

CONTRACT FOR LANDSCAPE MAINTENANCE AND GRASS MOWING AT THE FIRE ADMINISTRATIVE BUILDING (ACADEMY), FIRE MAINTENANCE GARAGE AND FIRE TRAINING GROUNDS

This contract is dated, made, and entered into as of the _____ day of _____, 20____, by the City of Durham (“City”), a N.C. municipal corporation, and The Rashid Group LLC (“Contractor”), a corporation organized and existing under the laws of North Carolina.

Sec. 1. Background and Purpose. The purpose of this contract is to provide landscape maintenance, grass mowing and other services to the grounds (land and lawn areas) of the Fire Administrative Building (Academy), Fire Maintenance Garage and Fire Training Grounds located at 2008 E. Club Boulevard, Durham, N.C. The lot size is approximately 6.0 acres.

Project Manager in this contract means Fire Chief or Deputy Fire Chief, Durham Fire Department or other designee.

Sec. 2. Services and Scope to be Performed. Presumption that Duty is Contractor’s. The Contractor shall provide services (“Work”) fully described in **Exhibit A- Scope of Services**, and as set forth elsewhere in this contract. 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. Exhibits. The following exhibits are made a part of this contract:

Exhibit A – Scope of Services consisting of 6 pages (numbered pages 11-16).

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

Sec. 5. Contract Term. The term of this Work commences on November 1, 2015 and will end on October 31, 2018.

Sec. 6. 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. 7. Contractor’s Billings to City. Compensation. The Contractor shall send invoices to the City (attention, Project Manager) 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. Contractor shall list the month that the payment is being requested for and list out any specific dollar amounts that are being billed in the invoice. 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 described in Section 2. The total compensation for the Work during the term of this contract is \$52,773. The City shall pay \$16,740 in Year 1 (\$1,395 per month); \$17,577 in Year 2 (\$1,464.75 per month); \$18,456 in Year 3 (\$1,538 per month). The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by Section 2.

The definitions for Year 1, 2 and 3 in this section are as follows: Year 1 means November 1, 2015 through October 31, 2016; Year 2 means November 1, 2016 through October 31, 2017; and Year 3 means November 1, 2017 through October 31, 2018.

Sec. 8. 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. 9. Insurance. Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following applicable coverages and limits. The requirements contained herein, as well as City’s review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract.

Commercial General Liability – Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

Automobile Liability – Limits of no less than \$1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract and/or are brought on a City of Durham site.

Umbrella or Excess Liability – Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest ‘Each Occurrence’ limit for required policies. Contractor agrees to endorse City of Durham as an ‘Additional Insured’ on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a ‘Follow-Form’ basis.

Worker’s Compensation & Employers Liability – Contractor agrees to maintain Worker’s Compensation Insurance in accordance with North Carolina General Statute Chapter 97 and with Employer Liability limits of no less than \$1,000,000 each accident, each employee and policy limit. This policy must include a Waiver of Subrogation.

Professional Liability- Contractor agrees to maintain Professional Liability Insurance with limits no less than \$1,000,000 per occurrence, covering claims arising out of professional architect, engineers and surveyors services performed in connection with this contract.

Environmental/Pollution- Contractor agrees to maintain Environmental/Pollution Liability Insurance with limits no less than \$1,000,000 per occurrence and \$2,000,000 aggregate, covering claims arising out of the use or application of chemicals/herbicides as well as the negligent release of hazardous materials. Coverage may also be satisfied by endorsement to the Commercial General Liability policy with minimum limits of \$1,000,000/\$2,000,000.

Additional Insured – Contractor agrees to endorse the City as an Additional Insured on the Commercial General Liability. The Additional Insured shall read ‘City of Durham as its interest may appear’.

Certificate of Insurance – Contractor agrees to provide City of Durham a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Contractor’s insurer. If Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

City of Durham
Attn: Fire Department, Project Manager
2008 E. Club Blvd.
Durham, NC 27704

All insurance companies must be authorized to do business in North Carolina and be acceptable to the City of Durham's Risk Manager.

Sec. 10. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule required by this contract (see **Exhibit A**), 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. 11. 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:

City of Durham,
Durham Fire Department
Attention: Christel Mangum, Project Manager, Landscape Contract
2008 E. Club Blvd.
Durham, NC 27704
The fax number is (919)560-4256.
Email: Christel.Mangum@durhamnc.gov

To the Contractor:

The Rashid Group LLC
144 Annaron Court
Raleigh, NC 27603
The fax number is (919) 772-2997.
Email: therashidgroupllc@gmail.com

(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.

Sec. 12. 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. 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. 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) 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.

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

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

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

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

Sec. 15. E-Verify compliance under 143-133.3. The contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). This E-Verify compliance under 143-133.3 section is intended to apply to only the contracts to which NCGS 143-133.3(a) applies and shall be construed in accordance with that statute. Any clause in this contract included under the authority of NCGS 160A-20.1(b) shall be of no effect; provided, however, to the extent (if any) required to comply with NCGS 143-129(j), a clause in this contract requiring the contractor and its subcontractors to comply with the requirements of Article 2 of Chapter 64 shall remain in effect if this contract is subject to NCGS 143-129. This E-Verify compliance under 143-133.3 section is valid only if House Bill 318, which was ratified on 29 September 2015, is signed into law by the Governor of North Carolina.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed

under seal themselves or by their respective duly authorized agents or officers.

ATTEST:

CITY OF DURHAM

By: _____

Preaudit Certificate, if applicable _____

[The following officers may sign for the corporation: chairperson; president; chief executive officer; vice-president; assistant vice-president; treasurer; or chief financial officer.]

The Rashid Group LLC

By: _____ (SEAL)

Title of officer: _____

ACKNOWLEDGMENT BY CORPORATION

State of _____

County of _____

I, a notary public in and for the aforesaid county and state, certify that

_____ personally appeared before me this day and stated that he or she is (~~**strike through the inapplicable:**~~) chairperson/ president/ chief executive officer/ vice-president/ assistant vice-president/ treasurer/ chief financial officer of The Rashid Group LLC, a corporation, and that by authority duly given and as the act of the corporation, he or she signed, under seal, the foregoing contract with the City of Durham.

This the _____ day of _____, 2015.

My commission expires: _____

Notary Public

EXHIBIT A – SCOPE OF SERVICES

SECTION 1. General Statement of Contractor's Obligations: Contractor hereby agrees to provide landscape maintenance, grass mowing and other services to the grounds (land and lawn areas) of the Fire Administrative Building (Academy), Fire Maintenance Garage and Fire Training located at 2008 E. Club Boulevard, Durham, N.C. as described below. The lot size is approximately 6.0 acres.

Mowing Specifics:

- (a) Mowing shall be performed in a manner consistent with landscape maintenance industry standards that ensures smooth surface appearance without scalping or leaving any missed uncut grass.
- (b) All mowers must be adjustable and adjusted to the proper cutting height and level for the kind of grass and current condition of the turf. Mower blade height adjustment is to be measured from a level floor surface to the parallel and level plane of the mower blade.
- (c) All mower blades are to be sharp enough to cut, rather than to tear grass blades.
- (d) All litter and debris is to be removed from turf before mowing to avoid shredding that will damage turf appearance, or items that may be propelled by mower blades.
- (e) Mowing will be done carefully so as not to damage bark of trees or shrubs, intrude into ground cover beds, damage grassed berms, damage to sprinkler heads, valves, manifolds, time clocks, curbs, or other site features.
- (f) Grass clippings or debris caused by mowing, weed eating or trimming will be removed from adjacent walks, drives, gutters, and curbs or surfaces on the same day as mowed or trimmed. Nothing shall be allowed to stay in the vicinity of a stormwater inlet/catch basin(s) nor be allowed to enter into any body of water. Failure to follow these requirements may result in termination of the contract.
- (g) Mowing will not be done when weather or conditions will result in damaged turf, uneven cutting, or rutting grounds.
- (h) Grass shall not be mowed lower than two (2) inches in height. Cut heights should be set to remove half (1/2) of the blade height, not to exceed three quarter (3/4) of the blade height, with an average maintained height of three (3) to four (4) inches.

Mowing Schedule: Maintenance schedule will be mutually agreed upon by the contractor and the division manager or inspector, and will occur at the frequencies described in Sec. 13, above, during the months of April through September.

- (a) Fire Administrative Building (Academy), Fire Maintenance Garage and Fire Training Grounds to be maintained every week between April and September during the mowing season, or as mutually agreed upon by the contractor and the Project Manager or Inspector.
- (b) Fire Administrative Building (Academy), Fire Maintenance Garage and Fire Training Grounds to be maintained as requested by the Project Manager or Inspector between October

and March during each mowing season, or as mutually agreed upon by the contractor and the Project Manager or Inspector.

Trimming and Edging:

- (a) Trimming: Grass shall be trimmed during, or as an immediate operation following, mowing. Trimming may be accomplished by hand or hand powered shears or rotary nylon “fish line” cutting machines. Grass will be trimmed at the same height as adjacent turf is mowed, and as needed to remove all grass leaves from around all obstacles and vertical surfaces in the turf such as posts, play equipment, water fountains, grills, benches, picnic tables, trees, walls, cement medians. Berms shall be trimmed with a small trim mower only. Contractor shall use special care when trimming around trees to avoid damage to bark surface and/or the living cambium layer beneath, and when trimming around sprinkler heads and other irrigation system fixtures to assure their proper water delivery function.
- (b) Edging: Mechanical edging of all turf edges abutting sidewalks, and flush paved surfaces, including all road curbs, drives, etc., will be done during or as an immediate operation following the mowing for the cycle as follows: turf will be edged approximately eighteen (18) inches outside and around all trees that are in lawn areas, or as directed by City designee. Turf will be edged approximately ten (10) inches out from the drip line of shrubs and hedges. Turf edging at shrub beds, flower beds, ground cover beds, hedges, or around trees (where edging rather than weed eating is directed) shall be edged with a manual or mechanical edger to a neat vertical uniform line.

Dirt and debris produced by edging or weed eating will be removed and swept from adjacent hard surfaces during or as an immediate operation following the mowing.

Contractor is responsible for replacement of all damaged sod at Contractor’s cost and City shall not be financially responsible for replacement of sod damaged by Contractor. If sod replacement is not complete within one week of written notification, City may replace and deduct the cost of replacement from the next monthly payment application.

Trimming and Edging Frequencies: Edging and trimming are to be done every time area is mowed.

Litter and Debris Control:

- (a) Litter removal from turf areas and plant beds and designated right-of-way areas shall be complete prior to each mowing operation in the same day.
- (b) Litter is to be removed entirely from the sites and disposed of in accordance with City of Durham Ordinances; at Contractor’s expense (no dumping on City property shall be permitted).
- (c) The City reserves the right to maintain ownership of all shrub and tree trimmings, for mulch cultivation services. The Contractor shall be required to deliver said trimmings to the General Services Department, if requested, as part of services.
- (d) City retains the right to request debris removal upon a finding by City staff that such services are necessary.

Landscape Maintenance:

- (a) Grass areas will be fertilized two (2) times a year (March and September) with a top grade slow-release fertilizer. Spring fertilization to include pre-emergency crab grass control herbicide.
- (b) All turf areas will be aerated in the fall with a core-type aerator.
- (c) Reseeding in the fall using a hybrid blend of tall fescue at the rate of 4 lbs. per 1,000 sq. ft. All bare spots larger than one (1) foot to be prepared, seeded and mulched with wheat straw.
- (d) Shrub and plant beds will be weeded regularly. Round-up combined with Surflan to be sprayed as needed to kill existing vegetation and to control weed.
- (e) Shrubs to be fertilized at the start of the growing season.
- (f) Shrubs and small trees treated for disease and insects as needed. Also, prune, shape, and remove any dead growth.
- (g) All shrubs and small trees to be mulched with shredded hardwood mulch twice a year.
- (h) All sidewalks, curbs, driveways and parking lot areas to be blown off once a week during the mowing season (April through September), and leaves to be removed from ALL grass areas once every two weeks in the months of October through March. This removal also includes the leaves that collect around the fence on the property.
- (i) All sidewalk cracks and expansion joints must be sprayed to kill weeds and maintained free from weeds.
- (j) Existing plant beds to be mulched twice a year.
- (k) Tree removal (medium to large) services. Cost to be negotiated as needed. Small trees and shrubs will be assessed.
- (l) All natural areas must be properly maintained to restrict new growth.
- (m) Fire ant treatment services. Cost to be negotiated if necessary and as needed.

General:

- (a) **Damages:** Damage to landscape material due to any cause shall be immediately corrected by Contractor. This includes straightening and staking any fallen or leaning trees; removal of dead or damaged material; and minor grading and replacement of sod displaced by vehicles. Any pits left from tree removal shall be filled with good soil and sod lay to match existing grade the same day. (Contractor must contact Project Manager within twelve (12) hours of such repairs.)

Contractor shall also replace any landscape, irrigation, or structures damaged by maintenance operations or due to neglect to perform these specifications. If the Contractor fails to repair damages or replace the damaged item, the City shall charge cost of all labor & materials required to complete reinstallation, to maintenance Contractor. (Project Manager will notify Contractor prior to replacement or repair.)

Any facilities, equipment, cars, etc., damaged by the contractor's employees will be repaired at the contractors expense.

- (b) Maintenance Schedule: Contractor shall provide a target schedule of activities to the Project Manager or designee a minimum of four (4) weeks prior to beginning of scheduled work. By the fifth day of each month, prior to 8:00 AM, the Contractor shall fax or hand deliver to the Project Manager or designee, a schedule of work to be performed during that month and any items or services not completed the previous month. At a minimum, the schedule will include items in chronological order, approximate times that the contractor will be operating at the location, and the tasks to be performed at the location.
- (c) Frequency of Maintenance Schedule:
1. During the months of April through September, Contractor shall provide grass mowing at least once a week.
 2. During the months of October through March, Contractor shall provide grass mowing (if necessary) at least once every two weeks.
 3. Contractor shall comply with any other provisions in this contract setting forth when work is to be done.
- (d) Time Limits: All maintenance shall be performed in accordance with Contractor's approved time schedule. (1) Special attention will be given to specified areas, as established by the City, prior to national holidays to ensure that the City is at its best during these times. Contractor will check area two (2) days prior to the holiday and verify that maintenance has been properly performed.
- (e) Safety: All safety equipment must be used and OSHA compliance must be adhered to when performing work on City properties. The Contractor will adhere strictly to all OSHA regulations.

SECTION 2. Definitions: The following definitions apply when Contractor is performing services described in this Exhibit A.

Debris and Litter: Objects that are unsightly or present obstacles to mowing and other grounds maintenance operations including but not limited to, rocks in lawn areas, wind and storm damage items; paper, glass, trash, or debris deposited or blown onto the sites; and tree limbs; are to be removed by Contractor, at Contractor's expense.

Edging: The cutting of overhanging vegetation away from the hard surface (curbs, sidewalks, driveways, etc.) is to include actual depth penetration of soil.

Hedge Trimming: The trimming of hedges or any shrub material.

Irrigation: All of the plumbing and electrical devices involved in the distribution of irrigation water. The plumbing begins at, but does not include the main supply and ends with the drain valve or sprinkler head. The electrical begins at, and includes, the electrical controller (including box) and ends with the electrical solenoid on a valve or sprinkler head.

Mulch: Shall mean shredded hardwood mulch.

Shrub: A woody plant of relatively low height, distinguished from a tree by usually having several stems rather than a single trunk.

Trimming: The cutting of grass and weeds in areas that is inaccessible to mowers due to obstacles.

Weed: Any plant growing where it is not desired. Plants such as, but not limited to: clover, dandelions, purslane, chickweed, plantain, knotweed, black medic, and volunteer trees are also considered weeds. Grass in plant, rock and shrub beds, cracks in sidewalks, streets and parking lots is also a weed.

SECTION 3. Schedule of Areas To Be Serviced.

The landscaping/ mowing listed below is required:

- D – Daily/Nightly
- W – Weekly
- M – Monthly
- Q-Quarterly (every 3 months)
- A/N – As Needed
- B – Bi-Annually (every 6 months)
- BW – Bi-Weekly (every 2 weeks)
- N – Needed During Month
- A/E – After All Scheduled Events
- N/A – Not Applicable at this time

LANDSCAPE	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Shrub and plant beds will be weeded regularly. Round-up combined with Surflan to be sprayed as needed to kill existing vegetation and to control weeds.	A/N	A/N	A/N	M	M	M	M	M	M	A/N	A/N	A/N
Shrubs to be fertilized at the start of the growing season.			N									
Shrubs and small trees treated for disease and insects as needed. Also, prune, shape, and remove any dead growth.	A/N											
All shrubs and small trees to be mulched with shredded hardwood mulch twice a year.									N			
All sidewalks, curbs, driveways and parking lot areas to be blown off once a week during the mowing season (April through September), and leaves to be removed from ALL grass areas once every two weeks in the months of October through March. This removal also includes the leaves that collect around the fence on the property.	W	W	W	W	W	W	W	W	W	W	W	W
All sidewalks and curbs to be edged during the growing season (April through October).	A/N	A/N	A/N	W	W	W	W	W	W	W	A/N	A/N
All sidewalk cracks and expansion joints must be sprayed to kill weeds and maintained free from weeds and shall be blown off after each cutting.	A/N	A/N	A/N	W	W	W	W	W	W	A/N	A/N	A/N
Existing plant beds to be mulched twice a year.	N/A											
Tree removal (medium to large) services. Cost to be negotiated as needed. Small trees and shrubs will be assessed.	A/N											
All natural areas must be properly maintained to restrict new growth.	A/N											

SECTION 4. Additional Work. It is further agreed that the Contractor will perform extra work indicated below that is not required in this contract for the prices indicated below.

- (a) Routine Mowing: Mowing shall be performed in a manner consistent with landscape maintenance industry standards that ensures smooth surface appearance without scalping or leaving any missed uncut grass. Price to be paid is \$65.00 per acre.
- (b) String Trimmer: Grass shall be trimmed during, or as an immediate operation following, mowing. Trimming may be accomplished by hand or hand powered shears or rotary nylon “fish line” cutting machines. Price to be paid is \$14.95 per hour.
- (c) Sod Replacement: Contractor will supply sod replacement to the City on an as-needed basis. Sod will be priced per square foot of removal, grade and install; prices will be adjusted annually. Price to be paid is \$75.00 per square yard.
- (d) Storm and Debris Cleanup: Debris shall be removed within the project maintenance areas after major storm events, including but not limited to hurricanes, at the City’s request, on a crew hourly rate, which should include a minimum five (5) person crew, all necessary equipment, and disposal in said rate. Price to be paid is \$65.00 per hour.
- (e) Fire ant treatment services: Cost to be negotiated if necessary and as needed. Price to be paid is \$75.00 per perimeter treatment or \$50.00 per hour for spot treatment.