



## **Term Contract for Aggregates**

**Bid No. 20-0005**

**City of Durham  
Finance Department  
Purchasing Division**

# BID PROPOSAL FORM

*(Use this form only)*

## INSTRUCTIONS TO BIDDERS

1. **Use of proper bid form.** All information requested, including manufacturer, model/part numbers, unit prices, and extensions, must be entered on the appropriate spaces provided. Bidders are to fill in all blanks on the Bid Proposal Form unless it is clear that the City will do so; if a blank is not applicable, bidders should write "N/A." Bids submitted on anything other than the form(s) provided may be non-responsive and therefore subject to rejection. Along with the bid form, bidders should place in the bid envelope all the documents.
2. **Equity & Inclusion Department; UBE.** If the bid documents include Equity & Inclusion Department material (such as pertaining to the UBE and to employee statistics), Bidders must complete and submit all applicable portions of that material in accordance with the instructions contained in that material.
3. **Taxes.** Do not include Federal, State, or local sales or excise taxes in bid prices. Seller will add State and local sales tax to its invoice. The City is exempt from Federal tax and will furnish an exemption certificate if applicable to the particular transaction.
4. **Exceptions.** If a bidder wishes to note exceptions (to specifications, conditions, or anything else), the exceptions must be made prominent. However, exceptions considered material or substantial can make your bid non-responsive and therefore subject to being rejected.
5. **Brands.** Unless the bid documents state that only the brand is acceptable, brands are used in specifications solely for denoting the type and quality of goods, and "or equivalent" is automatically implied. If a bidder proposes an equivalent, the bidder must provide information showing the item is equivalent. This information needs to be submitted on paper; citation to Internet sites will generally be insufficient.
6. **State Treasurer's lists regarding Iran and Boycott of Israel.** If the successful bidder or the City signs the contract on October 1, 2017 or afterwards, and the value of the contract is \$1,000 or more, the following applies unless the bidder otherwise states in its bid: the bidder affirms (by submitting a bid) 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.
7. **Alternate bids.** Do not submit alternate bids unless called for on the Bid Proposal Form or other documents. When alternate bids are requested the bidder must submit information to show that the proposed goods are comparable. This information needs to be submitted on paper; citation to Internet sites will be insufficient.
8. **Updates.** Bidders should check <https://durhamnc.gov/bids.aspx> for any addendums or changes to this project before submitting bids.
9. **Questions; Changes; Interpretations; Answers.** For questions concerning the bid, the forms, the specifications, etc., please contact Purchasing at 919-560-4132 ext. 18225, or by email at [jonathan.hawley@durhamnc.gov](mailto:jonathan.hawley@durhamnc.gov). All changes in specifications will be in writing in the form of an addendum and furnished to all bidders. If the instructions require that bids be sealed, changes to

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specifications will normally be made seven or more days before the bid opening. Oral interpretations, oral changes, and other oral information provided by any City personnel will not be considered in awarding of bids or as being binding on the City.

10. **Sealed bids.** A bid to sell goods to the City of Durham must be sealed if it is for \$90,000 or more, or if the instructions say that bids must be sealed. When a bid must be sealed, the bidder shall place the bid form and the other documents required to be submitted in a sealed opaque envelope ("bid envelope").
11. **Delivery.** Send only one bid per bid envelope. Address the envelope and place the bid number on the outside of the envelope as shown below. It is the bidder's responsibility to have the bid envelope at the Purchasing Division itself by the specified time. Delivery to another City of Durham office is not sufficient. A bid envelope delivered late to the Purchasing Division for any reason, such as weather, traffic, failure to follow instructions, or failure of a delivery service or the Postal Service, is still late.

<u>DELIVERED BY U.S. POSTAL SERVICE</u>	<u>DELIVERED BY ANY MEANS OTHER THAN U.S. POSTAL SERVICE.</u> <u>This includes hand delivery.</u>
BID NO. _____ Deadline for receiving bids: _____, 20____ PURCHASING DIVISION FINANCE DEPARTMENT CITY OF DURHAM 101 CITY HALL PLAZA DURHAM, NC 27701-3329	BID NO. _____ Deadline for receiving bids: _____, 20____ PURCHASING DIVISION FINANCE DEPARTMENT CITY OF DURHAM 101 CITY HALL PLAZA ANNEX, 1 <sup>ST</sup> FLOOR DURHAM, NC 27701-3329

If U.S. Postal Service mail requires a signature, the mail carrier hands it to City Hall mailroom staff. City Hall mailroom staff sign for it. City Hall mailroom staff then arrange for the item to be picked up by Purchasing staff.

12. **Bid opening.** If this contract is designated as formally bid, the City will open all bids in public at the time and place indicated. Bidders are welcome to such bid openings. On the other hand, if this contract is designated as informally bid, the City may open bids at any time without a public bid opening. If so, it is expected that bids will be tabulated the first working day after the date indicated as the last date on which to submit bids.
13. **Bid tabulation.** The City will provide a bid tabulation upon request.
14. **Withdrawal of bid.** The deadline described in this Withdrawal of bid section applies if the bid is subject to N.C.G. S. 143-129. A request to withdraw pursuant to N.C.G. S. 143-129.1 must be made prior to the award of the contract but not later than 72 hours after the opening of bid. City holidays observed pursuant to City Code section 42-16, Saturdays, and Sundays are not included in the 72 hours.

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*(Use this form only)*

15. **Keeping bids open.** Except to the extent otherwise provided by law, bids shall not be withdrawn and bids shall remain subject to acceptance by the City for a period of 45 days after the deadline for submitting bids.
16. **Award procedure and timing.** Some awards can be made by the City Manager or other City staff and do not go before the City Council. However, if the award of this contract is to be made by the City Council, the City Council usually decides on awards about five weeks after the bid opening. The City Council decisions are usually taken at the meetings that begin at 7:00 PM on the first and third Mondays of the month in Durham City Hall, except for a reduced meeting schedule in July.
17. **How the City will interpret errors and omissions in the bid.**
- (a) When writing numbers, bidders shall use figures (1, 2, 3, and so forth), unless instructions provide otherwise. In case a number written in figures is ambiguous or is otherwise not clear, and the number cannot be resolved by using sections (b), (c) or (d) below, the number written in words controls. In all other cases where a conflict arises between the number written in figures and the number written in words, the number written in figures controls.
  - (b) If the bid contains an error in multiplying a unit price by a quantity to calculate the “product” (also known as the extension or extended amount), the correct product of the unit price times the quantity will control over the incorrect product entered by the bidder. (For instance, suppose the bidder multiplies \$2 per unit x 3 units. Even though the correct product is \$6, suppose the bidder mistakenly enters \$7. In this example, the bid will be deemed to be in the amount of \$6.) If a bid leaves a unit price blank but enters a dollar amount for the extension, the dollar amount in the extension will apply, instead of the empty blank. If a bid contains an error in adding entries on the bid form, the correct addition will control over the incorrect sum entered by the bidder or over a blank where the bidder should have entered the sum. (For instance, if the bidder adds \$2 + \$3 and enters the sum of \$7, the bid will be deemed to be in the amount of \$5 because  $2 + 3 = 5$ .) When the bidder leaves a blank empty in an equation, and by the process of arithmetic or algebra only one number will solve for that blank, that number will be deemed to have been entered. (For instance, if the bid is for four items and the bid shows  $\$1 + \$1 + \_\_\_ = \$5$ , the blank will be deemed to contain \$3 because  $1 + 1 + 3 = 5$ .)
  - (c) Unless otherwise indicated, all of the blanks in the bid form (including alternates) are required to be filled in as part of a complete bid. The bid documents indicate whether bidders have the option of not bidding on some items. If a bidder fails to fill in a dollar amount in a blank that is required to be filled in, that will be understood as a bid for \$0.00, unless the rules stated in section (b) above apply to the blank.
  - (d) An optional blank that is left blank is understood to mean that the bidder does not propose to supply that item, and it will be deemed that the bidder does not propose to supply that item. If the bidder chooses to write something in an optional blank when the bidder does not propose to supply that item, the bidder should write “no bid.”
18. **Protests.** If (i) the City seeks bids from more than one person (which includes companies and other firms), (ii) the contract goes to the City Council with a recommendation of award, and (iii) the responsible City staff person posts a notice of intent to make a recommendation to City Council, the City’s formal protest procedure applies. When those three -- (i), (ii), and (iii) -- conditions exist, a protesting bidder must file its protest promptly or lose the right to protest. The policy is FP 113-1 and is titled “Administrative Review of

# BID PROPOSAL FORM

*(Use this form only)*

Recommendations for Contract Award.” Upon request, the Purchasing Division will supply a copy of the policy.

19. **Changes after award.** Any changes made after the bid has been awarded, including those regarding specifications and quantities, must be with the written consent of the Purchasing Supervisor or other designee of the City Manager and may require a contract amendment.

\*\*\*\*\*SPECIAL NOTE – PLEASE READ\*\*\*\*\*

**The US Postal Service DOES NOT deliver any mail (US Postal Express Mail, Certified, Priority, Overnight, etc.) to our physical address of 101 City Hall Plaza (Annex).**

**Throughout these forms, it is the bidder’s responsibility to fill in blanks and provide information except where it is clear that the City will do so.**

**THANK YOU FOR YOUR INTEREST IN THE CITY OF DURHAM**

# BID PROPOSAL FORM

(Use this form only)

August 28, 2019

Bid No. 20-0004

The CITY OF DURHAM invites your bid for a **Term Contract Requirements for Aggregates** to be opened at **2:00 p.m., Wednesday September 25, 2019** in the Finance Conference Room. Room A, 1<sup>st</sup> Floor, 101 City Hall Plaza-Annex, Durham, North Carolina 27701.

Use this form only, for submitting bids. In submitting your proposal, keep in mind any alternations, changes in bid format, etc. will make it difficult to evaluate bids. All items should be bid in the units, quantities, units of measurements, etc. specified. Do not submit alternates unless requested. The City reserves the right to reject any or all proposals.

.....  
If the City of Durham issues to the bidder a Purchase Order that refers to the Bid Number shown on this bid, the bidder shall provide the quantities of goods required by the City during the period shown in the "Delivery" box on the Purchase Order (which period begins on the Order Date shown on the Purchase Order) unless that period is changed as provided in the bid documents. The bidder will not be obligated to fulfill a Purchase Order for a quantity that is not in accordance with the quantity limitations, if any, in the bid documents. The bid documents include all conditions, specifications, and terms on file in the City's Purchasing Division under that Bid Number.

Return the following: Bid Proposal Form(s), Bid Deposit (if required), Documentation (if required), UBE data forms, and Warranty (if applicable) to: (*see mailing instructions – under Instructions to Bidders No. 21*).

Complete all three boxes. Failure to give specific information may nullify bid.

<b>Payment Terms</b> _____	<b>Delivery to</b> be _____ days after receipt of order.	<b>Method of Delivery:</b> ___ Truck ___ Rail ___ Other (specify) _____	<b>Deliveries to be</b> <b>F.O.B. DESTINATION</b>
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I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid for the same materials, supplies, or equipment and is in all respects fair without collusion or fraud. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards. The bidder hereby makes an offer to the City of Durham in accordance with the bid documents, including this Bid Proposal Form and all enclosures. The undersigned individual certifies that he or she is authorized to sign this bid for the bidder.

Date \_\_\_\_\_

The following are enclosed: (check all applicable)

- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_ Brochures  
\_\_\_ Warranty

\_\_\_\_\_  
OFFICIAL LEGAL NAME OF BIDDER

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
CITY STATE ZIP CODE

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
PRINT NAME TITLE

\_\_\_\_\_  
( ) ( )

\_\_\_\_\_  
TELEPHONE NO FAX NO.

\_\_\_\_\_  
FEDERAL I.D. NUMBER

\_\_\_\_\_  
EMAIL/WEB SITE ADDRESS

# BID PROPOSAL FORM

*(Use this form only)*

## **SECTION I - AGGREGATES - DELIVERED**

<b><u>Item No.</u></b>	<b><u>Estimated Quantity</u></b>	<b><u>Description</u></b>	<b><u>Unit Price</u></b>	<b><u>Extension</u></b>
1.	550 Tons	#57 Aggregate	\$_____/Ton	\$_____Delivered
2.	7,000 Tons	ABC Spec. Aggregate	\$_____/Ton	\$_____Delivered
3.	500 Tons	ABC-M Aggregate	\$_____/Ton	\$_____Delivered
4.	100 Tons	Class A Rip Rap	\$_____/Ton	\$_____Delivered
5.	100 Tons	Class B Rip Rap	\$_____/Ton	\$_____Delivered
6.	100 Tons	Surge Pile Rip Rap	\$_____/Ton	\$_____Delivered
7.	100 Tons	Class I Rip Rap	\$_____/Ton	\$_____Delivered
8.	100 Tons	Class II Rip Rap	\$_____/Ton	\$_____Delivered
9.	100 Tons	#467 Aggregate	\$_____/Ton	\$_____Delivered
10.	1,200 Tons	Masonry Sand	\$_____/Ton	\$_____Delivered

**TOTAL SECTION I**    \$\_\_\_\_\_

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*(Use this form only)*

## SECTION II - AGGREGATES - CUSTOMER PICKUP

<u>Item No.</u>	<u>Estimated Quantity</u>	<u>Description</u>	<u>Unit Price</u>	<u>Extension</u>
1.	100 Tons	#467 Aggregate	\$_____/Ton	\$_____
2.	500 Tons	#57 Aggregate	\$_____/Ton	\$_____
3.	100 Tons	#67 Aggregate	\$_____/Ton	\$_____
4.	100 Tons	#5 Aggregate	\$_____/Ton	\$_____
5.	100 Tons	#6 Aggregate	\$_____/Ton	\$_____
6.	500 Tons	#78M Aggregate	\$_____/Ton	\$_____
7.	4,000 Tons	ABC Spec. Aggregate	\$_____/Ton	\$_____
8.	100 Tons	ABC-M Aggregate	\$_____/Ton	\$_____
9.	100 Tons	Class A Rip Rap	\$_____/Ton	\$_____
10.	100 Tons	Class B Rip Rap	\$_____/Ton	\$_____
11.	500 Tons	#39 Surge Rip Rap	\$_____/Ton	\$_____
12.	100 Tons	Class I Rip Rap	\$_____/Ton	\$_____
13.	100 Tons	Class II Rip Rap	\$_____/Ton	\$_____
14.	100 Tons	#34 Screenings	\$_____/Ton	\$_____
15.	500 Tons	Masonry Sand	\$_____/Ton	\$_____

**TOTAL SECTION II**

**\$\_\_\_\_\_**

Distance from Plant to Centroid \_\_\_\_\_ Miles



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*(Use this form only)*

## **SECTION III - AGGREGATES - DELIVERED- (This Section will be Awarded by Item)**

<b><u>Item No.</u></b>	<b><u>Estimated Quantity</u></b>	<b><u>Description</u></b>	<b><u>Unit Price</u></b>	<b><u>Extension</u></b>
1.	550 Tons	Special #67 (Washed) Aggregate furnished with the following gradation:	\$_____/Ton	\$_____Delivered
	<u>Size</u>	<u>% Total Weight Passing</u>		
	1"	100%		
	3/4"	95 - 100%		
	3/8"	10 - 35%		
	#4	0 - 10%		
	#8	0 - 5%		
2.	1,550 Tons	Special #78M (Washed) Aggregate furnished with the following gradation:	\$_____/Ton	\$_____Delivered
	<u>Size</u>	<u>% Total Weight Passing</u>		
	1/2"	100%		
	3/8"	98 - 100%		
	#4	10 - 25%		
	#8	0 - 10%		

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## **SECTION III - AGGREGATES – DELIVERED - (This Section will be Awarded by Item)**

<b><u>Item No.</u></b>	<b><u>Estimated Quantity</u></b>	<b><u>Description</u></b>	<b><u>Unit Price</u></b>	<b><u>Extension</u></b>
3.	5,000 Tons	MOD #3T R/R Ballast furnished with the following specifications:	\$_____/Ton	\$_____Delivered

## **SECTION IV - AGGREGATES – PICK UP - (This Section will be Awarded by Item)**

<b><u>Item No.</u></b>	<b><u>Estimated Quantity</u></b>	<b><u>Description</u></b>	<b><u>Unit Price</u></b>	<b><u>Extension</u></b>
4.	5,000 Tons	MOD #3T R/R Ballast furnished with the following specifications:	\$_____/Ton	\$_____Delivered

Gradation test shall be determined in accordance to ASTM Method of Test Designation C-136, utilizing square opening sieves conforming to ASTM Specification E-11. The percentage passing each sieve shall fall within the following limits for #3 (modified):

<u>Sieve Designation</u>	<u>Sieve Opening</u>	<u>#3 Ballast (Modified) %Passing Sieve</u>
2-1/2"	2.50"	100
2"	2"	95-100
1-1/2"	1.50"	30-65
1"	1.00"	0-15
3/4"	0.75"	-
1/2"	0.50"	0-5
3/8"	0.375"	-
No. 4	0.187"	-
No. 200	0.0029	0-5 Max.

Testing in accordance with Norfolk Southern Corporation Specification #702.

# ***SPECIFICATIONS***

## **AGGREGATES**

### **SECTION – 905 – GENERAL REQUIREMENT FOR AGGREGATE**

#### **905-1 GENERAL**

A list of sources of aggregates in North Carolina and adjoining states that have been approved by the Department, and the purposes for which these aggregates are acceptable, is on file at the Department's Laboratory in Raleigh. Where an aggregate meets specification requirements, but has a history of unsatisfactory service performance, its use for construction purposes may be restricted by the Department and such restriction will be noted on the list of approved sources.

Aggregates proposed to be used on a project which are from sources that are not listed as approved will be investigated upon request of the owner or Contractor. Approval of such sources will be based not only on the quality of the aggregate, but also on satisfactory production facilities and procedures. Except as otherwise provided herein, aggregates from unlisted sources which have already been produced may be used on the work provided they have been properly stockpiled in units of not less than 200 cubic yards and tests of representative samples of these aggregates indicate satisfactory compliance with the specifications.

When an aggregate source contains rock of more than 1 identifiable rock type, or contains particles of visibly different degrees of weathering in amounts of 10 percent or more, each individual type, when separated from the total aggregate and tested in accordance with AASHTO T96, shall have a wear of not more than that specified for the particular use.

#### **905-2 HANDLING AND STORING AGGREGATES**

Aggregates shall be handled in such a manner as to minimize segregation.

Sites for aggregate stockpiles shall be grubbed and cleaned prior to storing aggregates, and the ground surface shall be firm, smooth, and well drained. A cover of at least 3 inches of aggregate shall be maintained over the ground surface in order to avoid the inclusion of soil or foreign material. Stockpiles shall be built in such a manner as to minimize segregation. When it is necessary to operate trucks or other equipment on a stockpile in the process of building the stockpile, it shall be done in a manner approved by the Engineer.

Stockpiles of different types or sizes of aggregates shall be spaced far enough apart, or else separated by suitable walls or partitions, to prevent the mixing of the aggregates.

Any method of stockpiling aggregate which allows the stockpile to become contaminated with foreign matter or causes excessive degradation of the aggregate will not be permitted. Excessive degradation will be determined by sieve tests of samples taken from any portion of the stockpile over which equipment has been operated, and failure of such samples to meet all grading requirements for the aggregate will be considered cause for discontinuance of such stockpiling procedure.

# ***SPECIFICATIONS***

## **GRADATION**

All standard sizes of aggregates shall meet the gradation requirements of Table 905-1 when tested in accordance with AASHTO T27, except that aggregate to be used in a base course or as a stabilizer aggregate will be tested for gradation in accordance with AASHTO T88 as modified by the Department. Copies of the modified test procedures are available upon request from the Materials and Tests Unit. The amount of material passing the No. 200 sieve will be determined by washing.

Standard sizes of coarse aggregate are identified by numerical or alphabetical designation. Standard sizes of fine aggregate are identified by number followed by the suffix “S”.

# SPECIAL CONDITIONS

1. The product furnished throughout the period of this contract shall be in compliance with any and all requirements established or set forth by the North Carolina Office of Water and Air Resources, EPA, OSHA, or any other body that legally or otherwise has authority to establish requirements for such products. **You must provide material specifications documentation and Material Safety Data Sheets with bid proposal.**
2. The responsibilities under this (proposed) contract is that the City of Durham is obligated during the period stipulated to purchase all of its "normal requirements" of the products and/or services indicated in this bid document from the contractor. The contractor is obligated to supply the quantities and/or services that the City of Durham requires for its operations. ***Requirements stated herein are approximate; but, are for the entire normal requirements, whether more or less. Requirements stated are not guaranteed.***
3. When bidding an item as an approved equal, it will be necessary to provide the City with a sample for evaluation purposes.
4. It is recommended that all suppliers become familiar with City unloading facilities before bidding. The City will provide one person to assist the truck driver with unloading.
5. Deliveries will be on an "as needed basis" with minimum orders of 100 tons. Deliveries shall be received within 24 hours of notice.
6. It is the intention of the City to award Sections I and II of this contract by section to the lowest responsible bidder. In order to award by section, bidders must bid on every item in that section or they will be deemed as "non-responsive". Section III will be awarded by item.
7. The responsibilities under this (proposed) contract are that the City of Durham is obligated during the period stipulated to purchase all of its "normal requirements" of the products and/or services indicated in this bid document from the contractor. The contractor is obligated to supply the quantities and/or services which the City of Durham requires for its operations. Requirements stated herein are approximate; but, are for the entire normal requirements, whether more or less. Requirements stated are not guaranteed.
8. The contract period will begin upon notification in writing to the successful bidder. Prices are to be firm for the duration of the contract.
9. The City shall reserve the right to cancel the contract upon 60 days written notice.
10. The City shall reserve the right to extend the contract for an additional period up to twelve (12) months upon agreement of both parties. And add additional locations for future delivery.

# SPECIAL CONDITIONS

11. Deliveries shall be made between the hours of 7:30 a.m. and 3:00 p.m., Monday through Friday at the following address:

City of Durham  
Public Works Operations Center  
1100 MLK Parkway  
Durham, NC 27707  
Telephone: 919/560-4312

Orders will be placed from other City Departments with various hours and locations.

The City will place orders on an "as needed" basis striving to give advance notification of any unusual requirements of either quantity or type.

12. **INSURANCE**: The contractor(s) to whom the award is made must carry insurance in the following minimum amounts:

**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.

**Commercial Auto Liability**, covering:

- Symbol 1, all vehicles
- Combined single limit of \$1,000,000
- 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 AL 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) (this must be stated on the certificate)
- Employers' liability, \$1,000,000
- Waiver of subrogation in favor of the City of Durham

# SPECIAL CONDITIONS

## **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: Purchasing Division  
101 City Hall Plaza (Annex)  
Durham, NC 27701
- The insurance certificate and the additional insured endorsement must be originals.
- If delivery is made via an independent commercial carrier, it will be the contractor's responsibility to insure that the carrier has the minimum insurance limits as stated above.
- Upon award of contract, the contractor(s) must provide an appropriate insurance certificate with the contract documents. Also, the insurer must notify the City thirty (30) days prior to any change in coverage.

13. **COST ADJUSTMENTS:** The cost for all items as quoted herein shall remain firm for the contract period specified/awarded. Costs for subsequent periods and any extension term periods shall be subject to an adjustment only if increases occur in the industry. However, unless very unusual and significant changes have occurred in the industry, such increases shall not exceed 5% per year or, whichever is less, the latest yearly percentage increase in the All Urban Consumers Price Index (CPI-U) (National) as published by the Bureau of Labor Statistics, U.S. Dept. of Labor. The yearly increase, or decrease in the CPI shall be that latest index published and available ninety (90) days prior to the end of the contract year then in effect compared to the index for the same month one year prior. Any requested cost increase shall be fully documented and submitted to the City at least ninety (90) days prior to the contract anniversary date. Any approved cost adjustments shall become effective upon the anniversary date of the contract. In the event the CPI or industry costs decline, the City shall receive, from the Contractor, a reasonable reduction in costs that reflect such cost changes in the industry.

The City may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or decreases are considered to be insufficient. In the event the City does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the City, the contract will not be renewed and the City will rebid the contract.

## **SPECIAL CONDITIONS**

14. All products supplied to the City under this contract will conform to the General, Handling and Storing, and Gradation Specifications as per Section 905 of the N.C. DOT Standard Specifications of Roads and Structures, July 1, 1978 or later. The City of Durham will conform to the contractor's methods and procedures for loading, weighing, ticketing, or invoicing, and all other rules and regulations established for the safety of personnel and customers, as well as efficient handling of aggregates
15. Any contract extension is subject to the continuation of usage and the appropriation of funds.



# **EEO PROVISIONS**

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

- a. 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 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.

## **NON-DISCRIMINATION PROVISION**

"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."



**EQUITY & INCLUSION**

CITY OF DURHAM

# **EQUAL BUSINESS OPPORTUNITY PROGRAM**

## **PROCUREMENT FORMS**

Updated 06/19



All information in this document is applicable as indicated when UBE goals are required. If documents are not submitted, your bid may be deemed non-responsive. Only the Employee Breakdown form is required when there are no UBE goals. Underutilized Business Enterprise (UBE) means a business, including a sole proprietorship, partnership, corporation, limited liability company, joint venture or any other business or professional entity that has been certified by (i) the State of North Carolina as a historically underutilized business (HUB) pursuant to G.S. 143-128.4, as amended; (ii) the North Carolina Department of Transportation as a disadvantaged minority-owned or woman-owned business pursuant to G.S. 136-28.4, as amended; or (iii) the Small Business Administration 8(a) Business Development program of the Small Business Administration of the U.S. Department of Commerce pursuant to 15 U.S.C. 637(a), as amended,

**UBE Participation** On this form, “participation” is the dollar amount of subcontracts for significant goods and services to be used to perform the contract. For instance, if the bidder would enter into a subcontract with UBEs for a total of \$30,000, that would be the UBE participation amount. The sum of UBE participation and non UBE participation should equal the amount of the bid. This form is required for a bid that has participation goals and must be completed and submitted with your bid.

**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.

**Statement of Intent to Perform as Subcontractor** The bidder must provide one of these forms for each UBE firm that the bidder would subcontract with if the City awards the contract to the bidder.

**Request to Change UBE Participation After Bid Opening:** If at any time during a City contract, the bidder/contractor proposes to do any of the following:

- to replace a subcontractor,
- to perform subcontracted work with the bidder/contractor’s own forces,
- to increase the quantity of subcontracted work,
- to decrease the quantity of subcontracted work, or
- to change the allocation of work among subcontractors,

then the bidder/contractor must make good-faith efforts to attain the goals that it has shown on the UBE Participation form, and the bidder/contractor must fill out the Request to Change UBE Participation After Bid Opening. Substitutions of subcontractors in these circumstances, both before and after the awarding of a contract, are subject to City approval. Consult the City’s Equity & Inclusion Department on the procedures to follow.

**Questionnaire on Bidder’s Good-Faith Efforts** Bidders that do not attain the UBE goals have the responsibility to make good-faith efforts and to demonstrate to the City that they have made such efforts. In determining a bidder’s good-faith efforts to engage UBEs, the City Manager shall consider the information supplied by the bidder to answer the questions in this form, along with other criteria that the City Manager deems proper. This questionnaire is an optional tool that bidders may use to show that they have made good-faith efforts. Even though this form may be submitted after the bid opening, it cannot include information on efforts made after the bid opening. Even if a bidder does not use this form, the City will nevertheless attempt to answer the questions on the questionnaire using good-faith documentation supplied by the bidder. Bidders who do not turn in the questionnaire will still find it helpful to know how the City will determine whether good-faith efforts have been made.

## EMPLOYEE BREAKDOWN

### 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	White	Black	Hispanic	Asian or Pacific 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.)

M-----a-----l-----e-----s

F---e---m---a---l---e---s

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

## UBE PARTICIPATION ON BID

Name of Bidder:

Is bidder a UBE (circle one):      Yes                      No

Total dollar amount of UBE participation in bid work:

***For each row, check one column: E or F, .***

Column A	Column B	Column C	Column D	Column E	Column F
Name of proposed subcontractor for base bid work	Goods and services to be provided for base bid work	Subcontract amount, in dollars, for base bid work	Percentage of total base bid (Column C divided by total base bid)	Minority-owned UBE	Women-owned UBE
		\$	%		
		\$	%		
		\$	%		
		\$	%		

*Attach extra sheets as needed.*

Do the above participation amounts meet the goals on this contract, assuming only the base bid is counted?

☐ **Yes** ☐ **No.** If the answer is No: (1) the bidder must have made good-faith efforts; (2) the bidder must provide, within 2 business days after bid opening, documentation of good-faith efforts; and (3) the bidder must sign below.

As an authorized representative of the Bidder, I swear or affirm under penalty of fraud that the good-faith efforts documentation submitted with this bid, pertaining to the base bid and all alternates, if any, is correct and not intended to defraud or mislead. After the contract between the City and the Bidder is signed, except to the extent that the City gives prior written approval for changes, the Contractor agrees that it shall engage the subcontractors listed on this form to perform the work for the dollar amounts or percentages described on this form.

---

**Signature of individual authorized to sign for Bidder**

## STATEMENT OF INTENT TO PERFORM AS SUBCONTRACTOR

Name of **Bidder**: \_\_\_\_\_

Name of **Project**: \_\_\_\_\_

The undersigned firm meets the City of Durham's criteria as a UBE.

The undersigned UBE represents that it will enter into a formal contract with the Bidder to perform the following work in connection with the Project, in the dollar amount or percentage listed below, if the Bidder signs a contract with the City of Durham for the Project.

Describe the work in sufficient detail so that it can be determined whether the UBE's work is a substantial and necessary part of the Project.

<b>Column 1</b> - description of work to be done by undersigned UBE	<b>Column 2</b> - dollar amount of the proposed subcontract between the bidder and the undersigned UBE	<b>Column 3</b> - percentage of Bidder's base bid represented by the proposed subcontract between the Bidder and the undersigned UBE

The undersigned UBE will be ready to begin work on the subcontract on the following date: \_\_\_\_\_

Name of UBE: \_\_\_\_\_ Telephone No. \_\_\_\_\_

Address, including Zip Code, of UBE: \_\_\_\_\_ Fax No. \_\_\_\_\_

\_\_\_\_\_  
**Signature of authorized representative of UBE**

Title of the person who signed above: \_\_\_\_\_

What person with the UBE should the City contact with questions about this form or the proposed subcontract?

Name of individual: \_\_\_\_\_ Telephone No. \_\_\_\_\_

Title of individual: \_\_\_\_\_

Email address: \_\_\_\_\_

By submitting this form to the City of Durham, the Bidder represents that if the Bidder signs the contract with the City of Durham for the Project, the Bidder will enter into the subcontract described above with this UBE.

## REQUEST TO CHANGE UBE PARTICIPATION AFTER BID OPENING

Project: \_\_\_\_\_

Name of bidder or contractor: \_\_\_\_\_

Name and title of representative of bidder or contractor: \_\_\_\_\_

Address: \_\_\_\_\_ | Zip Code: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ | Fax No.: \_\_\_\_\_

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/contractor'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 subcontractor: \_\_\_\_\_

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 concrete work and deleting \$7,000 in grading*): \_\_\_\_\_  
\_\_\_\_\_

Dollar amount of this subcontract before this proposed change: \_\_\_\_\_

Dollar amount of this subcontract after this proposed change: \_\_\_\_\_

This subcontractor is (check one):

- ☐ 1. inority-owned UBE
- ☐ 2. Women-Owned UBE
- ☐ 3. Not a UBE

**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 subcontractor: \_\_\_\_\_

Dollar amount proposed of this proposed subcontract: This subcontractor is:

- ☐ 1. Minority-owned UBE
- ☐ 2. Women-Owned UBE
- ☐ 3. Not a UBE

Add additional sheets as necessary.



*This form is used only if the conditions described in the instructions are present.*

## QUESTIONNAIRE ON BIDDER'S GOOD-FAITH EFFORTS

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 (that is, in the list provided by the City-) 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 UBEs with timely, adequate information about the plans, specifications, and requirements of the contract? ☐ **yes** ☐ **no**

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

(g) 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:**

**NEGOTIATION.** In your answers to 3, you may omit information regarding UBEs for which you are providing Form E-105.

- (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:**

**3. 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:**

**4. 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:**

**5. 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:**

# PURCHASE CONTRACT

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

**DRAFT COPY DO NOT COMPLETE**

T This contract is dated, made, and entered into this < > day of < > between the City of Durham, a N.C. municipal corporation (the "City") and < > ("Seller," "Vendor," and "Contractor").

- I. This contract is for < >.
- II. Seller is a (*check one*): ☐ corporation; ☐ limited liability company; ☐ limited partnership; ☐ general partnership; ☐ proprietorship.
- III. If Seller is a corporation, limited liability company, or limited partnership, Seller is organized under the laws of the State of \_\_\_\_\_.

## IT IS AGREED:

1. Seller, in consideration of the sums to be paid as provided in this contract, including in accordance with section 3 below, agrees to sell to the City, and the City agrees to purchase, at the times and prices, and in the quantities and qualities, the goods described in the following exhibits, which are made a part of this contract:

<input type="checkbox"/> Instructions to Bidders	<input type="checkbox"/> Special Conditions	<input checked="" type="checkbox"/> Standard Contract Terms – Exhibit Con
<input type="checkbox"/> Bidder Information Form	<input type="checkbox"/> General Conditions	<input checked="" type="checkbox"/> Insurance Clause – Exhibit Ins
<input type="checkbox"/> Bid Proposal Form	<input type="checkbox"/> Specifications	

2. In the files of the City's Purchasing Division, this contract is known as Bid No. < >. The City's contract information under the Notice section of the Standard Contract Terms is \_\_\_\_\_/ City of Durham/ 101 City Hall Plaza/Durham, NC 27701-3329/Fax: (919) \_\_\_\_\_/Email: \_\_\_\_\_@durhamnc.gov

3. The City shall make payment in the amount required by this contract after Seller's satisfactory completion of performance, in accordance with the billing and payment clauses. The sum to be paid under this contract is \$< >.

WHEREFORE, the City has caused this contract to be executed under authority of its City Council, and Seller (if corporate) has executed this contract under seal by authority of its board of directors; if not corporate, Seller has executed this contract under seal pursuant to proper authority.

ATTEST:

CITY OF DURHAM (and *preaudit certificate*)

.....  
The individuals executing this contract for Seller warrant that they have authority to execute this contract on behalf of Seller.

Signature of Seller

1. Unless the City specifies otherwise, Seller must complete and sign this contract in duplicate originals and return it within the time period, if any, specified by the City in its request for Seller to sign, to the City's Purchasing Division for execution by the City. After the City signs the contract, the City will return a copy signed by the City.
2. **Seller's Status; Authorized Signers.** One of these subsections (a, b, *or* c) applies.
  - (a) **SELLER IS A CORPORATION.** If Seller is a **corporation** --
    - (i) The corporation agrees that it is signing the contract under seal.
    - (ii) The full correct corporate name must be used. If a corporate division is involved, the corporation (not the division) should execute the contract.
    - (iii) This signature must be that of one of the following: (1) chairperson, president, chief executive officer, vice-president, assistant vice-president, treasurer, chief financial officer, or (2) a person authorized by the board of directors to execute contracts in general or this particular contract.
    - (iv) If someone other than chairperson, president, chief executive officer, vice-president, assistant vice-president, treasurer, chief financial officer signs, then you must attach a copy of the resolution of the board of directors authorizing the other person to sign the contract. That copy of the resolution must be certified by a corporate secretary, with the corporation's seal impressed on it. A resolution in the following form will comply with the requirements of this subpart "iv," although other forms may also be acceptable:

**Resolution Authorizing Execution of Contracts**

RESOLVED, that [insert name of person authorized to sign] shall have authority to enter into contracts with the City of Durham, N.C., in the name of and on behalf of [insert corporation's name] related to City of Durham Bid No. [insert bid number].

I, a Secretary or Assistant Secretary of the corporation whose name is stated above, certify that the foregoing is a true copy of a resolution duly adopted by the Board of Directors of the corporation, and that the resolution is still in effect.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Affix corporate seal)

\_\_\_\_\_  
Secretary or Assistant Secretary

(b) **SELLER IS A LIMITED LIABILITY COMPANY.** If Seller is a **limited liability company**, a manager is the standard person to sign. If the LLC's "operating agreement" specifically says that someone else may sign contracts, and that other person is signing this contract, please provide a copy of the following from the operating agreement: pages 1, 2, and signature pages; and the page containing the appointment of the person who is signing other than the LLC's manager. Please mark the text that makes that appointment.

(c) **SELLER IS AN INDIVIDUAL OR PARTNERSHIP.** If Seller is an **individual**, including an individual doing business under a business name, the individual owner must sign. If Seller is a **partnership**, a general partner must sign.

3. **Signature Format.** The City's Purchasing Division will provide a signature section that it thinks is appropriate based on information it has. Do not alter the documents without first obtaining authorization from the Purchasing Division. If the signature section does not fit your situation, please consult the Purchasing Division.

4. **Summary of Goods and Services.** The description in section I (which begins "This contract is for...") on the front of this document is only a summary and is intended only for general reference. The details of the purchase are described elsewhere and control over this summary.

## **Standard Contract Terms.**

If the bidder is awarded the contract, the bidder and the City will sign the City's Purchase Contract, which will include the following Standard Contract Terms.

### **STANDARD CONTRACT TERMS- "EXHIBIT CON"**

Sec. 1. Reserved.

Sec. 2. Definition of "Work"; Presumption that Duty is Seller's. In this contract, "Work" means the services that Seller is required to perform pursuant to this contract and all of Seller's duties to the City that arise out of this contract, including the duty to supply goods. 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 Seller.

Sec. 3. Reserved.

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, Seller 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. Seller's Billings to City. Compensation. Seller shall comply with the City's directions regarding sending invoices to the City 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 Seller a check in payment for all undisputed amounts contained in the invoice.

Sec. 6. Reserved.

Sec. 7. Reserved.

Sec. 8. Performance of Work by City. If Seller fails to perform the Work in accordance with the schedule required by this contract, the City may, in its discretion, 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 Seller notice of its intention. Seller 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. Reserved.

Sec. 10. Notice. (a) This subsection (a) pertains to all notices related to or asserting default, breach of contract, claim for damages, suspension or termination of performance, suspension or termination of contract, and extension or renewal of the term. All such notices shall be given by personal delivery, fax, UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City: This information is on the Purchase Contract.

To Seller: The Bidder's mailing address and other information from the Bidder Information Form will be used.

(b) Change of Address. Date Notice Deemed Given. A change of address, email address, fax number, or person to receive notices under subsection (a) shall be made by notice given pursuant to subsection (a). All notices and other communications related to or under this contract shall be deemed given and sent at the time of actual delivery, if personally delivered or sent by fax, personal delivery, UPS, Federal Express, or a designated delivery service. 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. If the notice is undeliverable because the information given to the City under this section is incorrect, incomplete, or out of date, the notice will be deemed given and sent on the date that the City attempted to deliver by fax, or the date the City placed 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.

Sec. 11.1 Indemnification I. (a) To the maximum extent allowed by law, Seller 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 Seller 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,” Seller 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 Seller. (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 Seller under this contract. (e) Limitations of Seller'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 Seller 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. 11.2. Warranties and Indemnification II. In addition to other warranties made in this transaction, Seller represents and warrants that all of the products (which includes goods, items, and other things) furnished under this contract, the process by which those products are made, and their use will not infringe any patent, trademark, or other rights of any other person, firm, or corporation, and Seller shall defend, indemnify, and hold harmless the City and its officers, officials, agents, contractors, and employees from and against any and all claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines, penalties, royalties, settlements, and expenses (including interest and reasonable attorney's fees assessed as part of any such item) arising out of any (i) actual or alleged infringement of any such patent, trademark, or other rights, or (ii) (except to the extent that the personal injury, death, or property damage is caused solely by negligent or intentional acts or omissions of the City) personal injury, death, or property damage allegedly caused by or resulting from the delivery to the City of, or the manufacture, construction, design, formulation, development of standards, preparation, processing, assembly, testing, listing, certifying, warning, instructing, marketing, selling, advertising, packaging, or labeling of any product furnished to the City under this contract. Without reducing the City's rights under this section, Seller, in case of an actual or threatened claim, may at Seller's option and expense procure for the City the right to continue using the products furnished under this contract. (However, the preceding sentence does not pertain to part “(ii)” of the first sentence of this section.) In addition to other warranties made in this transaction, Seller warrants that all of the products (which includes goods, items, and other things) furnished under this contract must be in conformity with applicable NC and federal statutes and regulations; except to the extent other contract documents provide otherwise, not have been used; and must be at least such as (a) pass without objection in the trade under the contract description; (b) in the case of fungible goods, are of fair average quality within the description; (c) are fit for the ordinary purposes for which such goods are used; (d) run, within the variations permitted by the contract, of even kind, quality and quantity within each unit and among all units involved; (e) are adequately contained, packaged, and labeled as the contract may require; and (f) conform to the promises or affirmations of fact made on the container or label if any.

Sec. 12. 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 Seller 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, Seller shall give the City all Work, including partly completed Work. In case of TFC, Seller shall follow the City's instructions as to which subcontracts to terminate. (c) *Payment*. The City shall pay Seller 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 Seller. Within 20 days after TFC, the City shall pay Seller one hundred dollars as a TFC fee and shall pay Seller 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. Seller 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. 13. State Law Provisions.

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

(b) Iran Divestment Act Certification. Seller certifies that, if it submitted a successful bid for this contract, then as of the date it submitted the bid, Seller was not identified on the Iran List. If it did not submit a bid for this contract, Seller certifies that as of the date that this contract is entered into, Seller is not identified on the Iran List. It is a material breach of contract for Seller to be identified on the Iran List during the term of this contract or to utilize on this contract any subcontractor that is identified on the Iran List. In this Iran Divestment Act Certification section -- "Iran List" means the Final Divestment List – Iran, the Parent and Subsidiary Guidance List – Iran, and all other lists issued from time to time by the N.C. State Treasurer to comply with G. S. 143C-6A-4 of the N.C. Iran Divestment Act.

#### Sec. 14. 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 and not the United Nations Convention on Contracts for the International Sale of Goods. 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 Seller is not a natural person (for instance, Seller is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by Seller 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, Seller agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. Seller 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 Seller. This subsection (ii) does not apply while Seller 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, Seller 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, Seller and all assignees shall be subject to all of the City's defenses and shall be liable for all of Seller's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting Seller the right to assign, it is agreed that the duties of Seller 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, Seller 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. Seller 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 Seller 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 Seller. 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 Seller's alleged violations of its obligations under Article III of Chapter 18 and not to Seller's alleged violations of other obligations.

(i) No Third Party Rights Created. This contract is intended for the benefit of the City and Seller 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 the Purchase Contract; the Purchase Contract includes these Standard Contract Terms and other documents incorporated into the Purchase Contract. (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 of these Standard Contract Terms. (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 Seller's services under this contract, that power may be exercised by City Manager or a deputy or



assistant City Manager without City Council action.

[end of STANDARD CONTRACT TERMS -- "Exhibit Con"]

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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 \$15.00 per hour through June 30, 2019, and \$15.46 per hour for July 1, 2019 – June 30, 2020. The City will re-set the rate for the period after June 30, 2020.