

INTERLOCAL COOPERATION AGREEMENT BETWEEN THE COUNTY OF DURHAM
AND THE CITY OF DURHAM TO CONTRACT FOR A DISPARITY STUDY OF
CONTRACTING AND PROCUREMENT PROCEDURES

This Agreement made, dated, and entered into as of the _____ day of February 2013, (“Effective Date”) between the County of Durham, a political subdivision of the State of North Carolina, hereinafter referred to as the “County” and the City of Durham, a North Carolina municipal corporation, hereinafter referred to as the “City”. The County and City shall be collectively referred to as the “parties.” This Agreement is made pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes.

WITNESSETH:

WHEREAS, in January 2008, the County adopted a ~~race neutral and race conscious~~ Minority and Women Business (MWBE) Ordinance after a study indicated present effects of past discrimination in the Durham marketplace having a direct effect on procurement processes of the County. The County MWBE Ordinance has been reauthorized but will sunset in December of 2013;

WHEREAS, similarly, the City has implemented an Equal Business Opportunity Program (EBOP) Ordinance to address past discrimination affecting City procurement processes. The City EBOP Ordinance has a sunset of March 31, 2014; and

WHEREAS, the County and City desire to enter into this Agreement in order to combine available funding to jointly undertake a disparity study with a single consultant that would evaluate both the County MWBE and City EBOP programs in order to determine their need and effectiveness and provide any recommended changes or alterations to the respective programs.

NOW THEREFORE, for and in consideration of mutual covenants contained herein and the mutual benefits to result therefrom, the parties hereby agree as follows:

1. DEFINITIONS:

- A. Disparity Study. The study to evaluate the need and effectiveness of current County MWBE and City EBOP programs to address existing and past discrimination in public contracting.
- B. Disparity Study Contract. The contract entered into the by the County with the Preferred Consultant after review of proposals and completion of the Request for Proposal (“RFP”) process.
- C. Preferred Consultant. The consultant selected by the County and approved by the City as part of the RFP process and with whom the County will negotiate the Disparity Study Contract.

2. PURPOSE: In order to achieve cost savings and efficiencies, the County and City desire to jointly share in the cost of contracting with a single qualified consultant that would conduct a joint Disparity Study for both the County and City. This Agreement describes the obligations and responsibilities of the parties in effectuating the Disparity Study.
3. CONSULTANT SOLICITATION AND SELECTION.
 - A. COUNTY RFP AND CONTENTS -- The County shall solicit proposals from qualified consultants to engage in a Disparity Study Contract pursuant to the County's standard RFP procedure. The issued RFP shall be approved by the City before issuance of the RFP. The RFP shall specify that the Preferred Consultant will contract with the County, but that the scope of work of the contract shall include an evaluation of both the County MWBE and City EBOP programs. As part of the review and evaluation of past and present discrimination in public contract procurement in the Durham marketplace, the Preferred Consultant shall separately evaluate contract procurement processes of the County and City. The RFP shall require that the selected consultant coordinate with and report to representatives of both the County and City in evaluating their respective programs.
 - B. CITY APPROVAL OF PREFERRED CONSULTANT REQUIRED – After the County receives proposals in response to the issued RFP, the County shall provide the City with complete copies of all proposals submitted. After review and evaluation of the proposals, County and City representatives shall meet to discuss the proposals and attempt to identify a single Preferred Consultant that would be recommended to the County Commissioners to enter into the Disparity Study Contract. Upon mutual agreement of the County and City as to the selection of a Preferred Consultant, the County agrees to make recommendation to the County Commissioners for execution of the Disparity Study Contract with the Preferred Consultant.
 - C. FAILURE TO AGREE ON PREFERRED CONSULTANT – if the City and County cannot agree on a Preferred Consultant at the conclusion of the RFP process, the parties may do the following:
 1. Agree to re-issue a new RFP in the hope of soliciting at least one mutually, agreeable Preferred Consultant;
 2. The City may terminate this Agreement with written notice to the County and the City shall pay to the County ½ the cost of the RFP solicitation advertisement, printing and other direct associated costs; and,
 3. The County may terminate this Agreement with written notice to the City and proceed with a Disparity Study Contract with its Preferred Consultant without involvement of the City and the County may renegotiate the Disparity Study Contract to address only the County scope of work. The City shall have no financial obligations to the County under this scenario.

4. TERMS OF DISPARITY STUDY CONTRACT.

- A. SCOPE OF WORK – The Disparity Study Contract shall provide a scope of work that includes study and evaluation of both the County and the City EBOP programs. The County shall obtain City approval of the scope of work provided in both the RFP and the Disparity Study Contract as it pertains to the City EBOP program and City related work.
- B. CONTENT OF CONTRACT – The RFP and Disparity Study Contract shall require that (1) the City be identified as a 3rd party beneficiary to the Disparity Study Contract; (2) the City, its officers and employees be named as an Indemnities along with the County; (3) the City be named an additional insured; and (4) the Preferred Consultant shall be required to coordinate and cooperate with the City as necessary to deliver the scope of work related to the City’s MWBE program.
- C. DOCUMENT OWNERSHIP – The City and County shall have joint ownership of all records and documents generated or provided by the Preferred Consultant under the Disparity Study Contract.

5. METHOD OF FINANCING AND APPORTIONMENT OF FUNDS

- A. APPORTIONMENT: If the County successfully enters into the Disparity Study Contract with the Preferred Consultant approved by the City, the County and City shall equally share (50/50) in the costs and expenses of the Disparity Study Contract up to a total maximum contract amount of \$200,000. For example, if the total Disparity Study Contract costs and expenses equal \$180,000.00, the City and County shall be responsible for \$90,000.00, each. If, however, the total proposed contract costs and expenses are to exceed \$200,000.00, and the City is still interested in participating, the City shall obligate additional funding (in excess of the \$100,000 already budgeted) such that the City can still participate equally (50/50 share) with the County in the contract costs and expenses. If the City is unable to secure such additional funding, the City shall notify the County that it cannot participate. If the City and County agree on the contract apportionment pursuant to this section 5.(A), the City shall deposit with the County the City’s budgetary contribution to the Disparity Study Contract prior to the County’s execution of the Disparity Contract in an amount equal to one half the amount for the contract, but not to exceed \$100,000.
- B. FUNDING SOURCES: The funding sources to pay for the Disparity Study Contract shall be approved and budgeted by each respective governing board.
- C. METHOD OF DISTRIBUTION: The Disparity Contract will require that pay requests for the City’s share be invoiced by the Preferred Consultant to the City representative identified in the Disparity Contract. The City shall review the invoice and corresponding work, then forward the invoice and approval to the County for payment of same.. The County shall not be responsible for reviewing or approving City pay request. The City shall review the City pay request as being in conformance with the requirements of the Disparity Study Contract. The City shall have the right to challenge any portion of the pay request it believes is

inconsistent with the Disparity Study Contract directly with the Preferred Consultant before the City gives approval and authorization to the County to make payment to the Preferred Consultant. Pay requests for the County's share shall be reviewed and paid by the County.

6. DURATION AND TERMINATION:

- A. This Agreement shall take effect upon the Effective Date provided above and shall endure until satisfactory completion of the Disparity Study or July 1, 2014, whichever is first to occur. For purposes of this Agreement, "satisfactory completion of the Disparity Study" shall mean when final payment is made to the Preferred Consultant upon satisfactory completion of the Disparity Study pursuant to the Disparity Study Contract and final apportionment of costs has been made between the parties pursuant to this Agreement.
- B. Notwithstanding the duration provision above, this Agreement may be terminated by either party pursuant to 3.C. above. Termination of this Agreement by either party may be made by the respective Manager of either the County or City without respective governing board authorization.

7. GENERAL PROVISIONS:

- A. This Agreement shall be recorded in the Office of the Clerk of both the City and County.
- B. Amendments to this Agreement, if allowed by law, shall be effective only when reduced to writing and duly executed by parties.
- C. Appointment of Personnel. The City Manager shall designate persons to carry out the City's obligations under this Agreement. The County Manager shall designate persons to carry out the County's obligations under this Agreement.
- D. The laws of the State of North Carolina shall control and govern this Agreement.
- E. This Agreement sets forth the entire agreement between the County and the City and supersedes any and all other agreements on this subject between the parties.
- F. Any claims, disputes or other controversies arising out of, and between parties to this Agreement which may ensue shall be subject to and decided by the appropriate division of the General Court of Justice of Durham County, North Carolina.
- G. The subject headings of the paragraphs are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This agreement shall be deemed to have been drafted by both parties and no interpretation shall be made to the contrary.

*Interlocal Cooperation Agreement to Contract for a Disparity Study of Contracting and Procurement
Procedures between the County of Durham and the City of Durham*

H. This Agreement is made for the benefit of the City and the County and not for any other entity or person.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed on the day and year first above written, in their respective names by their proper officials of each of the taxing units.

ATTEST:

CITY CLERK

CITY OF DURHAM

BY: _____
CITY MANAGER

ATTEST:

COUNTY OF DURHAM

BY _____