



CITY OF DURHAM

REQUEST FOR PROPOSALS

ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE

Date of Issue: December 2, 2011

Purpose of Request for Proposals (RFP): The City of Durham Department of Community Development is soliciting proposals from qualified persons or firms for the preparation of a Analysis of Impediments to Fair Housing Choice.

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Project Manager Title	Federal Programs Coordinator
Project Manager Department	Community Development
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Section One Introduction and Instructions

1.1 Definitions

“City” means the City of Durham. “Proposal” is the response person, firm, or corporation proposing to provide the services sought by this RFP. “Proposer” or “Offerer” is the person, firm, or corporation that submits a proposal. “Contractor” is the Proposer with which the City enters into a contract to provide the services sought by the this RFP. “DCD” means the Department of Community Development.

1.2 General Information

- a) Proposers must submit one (1) original and five (5) copies of their proposal, in writing, to the Department of Community Development in a sealed envelope. The original copy must be signed by an officer who is authorized to bind the Proposer contractually. Also, the name and title of the individual who signed the proposal should be typed immediately below the signature. The proposal must be addressed as set out below.

**(Mailing address)
City of Durham
Department: Community Development
Attention: Wilmur Conyers
Analysis of Impediments to Fair Housing Choice
101 City Hall Plaza
Durham, North Carolina 27701**

**(Delivery Address if submitting in person or via private carrier)
807 East Main Street, Bldg. 2, Suite 2-200
Durham, North Carolina 27701**

- b) Proposals must be received on or be **3:00 January 5, 2012**. Fax and email proposals and/or oral proposals are not acceptable.
- a) Failure to submit a proposal before the deadline will cause the proposal to be disqualified. Late proposals or amendments will not be opened or accepted for evaluation.

All general questions regarding this RFP may be submitted to the contact listed below:

Wilmur Conyers, Federal Programs Coordinator
Department of Community Development
101 City Hall Plaza
Durham, NC 27701
Telephone: (919) 560-4570 ext 22277
Email: Wilmur.Conyers@durhamnc.gov

1.3 Contract Term & Work Schedule

The contract term and work schedule set out herein represent the City's best estimate of the schedule that will be followed. If a component of this schedule, such as the opening date, is delayed, the rest of the schedule will be shifted.

The approximate contract schedule is as follows:

Issue RFP	December 2, 2011
Pre-Proposal Conference	December 15, 2011
Proposal Submittal Deadline	January 5, 2012
Proposal Evaluation	January 12, 2012
Contract Execution and Work Commences	February 15, 2012
Contract Completion	April 30, 2012

1.4 Purpose of the Request for Proposal (RFP)

The City of Durham Department of Community Development is soliciting proposals from qualified persons or firms for the preparation of an Analysis of Impediments to Fair Housing Choice (AI). The City's latest AI was completed in 2006.

1.5 Location of Work

The City WILL NOT provide workspace for the contractor. The contractor must provide its own workspace.

1.6 Notice Under the Americans with Disabilities Act (ADA)

The City of Durham will not discriminate against qualified individuals with disabilities on the basis of disability in the City's services, programs, or activities. The City will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City's programs, services, and activities. The City will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all City programs, services, and activities. Anyone who requires an auxiliary aid or service for effective communications, or modification of policies or procedures to participate in the City program, service, or activity, should contact 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.

1.7 Required Review

Proposers should carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and objectionable material must

be made in writing and received by the Wilmur Conyers (email wilmur.conyers@durhamnc.gov) at least ten (10) days before the proposal opening. This will allow issuance of any necessary amendments. Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the contracting officer, in writing, at least ten (10) days before the time set for opening.

1.8 Questions Received before Opening of Proposals

All questions must be in writing and directed to the Department of Community Development, Attention: Wilmur Conyers. The Proposer must confirm telephone conversations in writing. Questions must be received no later than five (5) days prior to the date for receiving proposals. This will allow for the issuance of any necessary addenda. Questions and answers will be distributed to potential Proposers who have requested RFPs from the City.

Two types of questions generally arise. One may be answered by directing the questioner to a specific section of the RFP. These questions may be answered over the telephone. Other questions may be more complex and may require a written amendment to the RFP. The Department of Community Development contact person, Wilmur Conyers, will make that decision.

No addenda will be issued by the City after five (5) days prior to the date for receiving proposals. Proposers shall direct any questions that may arise to the City in sufficient time for inclusion in the final addendum. Proposers shall acknowledge receipt of addenda via signature with response to the RFP.

No other City official or employee is empowered to speak for the City with respect to this RFP. Proposers who seek to obtain information, clarification, or interpretation from another City official or employee is advised that such material is used at the Proposer's own risk, and that the City will not be bound by any such representations.

1.9 Amendments

If an amendment is issued, it will be provided to all who were mailed a copy of the RFP. If you obtained a copy of the RFP other than by mail, please contact the issuing office to provide your address, which will help ensure you receive updates and amendments.

1.10 Alternate Proposals

Proposers may only submit one proposal for evaluation.

1.11 Right of Rejection

The City of Durham reserves the right to reject any or all proposals at any time with no penalty and to waive immaterial defects and minor irregularities in proposals. Issuance of the "Request for Proposals" does not commit the City to award a contract, to pay any cost incurred in preparation of a proposal to this request, or to procure or contract for service or supplies. The City reserves the right to reject any and all proposals, and to re-advertise.

1.12 City of Durham Not Responsible for Preparation Costs

The City of Durham will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any proposal.

1.13 Disclosure of Proposal Contents

All proposals and other material submitted become the property of the City of Durham. All proposal information, including detailed price and cost information, will be held in confidence during the evaluation process and before the time a Notice of Intent to Award is issued. Thereafter, proposals will become public information.

With respect to all Trade Secrets that the proposer may submit to the City in Connection with this proposal or contract, if the contract is awarded to the proposer, the proposer shall comply with the section of the RFP titled "Trade Secrets and," including but not limited to all of its subsections, such as the subsection titled "Defense of City." The proposer acknowledges that the City will rely on the preceding sentence.

1.14 Subcontractors

Subcontractors may be used to perform work under this contract. If a proposer intends to use subcontractors, the proposer must identify in their proposal the names of the subcontractors and the portions of the work the subcontractors will perform.

If a proposal with subcontractors is selected, the proposer must provide the following information concerning each prospective subcontractor within five working days from the date of the City's request:

- [a] complete name of the subcontractor,
- [b] complete address of the subcontractor,
- [c] type of work the subcontractor will be performing,
- [d] percentage of work the subcontractor will be providing,
- [e] evidence, as set out in the relevant section of this RFP, that the subcontractor holds a valid City of Durham business license,
- [f] a written Statement, signed by each proposed subcontractor that clearly verifies that the subcontractor is committed to render the services required by the contract.

Failure to provide this information within the time set may cause the City to consider their proposal non-responsive and reject the proposal.

The substitution of one subcontractor for another may be made only at the discretion of the project manager and with prior written approval from the project manager. If

subcontractors are used, it is the City's preference that prime Proposer be responsible for managing, monitoring and maintaining all service agreements with the City.

1.15 Joint Ventures

Joint ventures will not be allowed.

1.16 Proposer's Certification

By authorized signature on the proposal, Proposers certify that they comply with,

- [a] the laws of the State of North Carolina,
- [b] the applicable portion of the Federal Civil Rights Act of 1964,
- [c] the Equal Employment Opportunity Act and the regulations issued there under by the federal government,
- [d] the Americans with Disabilities Act of 1990, and the regulations issued there under by the federal government,
- [e] all terms and conditions set out in this RFP,
- [f] a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury, and
- [g] that their offers will remain open and valid for at least 90 days.

By signature on their proposal, Proposers also certify that programs, services, and activities provided to the general public under the resulting contract are in conformance with the Americans with Disabilities Act of 1990, and the regulations issued there under by the federal government.

If any Proposer fails to comply with [a] through [g] of this paragraph, the City of Durham reserves the right to disregard the proposal, terminate the contract, or consider the contractor in default.

1.17 Conflict of Interest

Each proposal shall include a statement indicating whether or not the firm or any individual working on the contract has a possible conflict of interest (e.g., employed by the City of Durham) and, if so, the nature of that conflict. The Durham City Council reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the program to be developed by the Proposer. The City Council's determination regarding any questions of conflict of interest shall be final.

1.18 Confidentiality Policy

It is the policy of the City of Durham to hold in strictest confidence any information that might compromise the privacy or identity of any individual or organization where disclosure could place that person or organization at risk for identity theft. We expect the same of the contractors

1.19 Right to Inspect Place of Business

At reasonable times, the City of Durham may inspect those areas of the contractor's place of business that are related to the performance of a contract. If the City makes such an inspection, the contractor must provide reasonable assistance.

1.20 Disputes

Any dispute arising out of this RFP of a resulting contract will be resolved under the laws of North Carolina. The exclusive forum and venue for all actions arising out of this RFP and any contract which may result from this RFP shall be the North Carolina General Court of Justice, in Durham County. Such actions neither be commenced in nor removed to federal court.

1.21 Severability

If any provision of the RFP or resulting contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and, the rights and obligations of the parties will be construed and enforced as if the RFP or resulting contract did not contain the particular provision held to be invalid.

1.23 Federal Requirements

The Proposer must identify all known federal requirements that apply to the proposal, scope of services, the evaluation, and/or the contract.

1.24 Equal Business Opportunity Program

It is the policy of the City to provide equal opportunities for City contracting for small firms owned by socially and economically disadvantaged persons 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.

While there are no SDBE participation goals for this project, in accordance with the Ordinance, all contractors are required to provide information requested in the "SDBE Professional Services Forms" package, which has been included with this Request for Proposals in Section 8. **Proposals that do not contain the appropriate, completed "Professional Services Forms" will be deemed non-responsive and ineligible for consideration.** The "Declaration of Performance," "Participation Documentation," Managerial Profile," "Equal Opportunity Statement" and the "Employee

Breakdown” documents are required of all proposers. In lieu of “Employee Breakdown,” contractors may submit a copy of the current EEO-1 form (corporate basis). Other forms in the package should be used as needed.

The Department of Equal Opportunity/Equity Assurance is responsible for the Equal Business Opportunity Program. All questions about “SDBE Professional Services Forms” should be referred to Deborah Giles or other department staff at (919) 560-4180.

1.25 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. The term “Trade Secrets” 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 person.

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

(a) Designation of Confidential Records.

To the extent that the Proposer wishes to maintain the confidentiality of Trade Secrets contained in materials provided to the City that will or may become a record, the Proposer shall prominently designate the material as “Trade Secrets” at the time of its initial disclosure to the City. The Proposer shall not designate any material provided to the City as Trade Secrets unless the Proposer has a reasonable and good-faith belief that it contains a Trade Secret. When requested by the City, the Proposer shall promptly disclose to the City the Proposer’s reasoning for designating individual materials as Trade Secrets. In providing materials to the City, the Proposer shall make reasonable efforts to separate those designated as Trade Secrets from those not so designated, both to facilitate the City’s use of records 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 Secrets 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 Proposer 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 access
- (2) notify the proposer 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 Proposer of the request and that the City intends to decline the request.

Before declining the request, the City may require the Proposer to give further assurances so that the City can be certain that the Proposer 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 Proposer's proposal, the Proposer agrees that it shall 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 Proposer shall at its sole expense defend Indemnitees with legal counsel. The legal counsel shall be limited to attorney 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" does not include the Proposer. The City may require the Proposer to provide proof of the Proposer's ability to pay the amounts that may reasonably be expected to become monetary obligations of the Proposer pursuant to this section. If the Proposer 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 Proposer.

SECTION TWO STANDARD PROPOSAL INFORMATION

2.1 Authorized Signature

An individual authorized to bind the proposer to the provisions of the RFP must sign all proposals. Proposals must remain open and valid for at least ninety (90) days from the opening date.

2.2 Pre-Proposal Conference

A pre-proposal conference will be held on **December 15, 2011 at 10:00 AM** at the Department of Community Development located at 807 East Main Street, Building 2, Suite 2-200, Durham, NC 27701. The purpose of the conference is to discuss the work to be performed with the prospective Proposers and allow them to ask questions concerning the RFP. Questions and answers will be transcribed and sent to prospective Proposers as soon as possible after the meeting. Attendance is encouraged but not mandatory.

Firms interested in attending the conference must notify the Project Manager by December 13, 2011.

Proposer's with a disability needing accommodation should contact the Project Manager before the date set for discussions so that reasonable accommodation can be made.

2.3 Site Inspection

The City may conduct on-site visits to evaluate the Proposers capacity to perform the contract. Proposers must agree, at risk of being found non-responsive and having their proposal rejected, to provide the City reasonable access to relevant portions of their work sites. Individuals designated by the Purchasing Manager at the City's expense will make site inspection.

2.4 Amendments to Proposals

Proposers should submit their best proposals prior to the **January 5, 2012** submission deadline. Amendments to or withdrawals of proposals will only be allowed if acceptable requests are received before the deadline set for receipt of proposals. No amendments or withdrawals will be accepted after the deadline.

2.5 Discussions with Proposers

The City may conduct discussions with Proposers for the purpose of clarification. The purpose of these discussions will be to ensure full understanding of the requirements of the RFP and proposal. Discussions will be limited to specific sections of the RFP identified by the procurement officer. The Project Manager will only hold discussions with Proposers who have submitted a proposal deemed reasonably susceptible for award. Discussions, if held, will be after initial evaluation of proposals by the review committee. If modifications are made because of these discussions, they will be put in

writing. Following discussions, the Project Manager may set a time for best and final proposal submissions from those Respondents with whom discussions were held. Proposals may be reevaluated after receipt of best and final proposal submissions. Re-evaluation will be limited to the specific sections of the RFP opened to discussion by the Project Manager.

Proposer's with a disability needing accommodation should contact the Project Manager before the date set for discussions so that reasonable accommodation can be made.

2.6 Prior Experience

In order for their offers to be considered responsive, proposers must demonstrate substantial experience in preparing Analyses of Impediments to Fair Housing Choice. For the purposes of this RFP, "substantial" is defined to mean not less than five (5) years of experience. Proposers must provide third-party contact information for purposes of verifying such experience.

A Proposer's failure to meet these minimum prior experience requirements will cause their proposal to be considered non-responsive and their proposal will be rejected.

2.7 Evaluation of Proposals

The City will use an evaluation committee to evaluate all proposals. The evaluation will be based solely on the evaluation factors set out in section seven of this RFP.

2.8 Vendor Tax ID

A valid Federal Tax ID must be submitted to the issuing office with the proposal or within five (5) days of the City's request.

2.9 City of Durham Business License & Other Required Licenses

All organizations doing business with the City of Durham are required to comply with all state, local and federal licensing requirements. This includes obtaining a City of Durham business privilege license (if applicable). Firms selected through the RFP process will be required to demonstrate compliance with licensing requirements. All responding firms that are not currently licensed must provide proof of application for licenser and must obtain all necessary licenses before entering into a contractual agreement with the City of Durham. To obtain a Privilege License, call (919) 560-4700.

2.10 Contract Negotiations

After completing evaluation of the proposals, including any discussions held with Proposer's during the evaluation, the City may elect to initiate contract negotiations. The option of whether or not to initiate contract negotiations rests solely with the City. If contract negotiations are commenced, they will be held at a location to be determined in the City of Durham North Carolina. The Proposer will be responsible for their travel and per diem expenses.

2.11 Failure to Negotiate

The City may terminate negotiations with the Proposer initially selected and commence negotiations with the next highest ranked Proposer, if the selected Proposer:

- fails to provide the information required to begin negotiations in a timely manner; or
- fails to negotiate in good faith; or
- indicates they cannot perform the contract within the budgeted funds available for the project; or
- the Proposer and City, after a good faith effort, simply cannot come to terms with the City

2.12 Notice of Intent to Award (NIA) —Responder Notification of Selection

After the completion of contract negotiations, the Project Manager will issue a written Notice of Intent to Award (NIA) and send copies to all Proposers. The NIA will set out the names and addresses of all Proposals and identify the proposal selected for award. The scores and placement of other Proposer's will not be part of the NIA.

SECTION THREE STANDARD CONTRACT INFORMATION

3.1 Contract Type

The selected Proposer will be required to sign a City of Durham-generated contract. A sample contract is located in Appendix B. The actual contract may differ from the sample contract.

3.2 Contract Approval

This RFP does not, by itself, obligate the City. The City's obligation will commence when the Durham City Council or its designee approves the contract. Upon written notice to the Proposer, the City may set a different starting date for the contract. The City will not be responsible for any work done by the contractor, even work done in good faith, if it occurs before the contract start date set by the City.

3.3 Additional Terms and Conditions

The City reserves the right to add terms and conditions during contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

3.4 Insurance Requirements

Proposer shall purchase and maintain insurance coverage for not less than the following:

Commercial General Liability, covering:

- premises/operations;
- products/completed operations (two years minimum, from project completion);
- broad form property damage;
- contractual liability;
- independent contractors, if any are used in the performance of this contract;
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- Combined single limit not less than \$1,000,000 per occurrence, with an annual aggregate on not less than \$2,000,000 per year.

Auto Liability Insurance, covering:

- owned, hired, and non-owned vehicles;
- employee-non-ownership;
- MCS-90 endorsement for transportation of hazardous materials, where applicable
- Combined single limit not less than \$1,000,000 per accident;
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement).

Workers' Compensation Insurance, covering:

- statutory benefits;
- covering employees; covering owners partners, officers, and relatives (who work on this contract); certificate must specifically state who is covered by the policy)
- employers' liability, with a limit of not less than \$1,000,000;
- waiver of subrogation in favor of the City of Durham.

Insurance shall be provided by:

- companies authorized to do business in the State of North Carolina
- companies with Best rating of A-, VII or better.

Insurance shall be evidenced by a certificate:

- Providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- Certificates shall be addressed to:

City of Durham, North Carolina
Attention: Department of Community Development
101 City Hall Plaza
Durham, NC 27701

- The insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract.

3.5 Bid Deposit - Performance Bond - Surety Deposit

Will not be required.

3.6 Proposed Payment Procedures

The City will make payments based on a negotiated payment schedule. Each billing must consist of an invoice and progress report. No payment will be made until the Project Manager has approved the progress report and invoice.

3.7 Contract Payment

No payment will be made until the contract is approved by the Durham City Council as applicable, and has been fully executed by all parties. Under no conditions will the City be liable for the payment of any interest charges associated with the cost of the contract.

3.8 Termination for Default

If the Project Manager determines that the Contractor has refused to perform the work or has failed to perform the work with such diligence as to ensure its timely and accurate completion, the City may, by providing written notice to the contractor, terminate the contractor's right to proceed with part or all of the remaining work.

3.9 Contract Changes - Unanticipated Amendments

During the course of this contract, the contractor may be required to perform additional work. That work will be within the general scope of the initial contract. When additional work is required, the Project Manager will provide the contractor a written description of the additional work and request the contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work. Cost and pricing data must be provided to justify the cost of such amendments.

The contractor will not commence additional work until the Project Manager has secured any required City approvals necessary for the amendment and issued a written contract amendment.

3.10 Non-Discrimination Clause

The City of Durham 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.

3.11 EEO Provisions

During the performance of this Contract the Contractor agrees as follows:

- a. The Contractor shall not discriminate against any employee or applicant or employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall 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. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these provisions.
- b. The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
- c. The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding.
- d. In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the contractor ineligible for further City contracts.
- e. Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

SECTION FOUR BACKGROUND INFORMATION

4.1 Background Information

The City of Durham has been an entitlement city since 1974. The City receives an annual allocation of Community Development Block Grant (CDBG), HOME Investment Partnership (HOME) and Emergency Solutions Grant (ESG) funds. For fiscal year 2011-2012, the City received \$1,764,024 in CDBG funds, \$1,134,446 in HOME funds, and \$85,279 in ESG funds from the U.S. Department of Housing and Urban Development (HUD). The City's latest AI was completed in 2006. The Department of Community Development's website is located at: <http://durhamnc.gov/ich/cb/cdd/Pages/Home.aspx>

The City of Durham lies in the heart of the greater North Carolina Piedmont Area. As of 2009, an estimated 225,000 people reside in the City of Durham with an additional 40,000 persons living outside the City limit, bringing the area population to approximately 265,000.

As a part of the Consolidated Plan, the City certifies annually that it will affirmatively further fair housing, which means it will conduct and Analysis of Impediments to Fair Housing Choice (AI) within the jurisdiction, take appropriate actions to overcome the effects of any impediments indentified through that analysis, and maintain records reflecting that analysis and actions in this regard.

The scope of the AI is broad. It covers the full array of public and private policies, practices and procedures affecting housing choice. The purpose of the AI is to:

- Serve as the substantive, logical basis of fair housing planning and policy;
- Provide essential and detailed information to policy makers, administrative, housing providers, lenders and fair housing advocates;
- Give a comprehensive review of the City's regulations and administrative policies, procedures, and practices;
- Assess how those regulations affect the location, availability and accessibility of housing, and
- Review conditions, both public and private, affecting fair housing choice.

A Fair Housing Planning Guide detailing the information needed for conducting an AI is available on the HUD website at <http://www.hud.gov/office/fheo/images/fhpg.pdf>.

SECTION FIVE SCOPE OF WORK

5.1 Scope of Work

The Department of Community Development is soliciting proposals for the preparation of an Analysis of Impediments of Fair Housing Choice (AI). A February 15, 2012 start date is proposed for this effort with a tentative completion date of April 30, 2012.

The Consultant will organize and prepare the AI pursuant to HUD guidelines. The AI must be fully compliant with the requirements of the Housing and Community Development Act of 1974. The scope of work includes, but is not limited to the following:

1. An examination of pertinent data including demographic, income, employment and housing data as well as studies that have been completed that relate to fair housing.
2. A review of prior and current activities that propose fair housing, including an assessment of agencies currently providing fair housing programs in the area.
3. An examination of private market issues that relate to the sale or rental of housing, the provisions of brokerage services, mortgage lending, insurance sales and underwriting, property appraisal and property management.
4. An evaluation of public policies and practices which affect the provision of fair housing, including but not limited to public services, planning and zoning laws

and decisions, land use regulations, community development policies and practices, procedures and practices of the local public housing authority and property tax policies.

5. An identification of impediments to fair housing based on the above work as well as proposed methods of correction to address identified impediments. A listing of impediments in order of priority to assist the City in determining further action.
6. A fair housing action plan that will recommend a series of actions to overcome identified impediments to fair housing choice, milestones, timetables and measurable results.
7. Make a minimum of one (1) presentation to the Durham City Council.
8. Revise the final draft of the Analysis of the Impediments to Fair Housing Choice so as to reflect any changes required by the City. Should the City require revisions to the AI, the Contractor must bring the AI to an acceptable level within the designated time frame. An appropriate retainage will be withheld from the contract amount until the City gives final approval of the Analysis of Impediments to Fair Housing Choice.

5.2 Deliverables

The contractor will be required to provide the following deliverables:

- [a] Submit written progress reports to the Project Manager, as requested.
- [b] Provide one (1) copy of the draft AI in PDF format and one (1) in Word format using Microsoft Office 2007 no later than March 30, 2012.
- [c] Provide one (1) copy of the final AI in PDF format and one (1) in Word format using Microsoft Office 2007 no later than April 30, 2012.

5.3 Work Schedule

The contract term and work schedule set out herein represent the City's best estimate of the schedule that will be followed. If a component of this schedule, such as the opening date, is delayed, the rest of the schedule will likely be shifted.

The length of the contract will be from the date of award, approximately February 15, 2012 until completion, approximately April 30, 2012.

SECTION SIX PROPOSAL FORMAT AND CONTENT

6.1 Proposal Format and Content

In order to facilitate the analysis of the responses to this RFP, Proposers are required to prepare their proposals in accordance with the instructions outlined in this section. Each Proposer is required to submit the proposal in a sealed package. Deviation from these instructions may be considered non-responsive and may be disqualified at the discretion of the City.

Proposals should adequately describe the Proposer's capabilities to satisfy the requirements of this RFP. All parts, figures, and table should be lettered sequentially and clearly labeled including a Table of Contents.

The City discourages lengthy and costly proposals. However, in order for the City to evaluate proposals fairly and completely, Proposers should follow the format set out herein and provide all of the information requested.

Proposals must include the complete name and address of their firm and the name, mailing address, and telephone number of the person the City should contact regarding the proposal.

Proposals must confirm that the firm will comply with all of the provisions in this RFP, and if applicable, provide notice that the firm qualifies as a City of Durham bidder. Proposals must be signed by a company officer empowered to bind the firm. A Proposer's failure to include these items in their proposals may cause their proposal to be determined to be non-responsive and the proposal may be rejected.

SECTION SEVEN PROPOSAL EVALUATION

7.1 Evaluation

All proposals will be reviewed to determine if they are responsive. Points will be designated for the criteria below with a maximum total score of 100 points. DCD will use an evaluation committee to score all proposals. The evaluation will be based on the following:

7.2 Experience and Qualifications: 40 Points

Provide a brief company history including how long the company has been in business. An organizational chart specific to the personnel assigned to accomplish the work called for in this RFP. Illustrate the lines of authority and, designate the individual's responsible and accountable for the completion of each component and deliverable of the RFP.

Provide a narrative description of the organization of the project team.

Provide a personnel roster that identifies each person who will actually work on the contract and provide the following information about each person listed:

- a. title,
- b. resume,
- c. location(s) where work will be performed, and
- d. itemize the total cost and the number of estimated hours for each individual named above.

Provide reference names and phone numbers for similar projects your firm has completed. Information should include: list of services provided, address, telephone and fax numbers, length of implementation, name of client reference, and name of Project Manager.

7.3 Understanding of the project and schedule: 25

Proposers must provide a comprehensive narrative statement that illustrates their understanding of the requirements of the project and the project schedule.

7.4 Methodology/Approach Used for the Service: 25

Proposers must provide a comprehensive narrative statement that sets out the methodology they intend to employ and illustrates how their methodology will serve to accomplish the work and meet the City's service schedule. The Proposers should provide a detailed plan for implementing the services.

7.5 Contract Cost: 10

Proposer's cost proposals must include an itemized list of all direct and indirect costs associated with the performance of this contract including, but not limited to, total number of hours at various hourly rates, direct expenses, payroll, supplies, overhead assigned to each person working on the project, percentage of each person's time devoted to the project.

SECTION EIGHT ATTACHMENTS

- 8.1 Appendix A: SDBE Professional Services Forms
- 8.2 Appendix B: Sample of City of Durham Contract

8.1 – Appendix A

CITY OF DURHAM
SMALL DISADVANTAGED BUSINESS ENTERPRISE
PROFESSIONAL SERVICES FORM



Equal Opportunity/ Equity Assurance Department

Mailing Address:

101 City Hall Plaza
Durham, North Carolina 27701

Street Address:

302 E. Pettigrew Street, Suite C-180
Durham, North Carolina 27701

Phone: (919) 560-4180

Facsimile: (919) 560-4513

CITY OF DURHAM EQUAL BUSINESS OPPORTUNITY PROGRAM

Policy Statement

It is the policy of the City to provide equal opportunities for City contracting to small firms owned by socially and economically disadvantaged persons 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 small disadvantaged business enterprises, it is a desire of the City that the contractor will voluntarily undertake efforts to increase the participation of socially and economically disadvantaged 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 establish project specific goals for each project or contract based upon the availability of small disadvantaged business enterprises (SDBE's) within the defined scope of work, delineated into percentages of the total value of the work.

Equal Business Opportunity Ordinance SDBE Participation Documentation

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

Declaration of Performance must be completed and submitted with your proposal.

SDBE Participation Documentation must be used to document participation of Small Disadvantaged Business Enterprise (SDBE) on Professional Services projects. All SDBEs must be certified by the City of Durham's Equal Opportunity/Equity Assurance Department prior to submission date. If a business listed has not been certified, the amount of participation will be reduced from the total utilization.

Managerial Profile must be used to list the managerial persons in your workforce who will be participating in this project.

Equal Employment Opportunity Statement for your company must be completed and submitted with your proposal.

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 SDBEs proposed to perform on a contract. This form must be submitted with the proposal.

Post Proposal Submission SDBE Deviation

Post proposal submission SDBE deviation participation documentation must be used to report and deviation from SDBE 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.

SDBE 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 socially and economically disadvantaged employees and 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 SDBE 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 Small Disadvantaged Businesses equal opportunities for participation on City of Durham contracts.

Definition of the Scope of the Selection Policy

The Equal Opportunity/Equity Assurance Director shall establish SDBE participation goals for each contract to be awarded by the City. Project specific goals for each project or contract will be based upon the availability of small disadvantaged business enterprises (SDBE's) within the defined scope of work, delineated into percentages of the total value of the work.

Small Disadvantaged 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 SDBE Forms.

Selection Committee for Professional Services

A selection committee shall be established to 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 and Purchasing Manager. 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/contractor, SDBE 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. SDBE Participation; and
12. Documentation of Good Faith efforts.

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.

DECLARATION OF PERFORMANCE BY CONSULTANT/CONTRACTOR

Briefly address each of the following items:

1. A brief synopsis of the company and the products/services it provides:

2. Describe the normal procedure used on a bid of this type, giving the flow of purchase from the company to the ultimate purchaser:

3. List anyone outside of your company with whom you will contract on this bid:

The undersigned consultant/contractor certifies that: (check appropriate box)

- a) _____ It is the normal business practice of the consultant/contractor to perform all elements of the contract with its own workforce without the use of subcontractors/vendors; and

- b) _____ That the above documentation demonstrates this *firm's* capabilities to perform all elements of the contract with its own work force or without the use of subcontractors/vendors.

- c) _____ The vendor/contractor will use a subconsultant(s) in the fulfillment of this scope of work.

Date

Authorized Signature

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

Names of all firms (including prime and sub consultants/ Sub contractors)	Location	SDBE Firm Yes/No	Nature of Participation	% of Project Work

TOTAL: _____

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

Signature - Authorized Officer of Prime Consultant/Contractor Firm

Date

EQUAL OPPORTUNITY STATEMENT
(You may submit your organization's EEO policy in lieu of this sheet)

EMPLOYEE BREAKDOWN

Part A – Employee Statistics for the Primary Location

MALES

FEMALES

Employment Category	Total Employees	MALES					FEMALES						
		Total Males	Total Females	White	Black	Hispanic	Asian or Alaskan Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
Project Manger													
Professional													
Labor													
Clerical													
Totals													

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

MALES

FEMALES

Employment Category	Total Employees	MALES					FEMALES						
		Total Males	Total Females	White	Black	Hispanic	Asian or Alaskan Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
Project Manger													
Professional													
Labor													
Clerical													
Totals													

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

Letter of Intent to Perform as a Sub-Consultant

The undersigned intends to perform work in connection with the above project as a SDBE:

Minority (African American)	Woman	Hispanic
American Indian	Asian American	Handicapped

The SDBE status of the undersigned is certified by the City of Durham as identified by the attached copy of certification or the attached SDBE Contractor Identification List supplied by the EO/EA Department.

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 undersigned will subcontract _____% of the dollar value of this contract to a SDBE subconsultant/subcontractor and/or non-SDBE subconsultant/subcontractor.

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 SDBE PARTICIPATION

Project: _____

Name of bidder or consultant: _____

Name and title of representative bidder or consultant: _____

Address (including zip code): _____

Telephone number: _____ 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 SDBE 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 subconsultant: _____

Goods and services to be provided before this 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 subconsultant is (*check one*):

- 1. City-certified Black-owned SDBE
- 2. City-certified Women-owned SDBE
- 3. City-certified SDBE that is neither Black-owned nor women owned, but to be credited as:
 - 3(a) Black-owned SDBE 3(b) Women-owned SDBE
- 4. not a City-certified SDBE

BOX B. Proposed subcontracts other than the subcontract described in Box A above

Name of subcontractor for the new work: _____

Goods and services to be provided by this proposed subcontract: _____

Dollar amount proposed of this proposed subcontract: _____

This subcontractor is (*check one*):

- 1. City-certified Black-owned SDBE
- 2. City-certified women-owned SDBE
- 3. City-certified SDBE that is neither Black-owned nor women owned, but to be credited as:
 - 3(a) Black-owned SDBE 3(b) Women-owned SDBE
- 4. not a City-certified SDBE

Add additional sheets as necessary.

SDBE 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 SDBEs along with other criteria that the City Manager deems proper:

Name of Bidder: _____

*If you find it helpful, feel free to attach pages to explain your answers. **How many pages is your firm attaching to this questionnaire?** _____ (Don't count the 2 pages of this questionnaire.)*

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

1. SOLICITING SDBEs.

(a) Did your firm solicit, through all reasonable and available means, the interest of all SDBEs certified (that is, in the City's database) in the scopes of work of the contract? **yes** **no**

(b) 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**

(c) 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**

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

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

(f) Did your firm follow up with SDBEs that showed interest? **yes** **no**

(g) With reference to the SDBEs 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 SDBEs 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 SDBEs for which you are providing Form E-105.

(a) What are the names, addresses, and telephone numbers of SDBEs that you contacted?

ANSWER:

(b) Describe the information that you provided to the SDBEs regarding the plans and specifications for the work selected for potential subcontracting.

ANSWER:

(c) Why could your firm not reach agreements with the SDBEs that your firm made contact with? Be specific.

ANSWER:

4. ASSISTANCE TO SDBEs 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 SDBEs 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 SDBEs 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 SDBEs 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 SDBEs for the work?

yes **no** Please explain.

ANSWER:

8.2

Appendix B –Sample Contract

CONTRACT FOR *[descriptive title to be inserted]*

This contract is dated, made, and entered into as of the _____ day of _____, 20____, by the City of Durham (“City”) 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 under the laws of [name of State];
a sole proprietorship;
or a general partnership].

Sec. 1. Background and Purpose.

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

Sec. 3. Reserved.

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

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

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

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. [*Consult Risk Management.*]

Sec. 8. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule referred to in section 2 above, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

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

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) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:

Mike Barros, Director
Department of Community Development
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:

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

Sec. 11. Indemnification. (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of

any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) 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. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract 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, then subsection "a" above 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.

Sec. 12. Miscellaneous

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

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

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

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

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

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

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

(h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1)

The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall 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. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) SDBE. 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.

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

(k) 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.

(l) 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.

(m) 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.

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

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:

(Business Name)

Secretary
(Affix Corporate Seal)

(Business Representative name)
(Title)

Attest:

CITY OF DURHAM

City Clerk

Pre Audit Certificate