

DURHAM



1869
CITY OF MEDICINE

REQUEST FOR QUALIFICATIONS (RFQ)

RFQ No. SD-2018-06

Private Drainage Assistance Projects

Date Issued: December 11, 2017

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10. Date of RFQ.

December 11, 2017

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

Direct questions and concerns to the following.

ATTN: Dana Hornkohl
Public Works Department
101 City Hall Plaza
Durham NC 27701-3329
Phone: (919) 560-4326, ext. 30246
Fax: (919) 560-4316
E-mail: Dana.Hornkohl@DurhamNC.gov

Project Web Page: <http://durhamnc.gov/3256>

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

ATTN: Paul Wiebke
Public Works Department
101 City Hall Plaza
Durham NC 27701-3329
Phone: (919) 560-4326
Fax: (919) 560-4316
E-mail: Paul.Wiebke@DurhamNC.gov

DESCRIPTION OF PROJECT AND NATURE OF RFQ

30. Project. The City of Durham is seeking assistance through professional services for the survey, design, permitting and developing of construction documents for multiple stormwater drainage assistance projects involving private property. The City is seeking this assistance through the Small Local Business Enterprise (SLBE) program. Through this request for qualifications, the City intends to select several of the most qualified teams based on their submittals. The City intends to negotiate with each of the most qualified teams in order to enter into a contract to address multiple project sites. At this time the City has fourteen project sites and it is anticipated that three teams may be selected with each team being given four to five project sites. It is the City's intent that the construction documents for all of the project sites will be ready for advertisement in a single construction project in approximately the same amount of time.

The typical project site involves replacing and/or rerouting a compromised, existing stormwater drainage pipe system located on private property. Some sites involve stabilizing and/or rerouting open channels on private property. Older sections of Durham were developed with little or no stormwater regulations. There are residential and commercial structures that were built over, or in close proximity to stormwater drainage systems (pipes and/or open channels). As these systems have reached their useful life, they become compromised and are threatening existing buildings and structures. The City has determined that each project site is eligible for the Private Drainage Assistance Program. The eligibility criteria for the program may be reviewed in the Durham Code of Ordinances, [Section 70-685](#).

40. Scope of Work. The City is soliciting persons or firms to provide the following for each stormwater drainage assistance project involving private property.

40.1 Project Recommendations

- A. Utilizing existing GIS data and as-built documentation provide recommendations for cost-effective long term solutions to the compromised stormwater drainage system. The overall project site may include private property and rights-of-way (privately, City of Durham, and/or North Carolina Department of Transportation (NCDOT) maintained).

Private Drainage Assistance Projects (RFQ No. SD-2018-06)

- B. Recommendations should balance longevity and cost (City and private property owner) including upfront and maintenance costs. It is envisioned that alternatives may include some of the following options.
 - o Replacement and/or rerouted reinforced concrete pipe (RCP) and drainage structures
 - o Stabilization and/or rerouted open channels
- C. The City envisions choosing RCP as the pipe material option based on the desire for a maximum replacement life span. The City will entertain other material options so long as the various recommendations are similarly compared using an overall cost per year of life span.

40.2 Existing Conditions Survey and Easement Plats

- A. Prepare a detailed topographic and boundary survey within the project limits.
 - o Topographic survey and planimetric mapping on private property and within adjacent rights-of-way in sufficient length to design project tie in points including the following items.
 - Pavement, drives, buildings, parking lots
 - Landscape areas including woods lines and all trees greater than 6 inch diameter at breast height
 - Sign locations and types
 - Pavement markings
 - Fence locations, heights, and materials
 - Utility locations, location of underground utilities shall be based on above ground structures and Quality Level B Subsurface Utility Engineering (SUE)
 - Water, gas, sanitary sewer, storm drainage, drainage channels, underground and overhead telecommunications, underground and overhead power, etc.→
 - o Locate and map current effective, preliminary, and proposed FEMA special flood hazard areas.
 - o Property and deed research.
 - o Horizontal and vertical control, NCGS NAD 83 datum, Class I survey.
- B. Prepare easement plats and deeds for and secure permanent and temporary easements.
 - o The City will be responsible for an easement acquisition cost and recording fees.

40.3 Utility Relocation Design and Construction Documentation

- A. Provide design calculations and documentation for the relocation of utilities needed to install the chosen project option.
- B. Coordinate with utility providers for proposed utility relocations.
- C. Provide construction drawings and technical specifications for all utility relocations.
- D. Note: All proposed water and sanitary sewer work shall conform to [City of Durham Standard Specification and Details](#).

40.4 Storm Drainage and Roadway Design and Construction Documentation

- A. Provide design calculations and documentation for the chosen storm drainage project option and roadway replacement.
- B. Provide construction drawings and technical specifications for chosen project option.
- C. Provide a traffic control and construction detour plan.
- D. Provide a sediment and erosion control plan.
- E. Provide an Opinion of Probable Cost (OPC) for the complete construction project.
- F. Note: All storm drainage design shall meet the requirements of the City of Durham's [Reference Guide for Development](#). In some instances existing conditions may not allow the project design to meet these requirements. In these instances the intent will be to meet or improve existing pipe capacity.
- G. Note: All roadway and storm drainage construction shall meet the North Carolina Department of Transportation (NCDOT) [Standards Specifications](#) and [Standard Drawings](#).

40.5 Permitting

- A. Submit for and secure all permits necessary to perform the proposed project, including but not limited to the following.
 - o NCDEQ Certificate of Erosion and Sediment Control Plan Approval (if necessary)
 - o City of Durham Construction Document Approval
 - o City of Durham Certificate of Appropriateness where projects are located within local historic districts.
- B. The City of Durham will pay for all permit and application fees.

40.6 Meetings

- A. Project kickoff meeting.
- B. Site meeting with private property owner(s) and stakeholder(s) to discuss project options.

40.7 Available Information

- A. Geographic Information System (GIS) Data:
 - o Geodatabase information is available in ArcGIS format upon request.
 - o [GoMaps](#)
- B. As-Built Documentation
 - o Plan and profile as-built information may be available for some project sites. Once the project sites are identified during contract negotiation, any as-built information will be provided.
- C. NC Flood Risk Information: <http://fris.nc.gov/fris/Download.aspx?ST=NC>
 - o Current effective study data.
 - o Preliminary study data.
- D. Cityworks service request and work order records for the project site area may be available for some project sites. Once the project sites are identified during contract negotiation, any as-built information will be provided.

50. Compensation Amount and Schedule. The City expects that the successful firms will be compensated for the work as described below.

40.1 Project Recommendations: Labor fee plus expense basis with a maximum labor fee.

40.2 Existing Conditions Survey and Easement Plats: Lump sum fee.

40.3 FEMA Flood Modeling: Labor fee plus expense basis with a maximum labor fee.

40.4 Utility Relocation Design and Construction Documentation: Labor fee plus expense basis with a maximum labor fee.

40.5 Storm Drainage and Roadway Design and Construction Documentation: Labor fee plus expense basis with a maximum labor fee.

40.6 Permitting: Labor fee plus expense basis with a maximum labor fee.

40.7 Meetings: Labor fee plus expense basis with a maximum labor fee.

50.1 Project Management: Labor fee plus expense basis with a maximum labor fee.

Valid expenses include reproduction and express delivery service. Travel and lodging costs are not considered valid expenses.

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

The City expects the services to be completed within six months of the Notice to Proceed.

60. Definitions in this RFQ: City, RFQ, Proposal, Candidate, Contractor, Should. Unless the context indicates otherwise – (a) The expressions “RFQ,” “this RFQ,” and “the RFQ” refer to this document as it may be amended or updated. (b) “City” and “city” mean the City of Durham. (c) The “proposal” is the response of a person, firm, or corporation proposing to provide the services sought by this RFQ. (d) The word “Candidate” or “candidate” is the person, firm, or corporation that submits a proposal or that is considering submitting a proposal. (e) The word “Contractor” or “contractor” is the person, firm, or corporation with which the City enters into a contract to provide the services sought by this RFQ. That is, “contractor” generally refers to a successful candidate that has obtained a fully executed contract with the City, while “candidate” is generally reserved to the stage before a contract has been signed. (f) The word “should” is used to tell candidates what the City thinks it wants and/or what the project manager thinks is best. Candidates that want to increase the likelihood of being selected will, in general, do what the RFQ says candidates “should” do, but failure to comply with all “shoulds” will not necessarily and automatically result in rejection.

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

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

Definitions.

In this section (Trade Secrets and Confidentiality) –

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

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

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

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

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

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

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

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

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

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

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

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

85. Reserved.

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

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

- A. Professional Liability. Limits no less than \$1,000,000 each occurrence.
- B. Umbrella or Excess Liability. Consultant 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. Consultant 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.
- C. Worker's Compensation & Employers Liability. Consultant 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.
- D. Additional Insured. Consultant agrees to endorse the City of Durham as an additional Insured on the Professional Liability coverage.
- E. Certificate of Insurance. Consultant agrees to provide the City of Durham a Certificate of Insurance evidencing that all coverage's, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Consultant's insurer. If Consultant 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, Consultant 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 the coverage no longer in compliance. Certificate Holder address should read:

City of Durham
ATTN: Dana P. Hornkohl, PE, CFM
Public Works Department
101 City Hall Plaza
Durham, NC 27701
E-mail: Dana.Hornkohl@DurhamNC.gov

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

110. Discretion of the City.

- A. The City of Durham reserves the right to reject any or all proposals.
- B. Notwithstanding anything to the contrary in this document or in any addendums to this document, unless the contrary provision refers specifically to this provision, the City reserves the right (i) to negotiate changes of any nature with any candidate with respect to any term, condition, or provision in this document and/or in any proposals, whether or not something is stated to be mandatory and whether or not it is said that a proposal will be rejected if certain information or documentation is not submitted with it, and (ii) to enter into an agreement for some or all of the work with one or more persons, firms, or corporations that do not submit proposals. For example, all deadlines are for the administrative convenience or needs of the City and may be waived by the City in its discretion. This subparagraph B applies to the entire RFQ, including the UBE portions.
- C. Where the City asks or tells candidates to do stated things, such as that a proposal should follow a stated format or that the candidate should do stated things in seeking the contract, the City may reject a proposal because it does not comply with those requests, so the candidate is adding to its risk of rejection by non-compliance. Still, the City may, in its discretion, waive non-compliance. This subsection (C) does not limit subsections (A) and (B).
- D. Of course, once a contract is signed, the parties to the contract may enforce the contract according to its terms as allowed by applicable law.

SCHEDULE

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

Advertisement of Request for Qualifications: December 11, 2017

Pre-Submittal Conference: January 8, 2018, 1:00 PM

Last date and time for receipt of proposals: January 22, 2018, 1:00 PM

Submittal Evaluation Committee to complete its evaluation: 14-days after previous step.

Interviews (if necessary): 7-days after previous step.

City Manager and successful candidate execute contract: 45-days after previous step.

Notice to Proceed: 5-days after the previous step (anticipated March 2018).

The City expects the services to be completed within six months of the Notice to Proceed.

130. Keeping Proposals Open. All proposals will remain open and valid for the City to accept for a period of 60-days after the deadline for submission of proposals. The Project Manager may release candidates from this obligation by a written letter that specifically refers to this paragraph if he or she determines that the candidate and/or the proposal will not meet the City's needs.

140. Deadline to Submit Proposals. Candidates should see that their proposals are received at the following address by 1:00 PM, January 22, 2018, 101 City Hall Plaza, Third Floor Customer Service Desk, Durham NC 27701.

GETTING MORE INFORMATION ON THE PROJECT AND RFQ PROCESS

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

160. Pre-submittal conferences, meetings, and site visits. The City will conduct a pre-submittal conference at 1:00 PM, January 8, 2018, 101 City Hall Plaza, Third Floor Conference Room, Durham NC 27701. Attendees should already be familiar with this RFQ. Attendance is not required, but is included in the RFQ evaluation criteria.

170. Updates and revisions to RFQ. If you have supplied the Project Manager with your e-mail address, updates to this RFQ ("addendums" or "addenda") will be sent to you in that manner. Current project information may also be found on the project web page: <http://durhamnc.gov/3256>.

EVALUATION CRITERIA

180. Evaluation Criteria. If an award is made, it is expected that the City's award will be to the candidates that agree to meet the needs of the City. A number of relevant matters will be considered, including qualifications and cost. The Evaluation Criteria are intended to be used to make a recommendation to the entity or person (the City Manager or the City Council) who will award the contract, but who are not bound to use these criteria or to award on the basis of the recommendation. The City reserves the right to change the criteria and to otherwise vary from this procedure as it determines to be in the City's interest.

190. Cover Letter — 20 points. Submittals will be evaluated to determine how well the cover letter meets the requirements set out in the RFQ.

200. Tab 1: Qualifications — 60 points. Submittals will be evaluated against the questions below to determine how qualified the submitter is in meeting the requirements of the RFQ.

- a) How well does the Organizational Chart depict a qualified team?
- b) How well qualified is the Project Manager?
- c) How well qualified is the overall team?
- d) How well qualified are the proposed subconsultants?
- e) What is the nature and number of any previous team collaborations for similar projects?

210. Tab 2: Experience — 150 points. Submittals will be evaluated against the questions below to determine the experience of the submitter in similar projects.

- a) Experience in similar projects.
- b) Experience of the primary firm.
- c) Experience of the overall team.
- d) Experience of the proposed subconsultants.
- e) Experience depicted in the included resumes.

220. Tab 3: Understanding of the Project — 70 points. Submittals will be evaluated against the questions below to determine how well the submitter displays their understanding of the project and requirements described in the RFQ.

- a) How well is project understood by the submitter?
- b) How well does the project management approach of the submitter apply to this project?
- c) How well does the quality control approach proposed by the submitter ensure a successful project?
- d) What is the firm's understanding of the City's role in the project?

225. Tab 4: Miscellaneous — 70 points. Submittals will be evaluated against the questions below to determine how well the submitter meets miscellaneous requirements described in the RFQ.

- a) What is the location of the primary team members?
- b) Did the candidate adhere to the requirements of the Equal Business Opportunity Program (see section 250)?
- c) Did the submitter attend the Pre-Submittal Conference?
- d) How well did the submittal meet the requirements for font, number of pages, description of claims, conflicts of interest, etc.?
- e) Are the required forms included in the submittal?
- f) How well organized is the submittal?

226. Reserved.

230. Reserved.

CONTENTS OF PROPOSAL

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

- A. **Cover Letter.** The submittal should contain a cover letter, signed by a principal of the candidate. The cover letter shall be a maximum of two single-sided pages in length and will not count towards the overall page limit. The cover letter should contain the following statements and information.
 1. **Statement 1.** The undersigned, whose title and position with the candidate are stated next to or beneath his or her signature, has the authority to submit this proposal (including this cover letter) on behalf of the candidate in response to the City of Durham's Request for Qualifications.

2. Statement 2. Unless otherwise clearly stated in this response to the RFQ, our proposal accepts the terms and conditions stated in the RFQ, including the description of services to be performed and the provisions of the contract to be signed.
3. Statement 3. This submittal is not an offer, and the candidate retains the right to decline to enter into a contract with the City for this project.
4. Statement 4. The cover letter should contain one of the following two paragraphs A or B. If (i) the cover letter lacks both paragraph A and paragraph B, or (ii) the cover letter contains paragraph A but fails to comply with the instructions in the section of the RFQ titled "Trade Secrets and Confidentiality," the City may treat everything it receives from the candidate as not trade secret or confidential, and the City may disclose to the public everything it receives from the candidate.
 - A. With respect to all trade secrets that the candidate may submit to the City in connection with this proposal or the contract, if the contract is awarded to the candidate, the candidate shall comply with the section of the RFQ titled "Trade Secrets and Confidentiality," including all of its subsections, including the subsection titled "Defense of City." The candidate acknowledges that the City will rely on the preceding sentence.

-or-
 - B. The candidate is not submitting any trade secrets to the City in connection with this proposal or the contract; if the contract is awarded to the candidate, the candidate will not submit any trade secrets to the City in connection with this proposal or the contract. The candidate acknowledges that the City will rely on the preceding sentence.
5. Contact information. Include the candidate's name and address, and the contact information (name, mailing address, e-mail address, fax number, and telephone number) of the person whom the City should contact regarding the proposal.
6. Legal Status of the Candidate and Signers. State the full, exact name of the candidate. State whether the candidate is an individual, corporation, limited partnership, general partnership, limited liability company, professional corporation, professional association, etc. If it is anything other than an individual or a general partnership, specify the State under which the entity is organized. If the State under which the entity is organized is not North Carolina, specify whether the candidate has received a certificate of authority from the N. C. Secretary of State to transact business in North Carolina. State whether the entity is in existence at the time the proposal is submitted, and if not, whether and when the candidate intends to officially form the entity. State the names and titles of the individuals who will sign the contract with the City.
7. Conflict of Interest. If the candidate has any grounds to believe there could be a conflict of interest, such as that a City employee who is involved in awarding the contract has a connection with the candidate, please explain.
8. Addendums. The cover letter should list the last addendum that the City issues for this RFQ, with the following statement, "The undersigned candidate has read all the addendums issued by the City for this RFQ, through and including Addendum No. ____." In that blank the candidate should list the number of the last addendum read.

- B. **Tab 1: Qualifications.** Qualifications, certifications, and abilities of key staff identified in the proposal, as demonstrated by performance/role in projects of a similar nature.
1. Provide an organizational chart which clearly identifies the key members of the project team. Subconsultants should be included. Specifically identify the individual(s) who will likely serve as project manager(s).
 2. Provide one page resumes for all staff included on the organizational chart. Provide the following information on each resume. Resumes will not be counted towards the page limit.
 - Name and title;
 - Firm;
 - Address;
 - Phone number;
 - E-mail address;
 - Role in and name of similar past projects;
 - Project responsibilities; and
 - Name of employing company for past projects listed if different from current firm.
 3. Describe any previous collaboration(s) between key team members, the responsibilities of each team member during these collaborations, and the project(s) outcome. Cite any significant achievements reached as a result of this collaboration. Discuss the successes of the team collaboration, any design or constructability related problems encountered, and methods used to mitigate issues. Describe and number collaborations between staff in the same firm, and collaborations between firms.
 4. List the candidate's current licenses that are pertinent to this project.
 - The City may reject proposals from any candidate that does not hold licenses required by North Carolina laws to perform the contemplated work.

- C. **Tab 2: Experience.** List a maximum of five (5) relevant, similar projects, either currently in progress or having been completed in the past five (5) years, including any projects within North Carolina, containing work demonstrating the skills and abilities of the key team members, as follows:
1. List only projects involving the key team members or subcontractors proposed for this Project.
 2. List projects in date order with newest projects listed first and include the following:
 - Brief project description;
 - Dates and times the project services were performed;
 - Owner's representative having knowledge of the firm's work, include the contact name, phone, e-mail, address;
 - Indicate if the project was designed and constructed to NCDOT standard specifications and details. Projects that are designed and built to these standards will receive higher evaluation credit than those projects that do not.
 - Provide the initial award of contract amount, the final contract amount (include any and all change orders) and the total time period to complete the work. Please note whether contract work was completed on time and/or within budget.
 - Name of key team member(s) involved; including any changes to the project team and/or key team member(s) after project initiation, and if the key team member(s) completed the project. Include the project's current status if it is not yet completed. If experience for a key team member is listed from a previous employer, fully disclose with what firm the work was performed.
 - A list highlighting those skills demonstrated by key team member(s);
 - Discuss the methods, approach and controls used on the project in order to complete it in an effective, timely, economical and professional manner. If services included construction drawings, discuss the percentage that the engineer's construction cost estimate was within the bid award amount and final construction amount. Include an explanation for any differentials greater than 10%; and
 - Whether or not the project was involved in any construction claims, how they were resolved, and what the role of the key team members was for resolution.
- D. **Tab 3: Understanding of the Project.**
1. Discuss the firm's understanding of the project, the project objectives, and describe the proposed project approach to deliver the Services in an effective, timely and professional manner. Outline the project plans, structure and services to be provided and how and when these services shall be provided. This description should fully and completely demonstrate the firm's intended methods for servicing the requirements of all aspects of all types of projects set forth herein.
 2. Describe your firm's project management and quality control procedures.
 3. Describe the team's approach to providing accurate estimates for repairs projects identifies by the firm.
 4. Describe any support needed from City staff in order to execute the Services.
- E. **Tab 4: Miscellaneous.**
1. Discuss the location of the team members included in the organization chart.
 2. Discuss the team's ability to handle meet the schedule described in the RFQ.
 3. Discuss how the team adhered to the requirements of the Equal Business Opportunity Program (see Section 250).
 4. City of Durham, Equal Business Opportunity Program, Professional Services Forms (see Exhibit A)
 5. Non-Collusion Affidavit (see Exhibit C)

250. Equal Business Opportunity Program (EBOP).

- A. It is the policy of the City to provide equal opportunities for City contracting for underutilized firms owned by minorities and women doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct present effects of past discrimination and to resolve complaints of discrimination. This policy applies to all professional services categories.

- B. There are no MUBE or WUBE goals for this project. In accordance with the Ordinance, all contractors are required to provide information requested in the [Professional Services Forms](#) package (see Exhibit A). It is the intention of the City that proposals that do not contain the appropriate, completed Professional Services Forms will be deemed non-responsive and ineligible for consideration and that the Participation Documentation and the Employee Breakdown documents are required of all contractors. In lieu of the Employee Breakdown, contractors may submit a copy of the current EEO-1 form (corporate basis). Other forms in the package should be used as needed.
- C. The Department of Equal Opportunity/Equity Assurance is responsible for the Equal Business Opportunity Program. All questions about Professional Services Forms should be referred to Deborah Giles or other department staff at (919) 560- 4180.

HOW TO SUBMIT A PROPOSAL

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

Write the following prominently on the outside of the envelope:

Private Drainage Assistance Projects (RFQ No. SD-2018-06)

Proposals are to be received no later than January 22, 2018 at 1:00 PM. Proposals should not be made by e-mail or fax.

280. Format. Interested firms shall submit one (1) bound original proposal, including all required forms and one (1) CD or USB-drive containing a digital copy of the complete proposal package in PDF format. Please begin the file name of your PDF copy with the lead firm’s name.

Cover letter shall be a maximum of two single-sided pages in length. Tabs 1 through 4 shall be a maximum of fifteen single-sided pages in length. Required forms, resumes, and tabs/dividers do not count toward the page limit.

Proposals shall be printed on 8-1/2” x 11” paper; although pages containing organizational charts, matrices, or large diagrams may be printed on 11” X 17” paper in order to preserve legibility (provided they have been z-folded). Type size shall be no smaller than 12 points for narrative sections, but may be reduced for captions, footnotes, etc. as required while maintaining legibility. Divider pages are not included in the page counts. Submissions that do not conform to the requirements listed herein may be removed from consideration at the sole discretion of the City of Durham.

Please submit packages comprised of materials that are easily recyclable or reusable.

290. Alternative Proposals. If you wish to submit a proposal that does not comply with the City’s standards and expectations, consider submitting two proposals: a proposal that complies, plus a proposal that does not comply, so that your “non-compliant” version can be considered as an alternative if the City is interested. This will allow your compliant version to be considered if the City remains steadfast on applying the standards and expectations.

300. Candidate to Bear Expense; No Claims against City. No candidate will have any claims or rights against the City arising out of the participation by a candidate in the proposal process. No candidate will have any claims or rights against the City for the City’s failure to award a contract to it or for awarding a contract to another person, firm, or corporation, regardless of whether the other person, firm, or corporation participated in the RFQ process or did not submit a proposal that complied with the RFQ. A notice of award will not constitute acceptance by the City; the City’s only method of acceptance is the City’s execution of a formal contract in accordance with law.

310. Reserved.

MISCELLANEOUS

320. Notice under the Americans with Disabilities Act. A person with a disability may receive an auxiliary aid or service to effectively participate in city government activities by contacting the ADA Coordinator, voice (919) 560-4197, fax 560-4196, TTY (919) 560-1200, or ADA@durhamnc.gov, as soon as possible but no later than 48 hours before the event or deadline date.

Aviso bajo el Acto de Americanos Discapacitados – Una persona con una discapacidad puede recibir asistencia o servicio auxiliar para participar efectivamente en actividades del gobierno de la ciudad con ponerse en contacto con el Coordinador de ADA, buzón de voz (919) 560-4197, fax (919) 560-4196, TTY (919) 560-1200, o ADA@durhamnc.gov, lo más antes posible pero no menos de 48 horas antes del evento o fecha indicada.

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

- A. **Statement of City EEO Policy.** The City of Durham opposes discrimination in employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Therefore, it desires that firms doing business with the City:
1. not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
 2. take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. This action includes employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 3. state, in solicitations or advertisement for employees, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
 4. include this Statement of City EEO Policy in every purchase order for goods to be used in performing City contracts and in every subcontract related to City contracts.
- B. **Livable Wage.** The City of Durham desires that firms doing business with the City pay their workers an hourly wage while working on City contracts such that, if annualized, a person working 40 hours per week will earn enough money to support a family of four above the poverty level, as poverty is defined by the United States Census Bureau. As of July 1, 2017, that wage is \$14.15 per hour. That wage is adjusted annually, and the wage as adjusted will be posted on the City's Purchasing Division web page. The City's desire is that firms pay the wage as adjusted from time to time.

340. Ownership of Work Products. The City shall have exclusive ownership of all intellectual property rights in all designs, plans and specifications, documents and other work product prepared by, for, or under the direction of the selected firm pursuant to any contract under this RFQ (collectively, the "Intellectual Property"), including without limitation the right to copy, use, disclose, distribute, and make derivations of the Intellectual Property for any purpose or to assign such rights to any third party. The Intellectual Property shall be prepared in the City's name and shall be the sole and exclusive property of the City, whether or not the work contemplated therein is performed. The City will grant the firm a royalty-free, non-exclusive license to use and copy the Intellectual Property to the extent necessary to perform the contract.

350. Reserved.

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

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

370. State Treasurer's lists regarding Iran and Boycott of Israel. If the candidate 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 candidate otherwise states in its proposal: the candidate affirms (by submitting a proposal) that

- A. 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
- B. 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.

Exhibit A - City of Durham, Equal Business Opportunity Program, Professional Services Forms



CITY OF DURHAM EQUAL BUSINESS OPPORTUNITY PROGRAM

PROFESSIONAL SERVICES FORMS

Revised 03/2016



Phone: 919-560-4180
Facsimile: 919-560-4513

Street Address:

**101 City Hall Plaza (Annex)
Durham, North Carolina 27701**

The Department of Equal Opportunity/Equity Assurance
Good Things Are Happening In Durham

CITY OF DURHAM EQUAL BUSINESS OPPORTUNITY PROGRAM

Policy Statement

It is the policy of the City to provide equal opportunities for City contracting to underutilized businesses owned by minorities and women doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct the present effects of past discrimination and to resolve complaints of discrimination.

Goals

To increase the dollar value of all City contracts for goods and services awarded to minority and women business enterprises, it is a desire of the City that the contractor will voluntarily undertake efforts to increase the participation of minority and women individuals at higher skill and responsibility levels within non-minority firms engaged in contracting and subcontracting with the City.

The Equal Opportunity/Equity Assurance Director shall determine participation goals based upon the availability of minority and women business enterprises (MWBES) within the defined scope of contracting, and the goals established for the contracting category.

Equal Business Opportunity Program UBE Participation Documentation

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

UBE Participation Documentation must be used to document participation of an underutilized business enterprise (UBE) on Professional Services projects. All UBEs must be certified by the State of North Carolina as a historically underutilized business, the North Carolina Department of Transportation as a minority-owned or women-owned business or the U.S. Small Business Administration's 8(a) Business Development Program prior to the submission date. If a business listed has not been certified, the amount of participation will be reduced from the total utilization.

Employee Breakdown must be completed and submitted for the location providing the service/commodity. If the parent company will be involved in providing the service/commodity on the City contract, a consolidated employment breakdown must be submitted.

Letter of Intent to Perform as a Sub-consultant/Subcontractor must be completed for UBEs proposed to perform on a contract. This form must be submitted with the proposal.

Post Proposal Submission UBE Deviation

Post proposal submission UBE deviation participation documentation must be used to report any deviation from UBE participation either prior to or subsequent to startup of the project. The Equal Opportunity/Equity Assurance Department must be notified if the proposed sub-consultant/subcontractor is unable to perform and for what reasons. Substitutions of sub-consultants/subcontractor, both prior to and after awarding of a contract, are subject to City approval.

UBE Goals Not Met/Documentation of Good Faith Efforts

It is the responsibility of consultants/contractors to make good faith efforts. Good Faith Efforts means the sum total of efforts by a particular business to provide equitable participation of minority-owned and women-owned individuals or businesses as sub-consultants/subcontractors.

Whenever contract alternatives, amendments or extra work orders are made individually or in the aggregate, which increase the total value of the original contract, the consultant must make a good faith effort to increase UBE participation such that the amounts subcontracted are consistent with the established goals.

SELECTION OF CONSULTANTS/CONTRACTORS FOR ARCHITECTURAL/ENGINEERING AND OTHER PROFESSIONAL SERVICES

Goal

The purpose is to provide underutilized business enterprises owned by minorities and women with equal opportunities for participation on City of Durham contracts.

Definition of the Scope of the Selection Policy

The Equal Opportunity/Equity Assurance Director shall determine UBE participation goals for each contracting category to be awarded by the City. Goals for each project or contract will be based upon the availability of underutilized business enterprises(UBE's) within the defined scope of work, delineated into percentages of the total value of the work.

The City of Durham will consider a formal certification of the State of North Carolina's Historically Underutilized Businesses (HUB) Office, North Carolina Department of Transportation (N.C. DOT) minority and women businesses and the United States Small Business Administration (U.S. SBA) 8(a) Development Program as meeting the requirements of the Equal Business Opportunity Program, provided there is evidence that the firm is currently certified by one of the stated entities.

Underutilized Business Proposal Requirements

The prime consultant/contractor shall submit a proposal in accordance with the City of Durham's request for Proposal. In addition, the prime consultant/contractor must submit all required Professional Services Forms.

Selection Committee for Professional Services

A selection committee shall be established and may be composed of the following: City Manager or a designated representative of this office; Director of Finance or a designated representative of this office; department head responsible for the project; City Engineer if engineering services are involved; the Equal Opportunity/Equity Assurance Director or designee and Purchasing Manager or designee. Other representatives shall be called upon as needed based on their areas of expertise.

The committee shall screen the proposals based on the following criteria:

1. Firms; interest in the project;
2. Current work in progress by firm;
3. Past experience with similar projects;
4. General proposal for carrying out the required work;
5. Designation of key personnel who will handle the project, with resume for each;
6. Proposed associate consultants/contractors, UBE subconsultants;
7. Indication of capability for handling project;
8. Familiarity with the project;
9. Fees that have been charged for recent comparable projects;
10. References;
11. UBE Participation; and
12. Documentation of Good Faith efforts should UBE participation requirements not be met.

After ranking the firms presenting proposals based on the above criteria, interviews will be conducted by the selection committee with the top ranked firms (3-5). The contracting department will make the final recommendation, prepare contracts for review by the City Attorney, and prepare the recommendation for the City Council including the following:

1. Description and scope of the project;
2. Recommended firm;
3. Contract cost;
4. Time limits;
5. Basis for selection;
6. Source for funding;
7. Equal Business Opportunity Ordinance compliance; and
8. Recommendation that the contract be approved by the City Council.

Contract Award

A provision must be written in each contract with an architect or engineer requiring them to work with Equal Opportunity/Equity Assurance Department in creating and identifying separate work.

Project Evaluation

An evaluation shall be made of each contract after its completion to be used in consideration of future professional services contracts. The evaluation shall cover appropriate items from the check list for ranking applicants. A copy of the evaluation shall be given to the consultant, and any comment he/she cares to make shall be included in the files.

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

**Names of all firms
Project (including
prime and
subconsultants/sub
- contractors)**

Location

**UBE
Firm
Yes/No**

**Nature
of
Participation**

**% of Project
Work**

		Yes () No ()		
		Yes () No ()		
		Yes () No ()		
		Yes () No ()		
		Yes () No ()		
		Yes () No ()		
		Yes () No ()		
		Yes () No ()		

TOTAL _____

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

Signature - Authorized Officer of Prime Consultant/Contractor Firm

Date

**COMPLETE THIS FORM OR ATTACH COMPUTERIZE FORM
EMPLOYEE BREAKDOWN**

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

Part A – Employee Statistics for the Primary Location

M— a — l — e — s	F — e — m — a — l — e — s
-------------------------	----------------------------------

Employment category	Total Employees	Total males	Total females	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
Project Manager													
Professional													
Technical													
Clerical													
Labor													
Totals													

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

M— a — l — e — s	F — e — m — a — l — e — s
-------------------------	----------------------------------

Employment category	Total Employees	Total males	Total females	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
Project Manager													
Professional													
Technical													
Clerical													
Labor													
Totals													

Letter of Intent to Perform as a Sub-Consultant

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

Minority(African American, American Indian, Asian or Hispanic) Woman

The UBE status of the undersigned is certified if identified as HUB certified by the N.C Department of Administration HUB Office, minority or women certified by the N.C. Department of Transportation and 8(a) certified by the U.S. Small Business Administration.

The undersigned is prepared to perform the following described work in connection with the above project (specify in detail particular work items or parts thereof to be performed):

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

<u>ITEMS</u>	<u>PROJECTED COMMENCEMENT DATE</u>	<u>PROJECTED COMPLETION DATE</u>

The consultant will subcontract _____% of the dollar value of this contract to UBE sub-consultant.

The undersigned will enter into a formal agreement in the amount of \$ _____ for the above work with you, conditioned upon your execution of a contract with the City of Durham.

Name _____ Title _____
 Company _____ Telephone _____
 Address _____
 Signature _____

REQUEST TO CHANGE UBE PARTICIPATION

Project: _____

Name of bidder or consultant: _____

Name and title of representative of bidder or consultant: _____

Address: _____ Zip Code: _____

Telephone No: _____ Fax Number: _____

Email address: _____

Total amount of original contract, before any change orders or amendments: _____

Total amount of the contract, including all approved change orders and amendments to date, but not counting the changes proposed in this form: _____

Dollar amount of changes proposed in this form: _____

The proposed change (*check one*) **increases** **decreases** the dollar amount of the bidder's/consultant's contract with the City.

Does the proposed change decrease the UBE participation? (*check one*) **yes** **no**

If the answer is **yes**, complete the following:

BOX A. For the subcontract proposed to be changed (increased, reduced, or eliminated): Name of subcontractant _____

Goods and services to be provided before the proposed change: _____

Is it proposed to eliminate this subcontract? **yes** **no**

If the subcontract is to be increased or reduced, describe the nature of the change (*such as adding \$5,000 in environmental work and deleting \$7,000 in architectural*): _____

Dollar amount of this subcontract before this proposed change: _____

Dollar amount of this subcontract after this proposed change: _____

This subcontractor is (check one):

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

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

Name of sub-consultant for the new work: _____

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

Dollar amount proposed of this proposed subcontract: This sub-consultant is:

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

Add additional sheets as necessary.

UBE GOALS NOT HAVING BEEN MET. The following information must be presented by the consultant concerning good faith efforts taken.

It is the responsibility of consultants to make good faith efforts. Any act or omission by the City shall not relieve them of this responsibility. For future efforts, it shall be comprised of such efforts which are proposed to allow equitable participation of socially and economically disadvantaged employees and sub-consultants/subcontractors. The City Manager shall apply the following criteria, with due consideration of the quality, quantity, intensity and timeliness of efforts of consultants/contractors, in determining good faith efforts to engage UBEs along with other criteria that the City Manager deems proper:

Name of Bidder: _____

If you find it helpful, feel free to attach pages to explain your answers. How many pages is your firm attaching to this questionnaire? _____ questionnaire.)

(Don't count the 2 pages of this questionnaire.)

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

1. SOLICITING UBEs.

(a) Did your firm solicit, through all reasonable and available means, the interest of all UBEs in the list provided by the City in the scope of work of the contract? yes no

In such soliciting, did your firm advertise? yes no Are you attaching copies to this questionnaire, indicating the dates and names of newspaper or other publication for each ad if that information is not already on the ads? yes no

(b) In such soliciting, did your firm send written (including electronic) notices or letters? Are you attaching one or more sample notices or letters? yes no

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

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

(e) Did your firm follow up with UBEs that showed interest? yes no

(f) With reference to the UBEs that your firm notified of the type of work to be subcontracted, did your firm tell them:

(i) the specific work your firm was considering for subcontracting? yes no

(ii) that their interest in the contract is being solicited? yes no

(iii) how to obtain and inspect the applicable plans and specifications and descriptions of items to be purchased? yes no

2. BREAKING DOWN THE WORK.

(a) Did your firm select portions of the work to be performed by UBEs in order to increase the likelihood that the goals would be reached? yes no

(b) If **yes**, please describe the portions selected. **ANSWER:**

3. NEGOTIATION. In your answers to 3, you may omit information regarding UBEs for which you are providing a Letter of Intent.

(a) What are the names, addresses, and telephone numbers of UBEs that you contacted? **ANSWER:**

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

(c) Why could your firm not reach agreements with the UBEs that your firm made contact with? Be specific. **ANSWER:**

4. ASSISTANCE TO UBEs ON BONDING, CREDIT, AND INSURANCE.

(a) Did your firm or the City require any subcontractors to have bonds, lines of credit, or insurance? yes no (Note: In most projects, the City has no such requirement for *subcontractors*.)

(b) If the answer to (a) is **yes**, did your firm make efforts to assist UBEs to obtain bonds, lines of credit, or insurance? yes no If **yes**, describe your firm's efforts. **ANSWER:**

(c) Did your firm provide alternatives to bonding or insurance for potential subcontractors? yes no If **yes**, describe. **ANSWER:**

5. GOODS AND SERVICES. What efforts did your firm make to help interested UBEs to obtain goods or services relevant to the proposed subcontracting work? **ANSWER:**

6. USING OTHER SERVICES.

(a) Did your firm use the services of the City to help solicit UBEs for the work? yes no
Please explain. **ANSWER:**

(b) Did your firm use the services of available minority/women community organizations, minority and women contractors' groups, government-sponsored minority/women business assistance agencies, and other appropriate organizations to help solicit UBEs for the work? yes no
Please explain. **ANSWER:**

Exhibit B – Non-Collusion Affidavit

Non-Collusion Affidavit

By executing this proposal, I certify that this proposal is submitted to the City of Durham competitively and without collusion. I am authorized to represent the candidate both in submitting this proposal and in making this Non-Collusion Affidavit. To the best of my knowledge and belief, (1) the candidate has not violated N. C. General Statute section 133-24 in connection with the proposal, (2) the candidate has not entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with its proposal, and (3) the candidate intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor. The neuter includes the masculine and the feminine. The candidate to which this Non-Collusion Affidavit refers is:

(insert name of candidate)

(signature of individual)

ACKNOWLEDGMENT

Type or print name of the individual who signed the affidavit:

Type or print the name of Notary Public signing this acknowledgment:

Place where acknowledgment occurred: County of _____, State of _____

Notary's residence: County of _____, State of _____

I, the Notary Public named above, certify (1) the individual named above personally appeared before me this day, (2) I have personal knowledge, or satisfactory evidence, of the individual's identity; and (3) the individual acknowledged signing the foregoing affidavit.

This the _____ day of _____, 20 ____.

Notary Public

My commission expires:

Exhibit C – Professional Services Contract

Professional Services Contract

PRIVATE DRAINAGE ASSISTANCE PROJECTS (SD-2018-06) [EXAMPLE]

This contract is dated, made, and entered into as of the [day] day of [month], [year], by the City of Durham (“City”), a N. C. municipal corporation, and [name of firm] (“Contractor”), [type of entity].

Sec. 1. Background and Purpose. The City of Durham is seeking assistance through professional services for the survey, design, permitting and developing of construction documents for multiple stormwater drainage assistance projects involving private property. The City is seeking this assistance through the Small Local Business Enterprise (SLBE) program. Through this request for qualifications, the City intends to select several of the most qualified teams based on their submittals. The City intends to negotiate with each of the most qualified teams in order to enter into a contract to address multiple project sites. At this time the City has fourteen project sites and it is anticipated that three teams may be selected with each team being given four to five project sites. It is the City’s intent that the construction documents for all of the project sites will be ready for advertisement in a single construction project in approximately the same amount of time.

The typical project site involves replacing and/or rerouting a compromised, existing stormwater drainage pipe system located on private property. Some sites involve stabilizing and/or rerouting open channels on private property. Older sections of Durham were developed with little or no stormwater regulations. There are residential and commercial structures that were built over, or in close proximity to stormwater drainage systems (pipes and/or open channels). As these systems have reached their useful life, they become compromised and are threatening existing buildings and structures. The City has determined that each project site is eligible for the Private Drainage Assistance Program. The eligibility criteria for the program may be reviewed in the Durham Code of Ordinances, [Section 70-685](#).

Sec. 2. Services and Scope to be Performed. Presumption that Duty is Contractor’s.

The Contractor shall provide the following.

Project Recommendations

- A. Utilizing existing GIS data and as-built documentation provide recommendations for cost-effective long term solutions to the compromised stormwater drainage system. The overall project site may include private property and rights-of-way (privately, City of Durham, and/or North Carolina Department of Transportation (NCDOT) maintained).
- B. Recommendations should balance longevity and cost (City and private property owner) including upfront and maintenance costs. It is envisioned that alternatives may include some of the following options.
 - a. Replacement and/or rerouted reinforced concrete pipe (RCP) and drainage structures
 - b. Stabilization and/or rerouted open channels
- C. The City envisions choosing RCP as the pipe material option based on the desire for a maximum replacement life span. The City will entertain other material options so long as the various recommendations are similarly compared using an overall cost per year of life span.

Existing Conditions Survey and Easement Plats

- A. Prepare a detailed topographic and boundary survey within the project limits.
 - a. Topographic survey and planimetric mapping on private property and within adjacent rights-of-way in sufficient length to design project tie in points including the following items.
 - i. Pavement, drives, buildings, parking lots
 - ii. Landscape areas including woods lines and all trees greater than 6 inch diameter at breast height
 - iii. Sign locations and types
 - iv. Pavement markings
 - v. Fence locations, heights, and materials
 - vi. Utility locations, location of underground utilities shall be based on above ground structures and Quality Level B Subsurface Utility Engineering (SUE)
 1. Water, gas, sanitary sewer, storm drainage, drainage channels, underground and overhead telecommunications, underground and overhead power, etc.

- b. Locate and map current effective, preliminary, and proposed FEMA special flood hazard areas.
- c. Property and deed research.
- d. Horizontal and vertical control, NCGS NAD 83 datum, Class I survey.
- B. Prepare easement plats and deeds for and secure permanent and temporary easements.
 - a. The City will be responsible for an easement acquisition cost and recording fees.

Utility Relocation Design and Construction Documentation

- A. Provide design calculations and documentation for the relocation of utilities needed to install the chosen project option.
- B. Coordinate with utility providers for proposed utility relocations.
- C. Provide construction drawings and technical specifications for all utility relocations.
- D. Note: All proposed water and sanitary sewer work shall conform to [City of Durham Standard Specification and Details](#).

Storm Drainage and Roadway Design and Construction Documentation

- A. Provide design calculations and documentation for the chosen storm drainage project option and roadway replacement.
- B. Provide construction drawings and technical specifications for chosen project option.
- C. Provide a traffic control and construction detour plan.
- D. Provide a sediment and erosion control plan.
- E. Provide an Opinion of Probable Cost (OPC) for the complete construction project.
- F. Note: All storm drainage design shall meet the requirements of the City of Durham's [Reference Guide for Development](#). In some instances existing conditions may not allow the project design to meet these requirements. In these instances the intent will be to meet or improve existing pipe capacity.
- G. Note: All roadway and storm drainage construction shall meet the North Carolina Department of Transportation (NCDOT) [Standards Specifications](#) and [Standard Drawings](#).

Permitting

- A. Submit for and secure all permits necessary to perform the proposed project, including but not limited to the following.
 - a. NCDEQ Certificate of Erosion and Sediment Control Plan Approval (if necessary)
 - b. City of Durham Construction Document Approval
 - c. City of Durham Certificate of Appropriateness where projects are located within local historic districts.
- B. The City of Durham will pay for all permit and application fees.

Meetings

- A. Project kickoff meeting.
- B. Site meeting with private property owner(s) and stakeholder(s) to discuss project options.

Available Information

- A. Geographic Information System (GIS) Data:
 - a. Geodatabase information is available in ArcGIS format upon request.
 - b. [GoMaps](#)
- B. As-Built Documentation
 - a. Plan and profile as-built information may be available for some project sites. Once the project sites are identified during contract negotiation, any as-built information will be provided.
- C. NC Flood Risk Information: <http://fris.nc.gov/fris/Download.aspx?ST=NC>
 - a. Current effective study data.
 - b. Preliminary study data.
- D. Cityworks service request and work order records for the project site area may be available for some project sites. Once the project sites are identified during contract negotiation, any as-built information will be provided.

In this contract, "Work" means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor's duties to the City that arise out of this contract. Unless the context requires otherwise, if this

contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

Sec. 3. Reserved.

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

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

The City shall pay the Contractor for the Work as follows:

- Project Recommendations: Labor fee plus expense basis with a maximum labor fee.
- Existing Conditions Survey and Easement Plats: Lump sum fee.
- FEMA Flood Modeling: Labor fee plus expense basis with a maximum labor fee.
- Utility Relocation Design and Construction Documentation: Labor fee plus expense basis with a maximum labor fee.
- Storm Drainage and Roadway Design and Construction Documentation: Labor fee plus expense basis with a maximum labor fee.
- Permitting: Labor fee plus expense basis with a maximum labor fee.
- Meetings: Labor fee plus expense basis with a maximum labor fee.
- Project Management: Labor fee plus expense basis with a maximum labor fee.

Valid expenses include reproduction and express delivery service. These expenses may be paid by the City in addition to the fees listed above. Travel and lodging costs are not considered valid expenses. The Contractor shall submit invoices for valid expenses with each payment request.

The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section and consistent with the breakdown shown in [exhibit]. The total dollar amount to be paid under this contract by the City to the Contractor shall not exceed [amount] in fees plus the valid expenses listed above that are approved by the City's Project Manager.

The City and Contractor may negotiate for additional services that are not included in this agreement. The Contractor is not authorized to provide any additional services until an amendment to this agreement is executed by both parties. Fees for additional services shall be based on the schedule of rates and fees included in [exhibit].

Sec. 6. Prompt Payment to Subcontractors. (a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham.

(b) If the individual assigned to administer this contract for the City (in this section, titled "Prompt Payment to Subcontractors," he or she will be referred to as the "Project Manager") determines that it is appropriate to enforce subsection (a) in this manner, the City may withhold from progress or final payments to the Contractor the sums estimated by the Project Manager to be

- (i) the amount of interest due to the Subcontractor under subsection (a), and/or
- (ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the City to the Contractor.

This subsection (b) does not limit any other rights to withhold payments that the City may have.

(c) Nothing in this section (titled "Prompt Payment to Subcontractors") shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be

filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

(d) The Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

Sec. 7. Insurance. Consultant agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following coverage and limits. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Consultant is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Consultant under this Contract.

- (a) Professional Liability. Limits no less than \$1,000,000 each occurrence.
- (b) Umbrella or Excess Liability. Consultant 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. Consultant 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.
- (c) Worker's Compensation & Employers Liability. Consultant 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.
- (d) Additional Insured. Consultant agrees to endorse the City of Durham as an additional Insured on the Professional Liability coverage.
- (e) Certificate of Insurance. Consultant agrees to provide the City of Durham a Certificate of Insurance evidencing that all coverage's, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Consultant's insurer. If Consultant 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, Consultant 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 the coverage no longer in compliance. Certificate Holder address should read:

City of Durham
ATTN: Dana P. Hornkohl, PE, CFM
Public Works Department
101 City Hall Plaza
Durham, NC 27701-3329

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

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

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

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

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:

City of Durham
ATTN: Dana P. Hornkohl, PE, CFM
101 City Hall Plaza
Durham, NC 27701-3329
The fax number is (919) 560-4316
E-mail: Dana.Hornkohl@DurhamNC.gov

To the Contractor:

[*name, address, fax number and e-mail address of contractor*]

(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. 11. Indemnification.

- (a) Indemnification for Charges Arising from Professional Services. To the maximum extent allowed by law, 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 Contractor's performance of Professional Services under this Contract, but only to the extent such Charges are caused by the Professional Negligence of Contractor or its 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), Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.
- (b) Indemnification for Charges Not Arising from Professional Services. To the maximum extent allowed by law, Contractor shall defend, indemnify, and save harmless Indemnitees from and against all other Charges (not covered in subsection (a)) that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of 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 (b), Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.
- (c) Definitions. As used in subsections "a" and "b" above and "d" 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 Contractor. "Professional Services" means the performance of a particular, discrete act, which is required by North Carolina state law to be performed by an engineer, architect, landscape architect, or land surveyor licensed by the State of North Carolina. "Professional Negligence" means failure of Contractor to comply with the professional standard of care used by engineers on similar projects, whether such projects can be found locally, regionally or nationally in the performance or non-performance of professional services hereunder.
- (d) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of 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.
- (e) 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 Contractor under this contract.
- (f) Limitations of Contractor's Obligation. Subsections "a" and "b" above shall not require Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons

or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 12. Trade Secrets; Confidentiality. The request for proposals (RFP) section titled “Trade Secrets and Confidentiality” shall apply to any Trade Secrets disclosed to the City during the process leading to the parties’ entering into this Contract (including all of the Contractor’s responses to the RFP). This section (titled “Trade Secrets; Confidentiality”) shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. For purposes of this contract, the word “candidate” in the RFP section just cited shall mean the “Contractor.”

Sec. 13. Termination for Convenience (“TFC”). (a) *Procedure.* Without limiting any party’s right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations.* Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City’s instructions as to which subcontracts to terminate. (c) *Payment.* The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City’s decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Sec. 14. State Law Provisions.

(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, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

(b) Iran Divestment Act Certification. The Contractor certifies that, if it submitted a successful bid for this contract, then as of the date it submitted the bid, the Contractor was not identified on the Iran List. If it did not submit a bid for this contract, the Contractor certifies that as of the date that this contract is entered into, the Contractor is not identified on the Iran List. It is a material breach of contract for the Contractor 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 -- “Contractor” means the person entering into this contract with the City of Durham; and “Iran List” means the Final Divestment List – Iran, the Parent and Subsidiary Guidance– Iran list, and all other lists issued from time to time by the N.C. State Treasurer to comply with G. S. 147-86.58 of the N.C. Iran Divestment Act.

Sec. 15. 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) EBOP. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

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

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

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

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

Sec. 16. Ownership of Work Products.

(a) The Consultant hereby assigns to the City, without reservation, all copyrights in all Project-related

- documents, models, photographs, and other expression created by the Consultant. Among those documents are certain "Work Product," including the design drawings and the Construction Documents. The City's obligation to pay the Consultant is expressly conditioned upon the Consultant's obtaining a valid written comprehensive assignment of copyrights from its consultants in terms identical to those that obligate the Consultant to the City as expressed in this subsection, which copyrights the Consultant, in turn, hereby assigns to the City. The City, in return, hereby grants the Consultant and its consultants a revocable, nonexclusive license to reproduce the documents for purposes relating directly to the Consultant's performance of its obligations under this Agreement for the Consultant's archival records, and for the Consultant's reproduction of drawings and photographs in the Consultant's marketing materials. This nonexclusive license shall terminate automatically upon the occurrence of either a breach of this Agreement by the Consultant or the accused commission by the Consultant of a tort or a crime affecting the City or the Project or upon termination of this Agreement. This nonexclusive license is granted to the Consultant alone and shall not be assigned by the Consultant to any other person or entity, except that the non-exclusive license granted in this Agreement to the Consultant for purposes of the Consultant's performance hereunder may be sub-licensed to the Consultant's consultants (with the same limitations). Subject to the foregoing, this nonexclusive license shall terminate automatically upon a Consultant's assignment of this nonexclusive license to another or its attempt to do so.
- (b) To the extent that liability arises from misuse of the Work Product by the City or another Consultant or designer, the Consultant shall not be responsible for that misuse. If the City uses the Work Products for purposes including additions to and modifications of the Project, and for other projects, the City shall indemnify the Consultant for losses, including reasonable attorneys' fees, suffered by the Consultant as a result of the use of the design and these documents for such other purposes. If these documents are used for other purposes, the City shall see that they are modified (i) to indicate that the Consultant did not prepare them for such other purposes and is not responsible for their use in connection with such other purposes and (ii) to delete the Consultant's name and seal from the documents (where permitted or required by law).
 - (c) Except for the licenses granted in this Section 16, no other license or right shall be deemed granted or implied under this Agreement. No other Project-related data, expression, or documents may be reproduced by the Consultant or its consultants for any other purposes without the express written permission of the City.
 - (d) If the City subsequently reproduces Project-related documents or creates a derivative work based upon Project-related documents created by the Consultant, the City shall (where permitted or required by law) remove or completely obliterate the original professional's seals, logos, and other indications on the documents of the identity of the Consultant and its consultants.

PRIVAET DRAINAGE ASSISTANCE PROJECTS (SD-2018-06) between the City of Durham and [*contractor*]

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

ATTEST:

CITY OF DURHAM

By: _____

preaudit certificate, if applicable _____

Exhibit D – Current Project Sites and Example Project Site

Current Project Sites

- 1029 Dacian Avenue - 610 Watts Street (PDAP-045)
- 1211 Fargo Street (PDAP-044)
- 2720 Winton Road (PDAP-041)
- 708 Gerard Street (PDAP-026)
- 1211 Lincoln Street (PDAP-001)
- 2002 & 2006 Angier Avenue (PDAP-048)
- 2626 Ross Road (PDAP-017)
- 2204 Fayetteville Street (PDAP-042)
- 821 & 823 North Buchanan Boulevard (PDAP-046)
- 719 Shepherd Street (PDAP-032)
- 108 West Lavender Avenue (PDAP-064)
- 801 Yancey Street (PDAP-031)
- 1102 & 1104 Fairview Street (PDAP-062)
- 1806 & 1810 Capps Street (PDAP-040)

Example Project Site:

- 2626 Ross Road ([GoMaps](#))
- An existing large diameter corrugated metal pipe (CMP) beneath a driveway on private property has become compromised (see photos below).



Figure 1 – Upstream End



Figure 2 - Downstream End