



## REQUEST FOR PROPOSALS

### Roller Skating Rink Operation and Management Service

Date of Issue: January 23, 2023

Purpose of Request for Proposals (RFP): The City of Durham Department of Parks and Recreation (City) is soliciting proposals for qualified agencies to provide for operation and management of a roller-skating rink.

Project Manager	Rich Hahn, Business Manager
Department	Parks and Recreation
Mailing Address	101 City Hall Plaza, Durham NC 27701
Physical Address	400 Cleveland St., Durham NC 27701
Project Manager Phone	919-560-4355 x 27206
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## 1. INTRODUCTION AND INSTRUCTIONS

### 1.1 Definitions

- “City” means the City of Durham
- “Proposal” means the response of the person, firm, or corporation proposing to provide services sought by this RFP
- “Responder” means the person, firm, or corporation that submits a response to this RFP.
- “Contractor” means the Responder with which the City enters into a contract to fulfill the terms of this RFP

### 1.2 Submittal timeline

RFP issued	January 23, 2023
Pre-submittal conference	February 1, 2023 10:00 a.m.
Deadline to submit questions	February 13, 2023 1:00 p.m.
Proposal submittal deadline	February 24, 2023 4:00 p.m.
Contractor selection	March 3, 2023
Contract execution	July 2023

### 1.3 Pre-submittal conference

There will be a pre-submittal conference on **February 1, 2023, at 10:00 a.m.** at the Wheels Skating Rink, 715 N. Hoover Rd. Durham, NC 27703. Attendees should be familiar with this RFP. Attendance is not mandatory for proposal submittal.

Additional dates facility will be open to tour and review building and rink:

- Thursday February 2, 2023, 10 a.m. to 12 noon
- Wednesday February 8, 2023, 10 a.m. to 12 noon
- Thursday February 9, 2023, 10 a.m. to 12 noon

### 1.4 Questions regarding the RFP

All questions should be in writing and directed to the Project Manager. Questions are due no later than February 13, 2023, at 1:00 p.m. A compilation of responses will be posted on the City website as an amendment to the RFP, if necessary, no later than February 16, 2023 at 5:00 p.m.

If an amendment is issued it will be posted on the city website: <http://durhamnc.gov/bids.aspx>

### 1.5 Proposal submittal and deadline

Responders must submit one copy of their proposal via email to the Project Manager at [Rich.Hahn@durhamnc.gov](mailto:Rich.Hahn@durhamnc.gov). Proposals are due no later than 4:00 p.m. on **February 24, 2023**. Delays for any reason, will not be grounds for an extension of the due date. Faxed and mailed proposals are not acceptable.

## 1.6 Format

Any proposal submitted should include sample monthly schedule, itemized operating budget, proposed entrance and user fees, sample marketing campaign, resumes, examples of work experiences, references, and the required Equal Business Opportunity Program Procurement Forms included in this RFP in Appendix A (these items should be included as an attachment to the main document). Extensive colored displays and promotional materials are not necessary or desired. Emphasis should be placed on completeness and responses to the information requested in Section 3.

## 1.7 Solicitation

This solicitation for proposals has been placed on the City's internet site at <http://durhamnc.gov/bids.aspx>

Any responses to requests for information or clarification to the RFP will be posted to this site no later than 5:00 p.m. on February 16, 2023.

## 1.8 Assignment

The Contractor may not transfer or assign any portion of the contract without prior written approval from the Director of Durham Parks and Recreation.

## 2. BACKGROUND AND PURPOSE

### 2.1 Background information

The Durham Parks and Recreation Department (DPR) has had a rich history of providing exceptional programs, services, facilities, and beautiful parks and trails. The DPR system includes 65 parks, 7 recreation centers, 12 special use sites, and over 32 miles of existing greenway trails. Our facilities, parks, programs, and events have earned recognition, awards, and accolades from residents, visitors, the North Carolina Recreation and Park Association, and the National Recreation and Parks Association.

In November 2021, City Council approved a contract with RATIO for design services to develop park projects for Long Meadow and East End Parks as well as the approximately 8-acre former Wheels Fun Park Center site, located at 715 N. Hoover Road (purchased by the City in 2020). The primary intent of this "Splash and Play" project was to evaluate and assess the park sites with the focus on identifying opportunities to implement recommendations included in the City's 2013 Parks and Recreation Master Plan and 2017 Aquatics Facilities Master Plan. In addition, priority was given to the site of the former Wheels Fun Park for development of a large outdoor aquatics facility as recommended in the 2017 Facilities Master Plan, and other programming possibilities to supplement and compliment the newly developed Merrick-Moore Park, located directly across the street.

Upon project initiation, through the first phase of public outreach, and through public comment at the June 6, 2022 City Council Meeting, it became clear that a desire within the community included preservation and re-opening the Wheels Skating Rink as part of or before the overall site development. City Council directed staff in the June 9, 2022 City Council Work Session, to provide an assessment of the Wheels Skating Rink and provide budgetary costs associated with reopening the facility.

In October 2022, the City's General Services Department presented information to City Council, from the design team for the Aquatics Splash and Play project (RATIO), which was tasked with conducting additional analysis of the Wheels Skating Rink to report on updates and renovations necessary to bring the facility up to life safety code and ADA standards. This included the roller-skating rink, snack bar, eating area, restrooms, office, DJ booth, skate storage, and party room as well as outdoor parking. The report identified what deficiencies needed to be corrected to re-open the skating rink as a City of Durham facility, providing a code compliant, safe, and accessible amenity to the public. City staff are projecting this work to be completed by the end of February 2024.

The City's Parks and Recreation Department is issuing this Request for Proposal to solicit proposals for the operation and management of the Wheels Skating Rink once these repairs have been completed. Based on the current projections, we anticipate being able to open the facility for full operation by April 2024.

## 2.2 Purpose

The city is seeking a Contractor to provide professional operation and management services to operate a 13,260 square foot wooden surface indoor roller-skating rink with a small concession area. Total building square footage is 23,750 square feet.

## 2.3 City of Durham to Provide

- Skating Rink Building and adjacent parking lot
- Heating, ventilation, and air conditioning (HVAC) including maintenance and equipment
- Fire suppression and Burglar Alarm systems including monitoring and maintenance
- Security Camera system including monitoring and maintenance
- Outside grounds landscaping and parking lot maintenance
- Building Safety and ADA Upfits
- Building minor repairs and capital repairs – excluding resurfacing of wooden rink surface

## 3. SUBMITTAL REQUIREMENTS

*Notice under the Americans with Disabilities Act:* The City does not discriminate against qualified individuals with disability in the City's services, programs, or activities. The City will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City's programs, services, and activities. The City will make all reasonable provisions to policies and programs to ensure that persons with disabilities have an equal opportunity to enjoy all City programs, services, and activities. Anyone who requires aid or service for effective communications, or a modification of policies or procedures, should contact the office of Logan Small, ADA Coordinator, Voice: 919-560-4197 x 21237, TTY 919-560-1200; [Logan.Small@durhamnc.gov](mailto:Logan.Small@durhamnc.gov), as soon as possible but no later than 48 hours before a scheduled event.

### 3.1 Cover letter

The proposal must contain a cover letter, signed by the principal in the firm or agency, indicating his or her title and that he or she has the authority to submit the proposal on behalf of the firm or agency. The letter should contain the following statement: "The undersigned has the authority to submit this proposal on behalf of (*name of company or agency*) in response to the City of Durham RFP for providing Roller Skating Rink Operation and Management Services."

### 3.2 Core Requirements

The City requires that the selected Contractor be able to provide all of the services listed below:

- Operation and management of a roller-skating rink and small concession snack area
  - To include at a minimum
    - Staffing to operating a roller-skating rink and concession snack area
    - POS transaction hardware and software
    - Concession snack area supplies including but not limited to all paper goods, equipment, soda fountain, water, food
    - Vending Machines to provide snacks and beverages
    - Concession area seating
    - DJ Services and any legally required music licenses
    - Inside custodial services, including refuse removal
    - Wooden skate rink surface maintenance including annual rescreening
    - Skate Rental operations and inventory – standard, inline and speed
    - Group Skating lessons
    - Birthday parties and special event rentals
    - All utilities and broadband service (electric, gas, water, phone, internet)

**The Responder must provide all of the following information as part of the proposal:**

1. 12-month itemized operating budget showing a detailed allocation of all projected expenses and revenues associated with staffing and management of the operations of the roller rink, including the concession snack area. Projection should include any management fees requested from the City and/or any proposed profit sharing agreement to provide these services. Please do not include any expenses for items listed in section 2.3 City of Durham to Provide.
2. Projected 6-month programming calendar to include a variety of opportunities, i.e., lessons, rentals, parties, and open skate.
3. A 6-month sample staffing plan. Please include a statement on how you would include and recruit local teens and young adults.
4. A sample 6-month marketing campaign to reopen and advertise the facility and programs.
5. Itemized listing of recommended entrance fees based on City's priority to ensure that admissions and programs are affordable to the local community. Include any opportunities for scholarship or discount programs.
6. Description of the individual or company's experience in roller skating rink operations. This description should include a list of facilities operated within the past 3 to 5 years.
7. A minimum of three (3) references for which you have provided similar management services within the past 3 to 5 years.
8. Non –Collusion Affidavit
9. CONTRACTOR WORKFORCE DIVERSITY QUESTIONNAIRE The City of Durham has a commitment to attracting and maintaining a diverse workforce and, extends that same commitment to any business, vendor, or contractor that the city does business with. Please complete and submit The Contractor Workforce Diversity Questionnaire provided in Project Manual.
10. Signed Addendum(s) if issued.

Any bids submitted without all items listed may be deemed as “non-responsive”. If there are any questions or problems in filling out the UBE forms, please contact: City of Durham Equity & Inclusion Department (919) 560-4180

Please reference Section 4.5 of this RFP and note that these Core Requirements may be negotiated by the City.

### 3.3 Insurance

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

- Commercial General Liability, covering:
  - Premises/operations
  - Products/completed operations (two years minimum, from project completion)
  - Broad form property damage
  - Contractual liability
  - Independent contractors, if any are used in the performance of this contract
  - City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
  - Combined single limit not less than \$2,000,000 per occurrence, with an annual aggregate on not less than \$4,000,000.
  
- Commercial Auto Liability, (this is only required if proposal includes transporting participants) covering:
  - Symbol 1, all vehicles
  - Combined single limit of \$1,000,000
  - City of Durham must be named additional insured
  
- Workers' Compensation Insurance, covering:
  - Statutory benefits;
  - Covering employees; covering owner's partners, officers, and relatives (who work on this contract) (this must be stated on the certificate)
  - Employers' liability, \$1,000,000
  - Waiver of subrogation in favor of the City of Durham

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

**Certificate of Insurance** – Contractor agrees to provide City of Durham a Certificate of Insurance evidencing that all 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 Contractor's insurer. If Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

City of Durham

Attn: Parks and Recreation Department  
101 City Hall Plaza  
Durham, NC 27701

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

### 3.4 Company job qualifications, experience, and references

1. Job Qualifications:

- a. Excellent organization and project management skills
- b. Problem solver and results oriented
- c. Able to work well under pressure and meet event deadlines
- d. Ability to prioritize tasks in a fast-paced environment

2. Experience:

- a. Experience: Minimum 3-5 years of experience in all aspects of booking management
- b. Experience recruiting a variety of artists and negotiating fair pricing for bookings

3. References:

- a. A minimum of three (3) references for which you have provided recent booking management services within the past 3 years.

### 3.5 Equal Business Opportunity Program

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 City contracting, including procurement services.

In accordance with the Ordinance, all contractors are required to provide information requested in the "Equal Business Opportunity Program Procurement Forms" package included with this Request for Bids. Bids that do not contain the appropriate, completed forms will be **deemed non-responsive and ineligible for consideration.**

For procurement services **with UBE** goals, the "UBE Participation" and "Statement of Intent to Perform as Subcontractor" are required of all bidders. "Request to Change UBE Participation After Bid Opening" and the "Questionnaire on Bidder's Good Faith Efforts" documents are not required at this time. The MUBE goal is 0% and the WUBE goal is 0% on this bid.

The Department of Finance is responsible for the Equal Business Opportunity Program.

All questions about "Equal Business Opportunity Program Procurement Forms" should be referred to department staff at (919) 560-4180.



**3.6 Non-collusion**

This RFP constitutes an invitation to bid or propose. Include and sign the following with your proposal submittal:

The City of Durham prohibits collusion, which is defined as a secret agreement for a deceitful or fraudulent purpose.

I,                     (name), affirm that I have not engaged in collusion with any City employee(s), other person, corporations, or firms relating to this bid, proposal, or quotation. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

Signature \_\_\_\_\_

**3.7 Contractor Workforce Diversity Questionnaire**

A diverse workforce refers to the similarities and differences among employees in terms of age, cultural background, physical abilities and disabilities, race, religion, gender, and sexual orientation. A diverse workforce results in greater productivity, engagement and innovation among the employees of a business. The workforce of the City of Durham is diverse and directly benefits from diversity in hiring practices of the contractors that do business in the City of Durham. The City of Durham is committed to the promotion of a diverse workforce within its own workforce and the workforce of contractors that perform work for, or deliver goods or services to, the City.

The information requested in this questionnaire is intended to encourage the candidate, which is defined as the person, firm or corporation interested in contracting with the City, to engage in diverse workforce hiring practices as in the best interest of the City and the greater Durham community. The following questions focus on your efforts to recruit and maintain a diverse workforce and to provide your business with resources and recommendations on how to create and maintain a diverse workforce.

1. Do the management and professional positions within your business include women and minorities?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

If yes, please provide number(s) and positions:

Number of Women \_\_\_\_\_  
 Position title: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Number of Minorities \_\_\_\_\_  
 Position title: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

2. Please respond to the following efforts you make to create and maintain a more diverse workforce:

- (a) When you recruit for employees, do you only recruit by word-of-mouth?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

*[Note: Reliance on word-of-mouth recruiting alone is unlikely to result in a diverse workforce.]*

(b) Do you focus any recruitment efforts in the local Durham area?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

If, yes, please provide examples how you focus recruitment to the local Durham area:

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(c) Do you utilize any women/minority-focused LinkedIn groups and/or other professional or non-professional women/minority groups?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

If, yes, please provide examples: \_\_\_\_\_

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(d) Do you regularly recruit from HBCUs (Historically Black Colleges and Universities) and/or other minority-focused colleges and universities?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

If, yes, please provide names of the schools: \_\_\_\_\_

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(e) Do you attend minority-focused career fairs?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

If, yes, please provide names of examples: \_\_\_\_\_

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(f) Do you participate in Durham youth internship programs?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

If, yes, please provide names of examples: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

3. Please list the efforts your company makes to promote or create a more diverse workforce that may not be listed above under question No. 2.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Do you believe your business, including all employees, has a diverse workforce?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

Enter the total number of employees that work for your business \_\_\_\_\_.

Please provide the reasons why you believe **you have**, or **do not have**, a diverse workforce:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. How would you characterize the nature of the majority of your workforce?

(a) Professional and skilled (includes technicians and clerical) workers:

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

(b) Mostly unskilled workers and laborers:

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

(c) Mix of professional, skilled and unskilled workers and laborers:

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

6. To assist the City in determining the effectiveness of your diverse workforce hiring practices, please complete the following Employee Breakdown Table(s) to show your current employee diversity breakdown:

*[Instructions: Complete Part A for the primary location where the goods and services that are the subject of the bid/proposal are to be made or provided. If the parent company or other locations of the business are providing any substantial portion of the goods or services, then the business must also complete Part B, for the consolidated company.]*

**Part A – Employee Diversity Breakdown Table for Primary Location**

Employment Category	Total Employees	Total Males	Total Females	M-----a-----l-----e - s					F---e---m---a---l---e ---s				
				White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Island	Indian or Alaskan Native
Project Manger													
Professional													
Labor													
Clerical													
Totals													

Part B – Employee Diversity Breakdown for the Consolidated Company

Employment Category	Total Employees	Total Males	Total Females	M-----a-----l-----e - s					F-----m-----a-----l-----e -----s				
				White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Island	Indian or Alaskan Native
Project Manger													
Professional													
Labor													
Clerical													
Totals													

Resources –The City of Durham advertises job postings to a variety of sources in its own pursuitof a diverse workforce. The following resources are sources used by the City of Durham and others and are being provided to assist you in your recruitment of a more diverse workforce.

Category	Organization	Website
Professionals	American Women’s Society of Certified Public Accountants	<a href="http://www.awscpa.org">www.awscpa.org</a>
Professionals	Accounting & Financial Women’s Alliance	<a href="http://www.afwa.org">www.afwa.org</a>
Professional/ Technical	Society of Women Engineers	<a href="http://www.societyofwomenengineers.swe.org">www.societyofwomenengineers.swe.org</a>
Professionals	American Business Women’s Assoc.	<a href="http://www.abwa.org">www.abwa.org</a>
Professionals	Association for Women in Science	<a href="http://www.awis.org">www.awis.org</a>
Professionals	Women in Engineering	<a href="http://www.womeng.org">www.womeng.org</a>
Professionals	Women in Technology	<a href="http://www.womenintechnology.org">www.womenintechnology.org</a>
Professionals	Women in I.T	<a href="http://www.womeninit.org">www.womeninit.org</a>
Professionals	URISA	<a href="http://www.urisa.org">www.urisa.org</a>
Professionals	Women in GIS	<a href="http://www.womeningis.org">www.womeningis.org</a>
Professionals	Supporting Women in Geography & GIS	<a href="http://www.swiggis-austin.org">www.swiggis-austin.org</a>
Professionals	Women’s Transportation Seminar	<a href="http://www.wtsinternational.org">www.wtsinternational.org</a>
Professionals	Society of Asian Scientists and Engineers	<a href="https://www.saseconnect.org/">https://www.saseconnect.org/</a>

Professionals	National Organization of Minority Architects	<a href="https://www.noma.net/professional/north-carolina">https://www.noma.net/professional/north-carolina</a>
Professionals	North Carolina Society of Hispanic Professionals	<a href="https://www.thencshp.org">https://www.thencshp.org</a>
Professionals	Association of Asian American Architects & Engineers	<a href="https://www.aaaesc.org">https://www.aaaesc.org</a>
Professionals	Minority Professionals Network	<a href="http://www.minorityprofessionalnetwork.com">http://www.minorityprofessionalnetwork.com</a>
Gen. Construction	National Association of Black Women in Construction	<a href="https://nabwic.org">https://nabwic.org</a>
Chamber of Commerce	Carolinas Asian American Chamber of Commerce	<a href="https://caacc.com">https://caacc.com</a>
Skilled Craft	Hispanic Arborist Assoc.	<a href="http://www.hispanicarboristassociation.com">www.hispanicarboristassociation.com</a>
Skilled Craft	Electrical Workers Minority Caucus	<a href="http://www.ibew-ewmc.org">www.ibew-ewmc.org</a>
Skilled Craft	Women in Manufacturing	<a href="http://www.womeninmanufacturing.org">www.womeninmanufacturing.org</a>
Skilled Craft	Rainbow PUSH Automotive Project	<a href="http://www.automotiveproject.org">www.automotiveproject.org</a>
Skilled Craft	Women in Automotive	<a href="http://www.womeminautomotive.org">www.womeminautomotive.org</a>
Service/Maintenance	Conf. of Minority Transportation Officials	<a href="http://www.comto.org">www.comto.org</a>
Service/Maintenance	Coalition of Labor Union Women	<a href="http://www.cluw.org">www.cluw.org</a>
Service/Maintenance	National Assoc. of Women in Construction	<a href="http://www.nawic.org">www.nawic.org</a>
Protect and Serve	National Assoc. of Latino Firefighters	<a href="http://www.nahf.org">www.nahf.org</a>
Protect and Serve	Int. Assoc. of Black Firefighters	<a href="http://www.iabpf.org">www.iabpf.org</a>
Protect and Serve	Int. Assoc. of Women in Fire & Emergency Services	<a href="http://www.i-women.org">www.i-women.org</a>
Protect and Serve	National Assoc. of Women Law Enforcement Officers	<a href="http://www.nawlee.org">www.nawlee.org</a>
Protect and Serve	National Latino Law Enforcement Org.	<a href="http://www.nlleo.com">www.nlleo.com</a>
Protect and Serve	National Coalition of Latino Officers	<a href="http://www.latino-officers.org">www.latino-officers.org</a>
Protect and Serve	Asian American Law Enforcement Assoc.	<a href="http://www.asianamericanlawenforcementassociation.org">www.asianamericanlawenforcementassociation.org</a>

## **4. CONDITIONS**

### **4.1 Discretion of the City**

The City reserves the right to reject any or all proposals. Notwithstanding anything to the contrary in this document or in any addenda to this document, unless the provision refers specifically to this topic, the City reserves the right to negotiate changes of any nature with any firm or agency proposing to do the work with respect to any term or condition in this document and in any proposal.

### **4.2 City not responsible for preparation cost**

The City is not responsible for any costs associated with preparation or submittal of the proposal

### **4.3 Disclosure of proposal contents**

All proposals and other material submitted become the property of the City. All information, including detailed cost information, will be held in confidence during the evaluation process and before the contract award. Thereafter, proposals will be subject to the North Carolina Public Records Law.

### **4.4 Limit on claims**

No Responder will have any claims or rights against the City for participating in the Proposal Process. Any rights and claims the Contractor may have against the City arising out of participating in the Proposal Process will be in the Contract with the selected Responder(s).

### **4.5 Contract negotiations**

After completion of the evaluation of proposals, including any discussions held with Responders during the evaluation, the City may elect to initiate contract negotiations. The option of whether or not to initiate contract negotiations rests solely with the City. If the City elects to initiate contract negotiations, the negotiations will not involve any terms or changes that would, by their nature, materially affect the proposal selection and/or evaluation previously conducted.

### **4.6 Failure to negotiate**

The City may terminate negotiations with the Contractor initially-selected and commence negotiations with the next highest ranked Responder if the selected initially-selected Contractor does any of the following:

- a. fails to provide requested information to negotiate in a timely manner;
- b. fails to negotiate in good faith;
- c. indicates that he/she cannot perform the contract within the budgeted funds available for the services; or
- d. if, after good faith efforts, the City and the initially-selected Contractor cannot come to terms.



#### **4.7 E-Verify Requirements**

The contract will require compliance by the Contractor and its subcontractors with respect to the N. C. E-Verify law. The Contractor will need to represent and covenant 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).

#### **4.8 State Treasurer's lists regarding Iran and Boycott of Israel**

If the Contractor 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 Contractor otherwise states in its proposal: the Contractor affirms (by submitting a proposal) that (1) its name does not appear on the list of companies that are engaged in a boycott of Israel developed by the N. C. State Treasurer under N.C.G.S. 147 86.81(a)(1) or on a list created by the Treasurer pursuant to N.C.G.S. 147 86.58 as a company engaging in investment activities in Iran, and (2) it has no reason to expect that its name will appear on either of those lists. Take notice that a contract between a company named on either list and the City may be void.

## 5. EVALUATION OF PROPOSALS

### 5.1 Evaluation method

City will use an evaluation committee to score all proposals. The evaluation will be based on the following:

- a. Proposed Budget and Management Fee or Profit Sharing
- b. Contractor Workforce Diversity Completed Questionnaire
- c. Ability to fulfill the requirements of the services requested
- d. Experience, qualifications, history, and references

### 5.2 Point scoring method

- a. Proposed Budget and Management Fee or Profit Sharing (30%)  
How well does the proposal meet the City's budgetary requirement? How reasonable are the Responder's cost estimates for services and additional features? Are the cost estimates documented?
- b. Contractor Workforce Diversity Completed Questionnaire (10%)  
Contractor will be rated based on the completed Workforce Diversity Questionnaire answers.
- c. Ability to fulfill the requirements of the services requested (40%)  
How well does the proposal match the City's needs? Does proposal include a diverse program offering (i.e., lessons, rentals, parties, open skate, etc.)? Does staffing plan incorporate the hiring of teens? Are the proposed fees "affordable" to the local community?
- d. Experience, qualifications, history, and references (20%)  
Does the Responder have experience in providing similar services within the past 3 to 5 years?  
Has the Responder provided three (3) references from within the past three (3) – five (5) years?



# EQUAL BUSINESS OPPORTUNITY PROGRAM

## PROCUREMENT FORMS

Updated 03/22



All information in this document is applicable as indicated when UBE goals are required. If documents are not submitted, your bid may be deemed non-responsive. Underutilized Business Enterprise (UBE) means a business, including a sole proprietorship, partnership, corporation, limited liability company, joint venture or any other business or professional entity that has been certified by (i) the State of North Carolina as a historically underutilized business (HUB) pursuant to G.S.

143-128.4, as amended; (ii) the North Carolina Department of Transportation as a disadvantaged minority-owned or woman-owned business pursuant to G.S. 136-28.4, as amended; or (iii) the Small Business Administration 8(a) Business Development program of the Small Business Administration of the U.S. Department of Commerce pursuant to 15 U.S.C. 637(a), as amended,

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

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

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

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

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

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

**UBE PARTICIPATION ON BID**

Name of Bidder:

Is bidder a UBE (circle one):        Yes                      No

Total dollar amount of UBE participation in bid work:

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

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

*Attach extra sheets as needed.*

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

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

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

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

**STATEMENT OF INTENT TO PERFORM AS SUBCONTRACTOR**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REQUEST TO CHANGE UBE PARTICIPATION AFTER BID OPENING

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

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

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

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

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

Email Address: \_\_\_\_\_

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

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

Dollar amount of changes proposed in this form: \_\_\_\_\_

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

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

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

**BOX A. For the subcontract proposed to be changed (increased, reduced, or eliminated):** Name of subcontractor: \_\_\_\_\_

Goods and services to be provided before the proposed change: \_\_\_\_\_

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

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

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

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

This subcontractor is (check one):

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

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

Name of subcontractor for the new work: \_\_\_\_\_

Goods and Services to be provided by this proposed subcontractor: \_\_\_\_\_

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

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

Add additional sheets as necessary.



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

### QUESTIONNAIRE ON BIDDER'S GOOD-FAITH EFFORTS

Name of Bidder:

---

If you find it helpful, feel free to attach pages to explain your answers. **How many pages**

**is your firm attaching to this questionnaire?** \_\_\_\_\_

*questionnaire.)*

*(Don't count the 2 pages of this*

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

#### 1. SOLICITING UBEs.

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

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

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

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

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

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

(g) With reference to the UBEs that your firm notified of the type of work to be subcontracted -- Did your firm tell them?

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

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

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

**2. BREAKING DOWN THE WORK.**

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

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

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

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

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

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

**3. ASSISTANCE TO UBEs ON BONDING, CREDIT, AND INSURANCE.**

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

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

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

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

**5. USING OTHER SERVICES.**

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

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

## Appendix B

### (Model Services Contract)

CONTRACT FOR *[descriptive title to be inserted\*]*

This contract is dated, made, and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the City of Durham ("City"), a N. C. municipal corporation, and *[name of firm]* ("Contractor"), *[Indicate type of entity, for instance:*

*a corporation organized and existing under the laws of [name of State];*

*a limited liability company organized and existing under the laws of [name of State];*

*a professional corporation organized and existing under the laws of [name of State];*

*a professional association organized and existing under the laws of [name of State];*

*a limited partnership organized under the laws of [name of State];*

*a sole proprietorship;*

*or a general partnership].*

Sec. 1. Background and Purpose. *[Several sentences are usually enough.\*]*

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

Sec. 3. Reserved.

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

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

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

Sec. 6. Prompt Payment to Subcontractors. (a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 8<sup>th</sup> 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.

During the term of this contract, Contractor shall purchase and maintain insurance coverage for not less than the following:

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

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

- **Automobile Liability** – Limits of no less than \$1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract and/or are brought on a City of Durham site.
- **Umbrella or Excess Liability** – Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest ‘Each Occurrence’ limit for required policies. Contractor agrees to endorse City of Durham as an ‘Additional Insured’ on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a ‘Follow-Form’ basis.
- **Worker’s Compensation & Employers Liability** – Contractor agrees to maintain Worker’s Compensation Insurance in accordance with North Carolina General Statute Chapter 97 and with Employer Liability limits of no less than \$1,000,000 each accident, each employee and policy limit. This policy must include a Waiver of Subrogation.

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

**Certificate of Insurance** – Contractor agrees to provide City of Durham a Certificate of Insurance evidencing that all 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 Contractor’s insurer. If Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

City of Durham  
 Attn: Parks and Recreation Department  
 101 City Hall Plaza  
 Durham, NC 27701

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

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. *[City staff – Regarding the first sentence of this section: It is possible that -- and acceptable if -- the schedule is not called “schedule.” The schedule may be scattered about the contract. Try to indicate where the schedule is; an improved sentence might read: If the Contractor fails to perform the Work in*

accordance with the schedule required by this contract, including the schedule required by section \_\_, 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. \*]

Sec. 9. Exhibits. The following exhibits are made a part of this contract: [If none, write "None." Try to put your requirements, etc. into Section 2 and Section 3 of this contract, or in other appropriate places in this contract, instead of in exhibits. Unless what you want to say is really long, don't use an exhibit. It's easier to keep track of text that is in the middle of the contract and even makes it easier to number the pages. Heavy use of exhibits probably goes back to pre-computer days, when it was hard to cut and paste.\*]

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

Exhibit B [Insert title of exhibit] containing [insert number] page(s).

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

Sec. 10. Notice. (a) 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:

[Insert name and department\*]

City of Durham

101 City Hall Plaza

Durham, NC 27701-3329

The fax number is (919) [Insert fax number.\*]

Email: [Insert email address.\*]

To the Contractor:

[Insert name and address]

The fax number is \_\_\_\_\_.

Email:

(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) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection (a), the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

(b) Definitions: As used in subsections (a) above and (c) below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.

(c) Other Provisions Separate: Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract.

(d) Survival: This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

(e) Limitations of the Contractor's Obligation: If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 12. 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. 13. E-Verify Requirements. The Contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). This E-Verify compliance under 143-133.3 section is intended to apply to only the contracts to which NCGS 143-133.3(a) applies and shall be construed in accordance with that statute. Any clause in this Agreement included under the authority of NCGS 160A-20.1(b) shall be of no effect; provided, however, to the extent (if any) required to comply with NCGS 143-129(j), a clause in this Agreement requiring the contractor and its subcontractors to comply with the requirements of Article 2 of Chapter 64 shall remain in effect if this Agreement is subject to NCGS 143-129.

Sec. 14. Miscellaneous

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

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

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

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

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

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



(g) Notice of City Policy: THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, DISABILITY, FAMILIAL STATUS, MILITARY STATUS, SEXUAL ORIENTATION, GENDER IDENTITY, AND PROTECTED HAIRSTYLE 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. 15 Ownership of Documents: All reports, maps, and other deliverables prepared pursuant to this Agreement shall be owned by the City of Durham. Grant of any license is conditioned on receipt of full payment to the Contractor by the City. All deliverables shall be delivered to City upon final payment made to Contractor. In case of modification or reuse of the Contract Documents by the City, the Contractor's name shall be removed from the documents, and the Contractor shall not be liable to the City or third parties for their modification or reuse. After thirty

(30) days past the completion of the project or termination of the contract, the City will be responsible for any costs incurred by the Contractor to retrieve artwork, electronic files, or other documents associated with the project at the City's request. The Contractor retains the right to use the work products for promotional and educational purposes.

Sec.16 Conflict of Interest: Contractor agrees that it has no interest and shall acquire no interest, direct or indirect, that would conflict in any manner with the performance of the services hereunder. Contractor further agrees that, in the performance of this Agreement, no person having any such interest shall be employed.

Sec.17 Covid-19 Safety:

(a) The Durham Parks and Recreation department has created new protocols and put in place preventative measures to reduce the spread of COVID-19; however, the City cannot and does not guarantee that CONTRACTOR or participants of CONTRACTOR's programs will not become infected with COVID-19.

(b) CONTRACTOR understands and acknowledges the highly contagious nature of COVID-19 and voluntarily assumes the risk that its employees, agents, directors, officers, and representatives may be exposed to or infected by COVID-19 by being involved in any way in any event, program, activity, or reservation taking place at a Durham Parks and Recreation facility or park, and that such exposure or infection may result in personal injury, illness, permanent disability, and death. CONTRACTOR understands that the risk of becoming exposed to or infected by COVID19 at a Parks and Recreation facility or park may result from the actions, omissions, or negligence of its employees, agents, directors, officers, and representatives and others, including, but not limited to, City employees, volunteers, and participants and their families.

(c) CONTRACTOR hereby releases and agrees to hold harmless the City of Durham, its agents, employees, officers and contractors from and against all liabilities, claims, demands, judgments, cost or fees, including liabilities, claims, demands, judgments, costs related to COVID-19 including, arising in any manner from and all participation in the CONTRACTOR's programs and use of Durham Parks and Recreation facilities.

(d) CONTRACTOR agrees to adhere to CDC guidelines and NC Department of Health and Human Services guidelines for safety measures regarding COVID-19.

(e) CONTRACTOR acknowledges and understands that personnel of the City of Durham may at their discretion shut down a program, effective immediately, if the activity is in violation of rules, regulations, laws or ordinances; or poses a significant threat of harm or damage to the facility or any individuals, including due to failing to adhere to CDC guidelines and NC Department of Health and Human Services guidelines for safety measures regarding COVID-19.

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 \_\_\_\_\_

CONTRACTOR

By: \_\_\_\_\_

*Notary Acknowledgement based on corporation type*