold harmless, or defend Indemnitees regardless of whether the section in question is titled "indemnification," "warranty," or otherwise.

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

(j) (Compliance with law). It is agreed that this Section shall be applied to the maximum extent allowed by law and limited only as necessary to comply with N.C.G.S. § 22B-1.

Sec. 12. Trade Secrets; Confidentiality. The request for qualifications (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.

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

Sec. 15. Ownership of Work Products.

(a) The Contractor hereby assigns to the City, without reservation, all copyrights in all Work-related documents, including sketches, models, photographs, data sets, source code and scripts, and other Work-related

expressions created by the Contractor. Among those documents are certain “Work Product,” including Work-related deliverables, programs, applications, reports, design drawings, and construction documents. The City’s obligation to pay the Contractor is expressly conditioned upon the Contractor’s obtaining a valid written comprehensive assignment of copyrights from its subcontractors in terms identical to those that obligate the Contractor to the City as expressed in this subsection, which copyrights the Contractor, in turn, hereby assigns to the City. The City, in return, hereby grants the Contractor and its subcontractors a revocable, nonexclusive license to reproduce the documents for purposes relating directly to the Contractor’s performance of its obligations under this Contract for the Contractor’s archival records, and for the Contractor’s reproduction of drawings and photographs in the Contractor’s marketing materials. This nonexclusive license shall terminate automatically upon the occurrence of either a breach of this Contract by the Contractor or the accused commission by the Contractor of a tort or a crime affecting the City or the Work or upon termination of this Contract. This nonexclusive license is granted to the Contractor alone and shall not be assigned by the Contractor to any other person or entity, except that the non-exclusive license granted in this Contract to the Contractor for purposes of the Contractor’s performance hereunder may be sub-licensed to the Contractor’s subcontractors (with the same limitations). Subject to the foregoing, this nonexclusive license shall terminate automatically upon a Contractor’s assignment of this nonexclusive license to another or its attempt to do so.

(b) To the extent that liability arises from misuse of the Work Product by the City or another Contractor or designer, the Contractor shall not be responsible for that misuse. If the City uses the Work Products for purposes including additions to and modifications of the Work, and for other projects, the City shall indemnify the Contractor for losses, including reasonable attorneys’ fees, suffered by the Contractor as a result of the use of the design and these documents for such other purposes. If these documents are used for other purposes, the City shall see that they are modified (i) to indicate that the Contractor did not prepare them for such other purposes and is not responsible for their use in connection with such other purposes and (ii) to delete the Contractor’s name and seal from the documents (where permitted or required by law).

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

(d) If the City subsequently reproduces Work-related documents or creates a derivative work based upon Work-related documents created by the Contractor, the City shall (where permitted or required by law) remove or completely obliterate the original professional’s seals, logos, and other indications on the documents of the identity of the Contractor and its subcontractors.

Sec. 16. Standard of Care. The standard of care for all professional design and related services performed or furnished by Contractor under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing on similar projects whether such projects can be found locally, regionally or nationally. Subject to the foregoing standard of care, Contractor and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards. The Contractor warrants the accuracy of Contractor’s representations made to City as to Contractor’s qualifications and experience during the process in which the City selected the Contractor. The Contractor represents and warrants that it has the requisite professional licensure and registration required by the State of North Carolina necessary to perform the work.

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

(a) Dispute Resolution -- The City and Contractor agree to negotiate each dispute between them in good faith during the 30 days after providing the other party with a notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the City and Contractor may agree to mediation. If mediation is used and is unsuccessful, then the parties may exercise their rights at law. If, however, such dispute arises after the City has engaged a general contractor for construction work and during the construction administration phase, if any, the City and Contractor may avail themselves of the dispute resolution process adopted by the State Building Commission pursuant to G.S. § 143-135.26(11) and G.S. § 143-128(f1).

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

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

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

(ii) (Cost of Employees' Time) The cost of the employees' time will be calculated as follows: the time spent by any salaried employee of the City because of the error shall be compensated at an hourly rate equal to the employee's gross salary (using standards to determine gross salary for federal income tax purposes) during the applicable fiscal year of the City divided by the number of hours worked by that employee for the City during that fiscal year.

(iii) (Limits on Double Payments) If this Section 17(b) is applied to compensate the City for an error, the Contractor shall not owe the City any other compensation to remove the erroneously built work and replace it with correct work. However, the payment of such compensation or the application of this Section 17(b) shall not affect liability to the Contractor for personal injury or damage to property. (In the preceding sentence, "damage to property" excludes the damage suffered by the City for the cost of replacing the erroneously installed work for which this paragraph provides compensation, but it includes all other general, special, consequential, or other kinds of damage resulting from the error.)

(iv) (Limit on Use of Payment against Contractor) A payment by the Contractor pursuant to this Section 17(b) shall be considered a compromise, and the City shall not introduce the fact of the payment in any legal action or proceeding except to the extent that compromises are admissible.

(v) (Nonpayment Hereunder Not to Prevent Other Claims) If this Section 17(b) is not applied by the City so as to compensate the City for an error, this Section 17(b) shall not be used to construe this Agreement so as to reduce any remedy that is available to the City because of that error. For example, to the extent an error is not compensated for because the amount exceeds the insurance deductible, the City will not be deemed to have waived a claim for any damages arising from the error.

Sec. 18. Miscellaneous.

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

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

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

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

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

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

law.

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

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

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

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

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

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

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

ATTEST:

CITY OF DURHAM

By: _____

preaudit certificate, if applicable _____

[CONSULTANT]

By: _____ (SEAL)

Title of officer: _____

State of _____

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