



Call for Artists: Request for Interest (RFI) Public Art at Birchwood Park in Durham, NC

RFI Deadline to Apply: Monday, December 2, 2024

In collaboration with the City of Durham Parks and Recreation Department, the City of Durham’s Cultural and Public Art Program (referred to as “City”) is seeking an Artist, Artist Team, or Artist and Fabricator Team (referred to as “Candidates”) with experience in projects centered around community-based engagement to design and install public art at Birchwood Park located at 3105 Hursey Street, Durham, NC, 27703.



Figure 1: Photograph of basketball court in Birchwood Park at 3105 Hursey Street, Durham, NC

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

Direct questions and concerns to:

Att: Rachelle Sickerott

Cultural and Public Art Analyst
Cultural & Public Art Program Analyst
General Services Department
2011 Fay Street
Durham, NC 27704
(919) 560-4197, ext. 21243
rachelle.sickerott@durhamnc.gov

If you have concerns about this RFI that you believe are not being addressed by the project manager, please contact:

Att: Rebecca Holmes
Cultural & Public Art Program Manager
General Services Department
2011 Fay Street
Durham, NC 27704
(919) 560-4197, ext. 21245
rebecca.holmes@durhamnc.gov

DESCRIPTION OF PROJECT AND NATURE OF RFI

30. Project

In collaboration with the City of Durham's [Parks and Recreation](#), the City of Durham's [Cultural and Public Art Program](#) is seeking candidates with experience in projects centered around community-based engagement to design and fabricate exterior public art at Birchwood Park located at 3105 Hursey St., Durham, NC, 27703.

The goal of the public art component is to create a welcoming space for recreation and design visuals that reflect the community's values.

The selected Candidate(s) will work to:

- Collaborate with the community through in-person engagement sessions and surveys;
- develop community-informed designs for public artwork that visually connects to the site and/or recognizes historical and/or cultural aspects of the site;
- beautify the basketball court through [ground plane \(asphalt\)](#) artwork and other areas of the park jointly identified by the community, City staff, and the artist(s); and
- design, fabricate, and install artwork that is integrated into the site.

31. Site Description

Birchwood Park, located at 3105 Hursey Street, is a 4.9-acre park in East Durham. The park features a baseball/softball field and basketball court. The site-specific public art installations will include an inclusive ground plane mural on the existing basketball court to engage people of various abilities in play, along with other artistic elements that could include benches, basketball goal vinyl, or other artworks determined through engagement.



32. Project Background

Birchwood Park is one of twelve parks emphasized for public amenities improvements in FY 2023-24 through City of Durham’s [Equitable and Green Infrastructure plan](#).

Equitable and Green Infrastructure

The public art installation at Birchwood Park will be part of Durham’s Equitable and Green Infrastructure plan. In 2021, the City of Durham pledged \$6 million to the Equitable and Green Infrastructure Project (EGI). This project will prioritize investment in and engagement with low-wealth communities and communities of color that have historically been excluded from or harmed by policy decisions. It aims to rectify these harms through engagement and authentic partnership with these communities. EGI will focus on historically disinvested neighborhoods to reduce disparities in access, promote environmental justice, and improve residents’ quality of life. Prioritized spaces include bus stop facilities, parks, sidewalks, trails, and pedestrian safety + accessibility infrastructure.

For more information, visit: [Equitable & Green Infrastructure | Durham, NC \(durhamnc.gov\)](#)

Birchwood Heights Community Background

Birchwood Heights was one of the housing developments developed by the Durham Housing Authority (DHA) during the 1970s. Along with other developments like Liberty Street and Oxford Manor, Birchwood Heights was part of an effort to provide affordable housing in the area. The 1970s were a significant period for the development of public housing in Durham, with the introduction of the Section 8 Housing Program in 1974, which aimed to encourage the private sector to construct affordable homes. This program provided monthly subsidies to help participants pay their rent, making housing more affordable.

33. Community Engagement

To reflect the community's voice in the public art component, the selected Candidate(s) will plan and facilitate inclusive and accessible community engagement activities to encourage public input and participation as outlined in the "Scope of Work" section. The selected Candidate(s) will be expected to lead, host, facilitate, and participate in community and staff engagement activities before finalizing their designs to gather feedback from residents living in Durham and the neighborhood in which the public art will be installed.

The City of Durham may use virtual platforms that include SMS capabilities, geo-tagging, and surveys to assist the Candidate(s) throughout the engagement process.

40. Scope of Work

The services and obligations that will be required from the Candidate during the contract period include, but are not necessarily limited to:

- Working with City staff to lead, plan, and facilitate at least three (or more) engagement sessions; and gather community feedback and interest in the project.
 - Sessions should include in-person or virtual community conversations, an online element (i.e. survey, community board, etc.) and at least one on-site event.
 - Additionally, artist should participate in at least two community engagement sessions hosted by Durham Parks and Recreation (if applicable).
 - A budget of no more than \$3,000 may be set aside to assist the selected artist or artist team with community engagement; see budget section below for more information.
- Collaborating with the City on the initial and final design concepts of the ground plane mural and other artistic elements that beautify the space and align with the community's needs.
- Presenting design concepts to City staff and the Public Art Committee and addressing any questions or feedback during a public meeting.
- Overseeing the engineering (if applicable), fabrication, and installation of the public art piece(s).
- Submitting a reasonable maintenance plan to ensure proper conservation of the piece(s).
- Documenting the process (photos, written documents, video).
- Completing the project within the agreed-upon timeframe and budget.

50. Compensation Amount

The selected Artist or Artist Team will have an estimated total public art project budget of up to \$158,000, inclusive of all costs associated with this public art project including, but not limited to: artist fees, other subcontractors' fees, insurance that meets the standards of the City of Durham, engineering, materials, fabrication costs, transportation, installation of the artwork, community engagement, and documentation of the artwork on site.

A maximum budget of \$3,000 within the total contract amount of \$158,000 may be allocated towards engagement sessions for materials, engagement session needs, and/or a local consultant/facilitator (18 or older) that will collaboratively work with the City and the selected artist or artist team to facilitate community engagement. A planned budget of \$44,000 within the total contract amount of \$158,000 may be allocated towards artist fees. Fees will be negotiated based on fabrication and installation work completed by the artist or artist team. The selected artist or artist team will sign a contract with the City not to exceed amount of \$158,000. A total compensation and payment schedule will be negotiated with the successful Candidate.

60. Definitions in this RFI: City, RFI, Proposal, Candidate, Contractor, Should

Unless the context indicates otherwise – (a) The expressions “RFI,” “this RFI,” and “the RFI” refer to this document as it may be amended or updated. (b) “City” and “city” mean the City of Durham. (c) The “submission” or “application” is the response of a person, firm, or corporation proposing to provide the services sought by this RFI. (d) The word “Candidate” or “candidate” is the person, firm, or corporation that submits a application or that is considering submitting a application. (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 RFI. 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 RFI 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 at the conclusion of the RFI process there will be a contract between the City and the successful candidate under which the successful candidate will provide the goods and services generally described in this RFI. It is the City’s intention to use the contract that is attached as Exhibit A, modified and filled in to reflect the RFI and the proposal.

If a candidate objects to any of the contract provisions, it should state the objections in its submission. Failure to provide objections creates an assumption that the candidate accepts all standard City contract terms and conditions.

Attached Exhibit: Sample Artist Contract and Non-Collusion Affidavit

See page 17

7.1 Interpretation and translation services

Interpretation and translation services are available to you at no cost. If you need them, please contact us at dcab@durhamnc.gov or (919) 560-4197, ext. 21243, by: 11/08/24.

Hay servicios de interpretación y traducción a su disposición sin costo alguno. Si los necesita, póngase en contacto con nosotros mandando un correo electrónico a dcab@durhamnc.gov o llamando a (919) 560-4197, ext. 21243, hasta esta fecha: 11/08/24.

80-90. Intentionally left out (staff note)

100. Insurance Requirements of Selected Candidate(s)

- Selected Candidates(s) may be required to carry Automobile Liability insurance with 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.
- Selected Candidate(s) **will** be required to carry Commercial General Liability insurance with a combined single limit of no less than \$1,000,000 for each occurrence and \$2,000,000 aggregate. The Candidate(s) 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”.

- Selected Candidates(s) may be required to carry Worker’s Compensation & Employers Liability Insurance in compliance with Chapter 97 of the North Carolina General Statutes.

110. Discretion of the City

- A. The City of Durham reserves the right to reject any or all RFIs.
- 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 RFI submission, whether or not something is stated to be mandatory and whether or not it is said that a RFI submission 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 SOQs. 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 RFI.
- C. Where the City asks or tells candidates to do stated things, such as that a proposal and/or RFI submission should follow a stated format or that the candidate should do stated things in seeking the contract, the City may reject a proposal and/or RFI submission 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. 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. Proposed Schedule

RFI promotion/informing	Friday, October 25, 2024
RFI Deadline	Monday, December 2, 2024 by 3 p.m.
Confirmation of RFI Receipt via email from the City of Durham to Candidates	Monday, December 2, 2024
Review Committee to meet to evaluate submissions	Monday, December 9, 2024
City to notify Artist(s) of decision	Friday, December 20, 2024
City and Artist(s) develop contract	Friday, December 27, 2024
City Council views and votes to approve contract	Monday, February 17, 2025
Contract signed by the City	Late March, 2025
Work begins	Monday, June 2, 2025
Project delivery due	Spring 2026

130. Intentionally left out (staff note).

140. Deadline to Receive Submissions

Submissions must be received by **Monday, December 2, 2024 at 3:00 p.m.** via [Submittable](#).

Email any questions to Rachelle Sickerott (arts@durhamnc.gov), with the subject line "Public Art RFI: Birchwood Park" by Monday, December 2, 2024 at 5:00 p.m.

The project manager will distribute all questions and answers to those respondents who have requested RFI's from the City. No other City official or employee is empowered to speak for the City with respect to this RFI.

If a Candidate(s) does not receive confirmation receipt from the City by Monday, December 2, 2024 at 3:00 p.m., it is the responsibility of the Candidate(s) to contact the City to confirm submission by Monday, December 2, 2024 at 5:00 p.m. to be considered eligible.

GETTING MORE INFORMATION ON THE PROJECT AND RFI PROCESS

150. Questions

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

160-170. Intentionally left blank (staff note).

EVALUATION CRITERIA

180. Evaluation Criteria

A panel of community members, City staff and others will use evaluation criteria to review the submissions. If an award is made, it is expected that the City's award will be to the candidate that agrees to meet the needs of the City. A number of relevant matters will be considered, including qualifications and cost.

1. The Review Committee will include community members and staff from the City including representatives from the City of Durham's General Services Department, Durham Parks and Recreation, and community residents.
2. The Review Committee will review submissions for completeness and may reject incomplete or non-responsive submissions.
3. The Review Committee will evaluate applications based on criteria that may include, but is not limited to the following:
 - a. **Community Connections & Engagement (10 Points)**
 - Examples of past community engagement.
 - Experience, success, and/or interest in community engagement in the process of creating public artwork.
 - b. **Aesthetics (10 Points)**
 - Work examples demonstrating diversity in style, scale, and media.
 - Technical excellence as demonstrated in past projects.
 - Aesthetic cohesion of past projects.
 - c. **Context in Space (10 Point)**

- Proven ability to execute projects that are compatible with the project site.
 - The artwork is appropriate in terms of scale, materials, content and design with respect to its immediate and general, social and physical context.
 - Examples of work that relates to or complements the project sites built and natural environments.
- d. Diversity & Inclusion (10 Points)**
- Examples of past artwork that establish a community connection, reflect diversity, and showcase diverse and inclusive narratives.
 - Involvement with the local artists' community; for example, artist mentorship program(s).
- e. Technical Considerations (10 Points)**
- Proven track record of using the materials and methods appropriate for large scale projects.
 - Demonstrated ability to manage projects with similar budgets and schedules; prior experience working with external contractors such as fabricators or structural engineers.
 - Providing cost for previous work.
4. The Review Committee may invite up to eight (8) Finalists to interview with the committee or committee members.
 5. Finalists may be required to visit the site location and interview in-person or online with the Review Committee.
 6. After the interviews, the Review Committee will recommend the Candidates to the City, who will make the final determination as to which Candidates are selected.
 7. The City and selected Candidates will enter into a written contract detailing mutual responsibilities and the full scope of work, including a project budget (see attached exhibit; sample contract and non-collusion affidavit).

190. Call for Artists/RFI Eligibility

This RFI is open to all residents of North Carolina, but preference will be given to residents of the County of Durham with connections to the Durham community and/or who are connected to and aware of the history of the site and area.

The City encourages people from diverse backgrounds to apply. Candidates must be artists, designers, or fabricators or partnered with artists, designers, or fabricators, eligible to work in the United States, and age 18 and older. Candidates are eligible regardless of race, color, ethnicity, religion, national origin, gender, gender identification, military status, sexual orientation, marital status, or physical ability.

200. Project Partners

The Public Art Committee

The Public Art Committee (PAC) advises the [Durham Cultural Advisory Board](#), under the leadership of the City's General Services Department, and acts on behalf of the board on matters relating to public art. The Public Art Policy Resolution was initially approved by the City Council on November 21, 2011.

The committee's functions are to:

- Assist and advise the City regarding the implementation and evolution of the Public Art Program.
- Cultivate and review proposals for public art projects brought to it by City administration and other stakeholders.
- Work as a community advocate for public arts within the City by building awareness and forging connections that lead to involvement, investment, and opportunity.
- Review proposals for public art projects brought to it by the City administration and make recommendations to the Cultural Advisory Board with regard to project approvals.

For information on the Public Art Committee Criteria and Guiding Questions for Public Art Review, [click here to view the PDF](#).

City of Durham's Parks and Recreation (DPR)

[Durham Parks and Recreation \(DPR\)](#) provides opportunities for the Durham community to Play More: Connecting our whole community to wellness, the outdoors, and lifelong learning. Guided by the City's Strategic Plan, we strive to help residents discover, explore and enjoy life through creative and challenging recreational choices that contribute to their physical, emotional, and social health.

DPR manages:

- Over 1,600 acres of parkland
- 66 parks
- 56 playgrounds
- 29 miles of paved trails
- 7 recreation centers
- 13 special use facilities
- 3 outdoor pools
- 2 city lakes
- 2 heritage parks
- 2 indoor pools

DPR is a [nationally accredited agency](#) by the National Parks and Recreation Commission for Accreditation of Park and Recreation Agencies (CAPRA).

DPR Mission

Play More: Connecting our whole community to wellness, the outdoors, and lifelong learning.

DPR Vision

Durham Parks and Recreation will be Durham's leading resource for recreational choices to help citizens enjoy life while contributing to their health and well-being.

DPR History

Public recreation was started in Durham in April of 1924 by a City Council Resolution which stated, "It has been recognized by the Council that playgrounds are essential to proper growth and citizenship."

In accordance with this observation the Council, in July 1924, appropriated money for summer playgrounds. On July 1, 1925, the Council appropriated money to organize a Recreation Department with a full-time director. Durham became the second recreation department in North Carolina. C.R. Wood was selected as the first Director. [Visit DPR's history timeline](#) to learn more about DPR throughout the years.

City of Durham's Cultural & Public Art Program (CPAP)

The Cultural and Public Art Program believes that Durham’s rich cultural heritage is an important part of what makes Durham’s neighborhoods thrive, attracts tourism and business development, and what brings the community closer together. The program seeks to bring public art into the everyday experience of Durham residents through the implementation of community-informed placemaking practices. The program works to invest and create public art experiences – both downtown and in neighborhoods – that illuminate residents’ history, sparks reflection and dialogue, and enhances daily life.

To further help artists connect with opportunities, the City has also launched a Durham Calls for Artists page on its website, which lists a number of upcoming opportunities for artists in and around Durham. Artists and other stakeholders who would like to be notified of current and future art-related opportunities and news can sign up for alerts through the [Cultural and Public Arts Calls for Art mailing list](#).

For more information about the City’s Cultural and Public Arts Program, visit our [website](#).

City of Durham Plans and Resources

The selected Candidate(s) are encouraged to review existing City plans to develop and shape the community’s involvement in the design and development of the public art project. The City of Durham Strategic Plan serves as a roadmap to make Durham a diverse, welcoming and innovative community, which highlights goals to foster cohesive, engaged and diverse communities where residents have equitable access to community resources, and the opportunity for a high quality of life.

More information can be found here: <https://durhamnc.gov/183/Envision---Strategic-Plan>

The City of Durham’s Neighborhood Improvement Services have issued a draft Equitable Engagement Blueprint document to advance equitable community engagement by offering specific guidelines that can be adapted and replicated across City initiatives. More information can be found here: [Equitable Community Engagement Blueprint](#)

240. RFI Submission Requirements

The RFI submissions shall include the following:

- **Contact information:** include the candidate’s name and address, and the contact information (name, mailing address, email address, fax number, and telephone number) of the person whom the City should contact regarding the application.
- **Statement of Interest:** narrative outlining the Candidates’ qualifications and interest in this project, including descriptions of past engagement work within the Durham community or other communities and/or interest in community engagement. Artists are encouraged to include information on how they may identify and engage residents and community contacts within Durham and neighborhoods surrounding the project site.
- **Work samples:** visual representations of past artwork that demonstrate the Candidates’ qualifications for this project. In order to be considered for this project, the Candidate must submit at least five (5) images or documents of at least five (5) previously completed projects, with the option to submit up to ten (10) images or documents of no more than ten (10) previously completed projects.

Each work sample should include a summary that includes:

- Artwork title

- Artwork dimensions, including weight if applicable
- Artwork location
- Artwork description, including methods of fabrication
- Total budget of project
- Materials/media
- Date of installation and/or timeline of artwork fabrication

***Preference for file formatting: PDF, JPG, PNG**

- **References:** each Candidate should provide at least three (3) current references (non-familial) or recommendation letters with contact information for each reference who can speak to the Candidate’s work ethic, skills and strengths.
- **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 application 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
- **Project Team, Location of Work, and Subcontracting:** state the names and qualifications of the individuals who will have responsibility for this project.
- **UBE (Underutilized Business Enterprise) Participation. See the [EBOP Guide](#)** For UBE participation information. Applicants for this project are required to sign page 11.

For help, call the City’s Division of Contracts & Compliance in the Department of Finance at (919) 560-4180.

- **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.
- **Non-collusion:** The selected candidate must sign and notarize a *NON-COLLUSION AFFIDAVIT* to enter a contract with the City.

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 bid 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:

250-290. Intentionally left out

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 RFI process or did not submit a proposal that complied with the RFI. 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. State Treasurer's lists regarding Iran and Boycott of Israel

If 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 an application) 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. 14786.81(a)(1) or on a list created by the Treasurer pursuant to N.C.G.S. 14786.58 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.

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 Durham One Call at 919-560-1200 or ADA@DurhamNC.gov, as soon as possible but no later than 48 hours before the event or deadline date.

Aviso en virtud de la Ley de Estadounidenses con Discapacidades -- Con el fin de recibir un recurso o servicio auxiliar para participar de manera efectiva en las actividades del gobierno de la ciudad, cualquier persona con una discapacidad puede comunicarse con la línea Durham One Call al teléfono 919-560-1200 o al correo ADA@DurhamNC.gov, tan pronto como sea posible, a más tardar 48 horas antes del evento o fecha límite.

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, disability, familial status, military status, sexual orientation, gender identity, and protected hairstyle. Consistent with Chapter 34 (Non-Discrimination) of the Durham City Code, the City requires that firms doing business with the City:
 1. not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, familial status, military status, sexual orientation, gender identity, and protected hairstyle.
 2. take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, national origin, sex, disability, familial status, military status, sexual orientation, gender identity, and protected hairstyle. 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, national origin, sex, disability, familial status, military status, sexual orientation, gender identity, and protected hairstyle.
 4. include this Statement of City EEO Policy in every purchase order for goods to be used in performing City contracts and in every subcontract related to City contracts.
- B. Livable Wage. The City of Durham desires that firms doing business with the City pay their workers a livable wage rate while working on City contracts. The livable wage rate is \$19.58 per hour through June 30, 2025. The City will re-set the rate for the period after June 30, 2025.

Sample Artist Contract and Non-Collusion Affidavit

STATE OF NORTH CAROLINA COUNTY OF DURHAM

CONTRACT FOR _____ *[insert descriptive title]*

This contract is dated and entered into as of the ____ day of _____, 20____, by the City of Durham (“the City”), a North Carolina municipal corporation, and _____ *[name of firm]* (“the Contractor”), *[Indicate type of entity, for instance:*

a corporation organized and existing under the laws of [name of State];
a non-profit corporation organized and existing under the laws of [name 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 and existing under the laws of [name of State];
a sole proprietorship;
or a general partnership
If it’s a corporation, LLC, or limited partnership, use the above “organized and existing” language, and do not substitute information about the contractor’s principal office or place of business.]

Sec. 1. Background and Purpose.

1.1 Definitions

(a) “Artwork” refers to the original visual representation and material design, renderings, sketches, drawings, photographs, depictions, descriptions, samples and any other representation of the Contractor’s work pursuant to this Contract that is subject to copyright, which is intended to be fabricated and installed at the Site.

(b) “Contract Administrator” refers to the City staff employee primarily responsible for administering the Contract and for advancing the progress of work described in Exhibit B, Scope of Work. The Contract Administrator may change from time to time, as determined by the Director of General Services or designee.

(c) “Initial Design Proposal” refers to the initial submittal of the proposed Artwork as it is to appear on the Site. The Initial Design Proposal includes a rendering of the Artwork and sufficient details to provide an accurate representation of how the Final Artwork should appear. The detailed requirements of the Initial Design Proposal are described in Exhibit B, Scope of Work.

(d) “Final Artwork” refers to the work in its final, completed form, installed at the Site, and all digital images and written documentation of archival collection. Reference to the Final Artwork may include, however, any and all aspects of installation of the Artwork whether or not wholly representative of the Final Artwork, such as securing applicable permits, passing inspection, or obtaining other required approvals.

(e) "Final Design Proposal" refers to the proposal accepted by the City representing the Final Artwork to be installed at the Site. The Final Design Proposal shall be the basis for the design and installation of the Final Artwork and shall include a detailed description of the Final Artwork elements, materials and means and mechanisms for installation and attachment to the Site.

(f) "Site" refers to [INSERT SITE INCLUDING STREET ADDRESS].

(g) "Work" refers to 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. The Work includes all the services and performance obligations required by the terms of the Contract, with the ultimate goal of delivering the "Final Artwork".

(h) "Artist Mentee" refers to an artist or individual aged 18 to 24, with preference for an artist or individual residing in the County of Durham, that shall participate in the project as an apprentice/intern to the Contractor, with the objective of receiving arts related educational enrichment and skill building opportunities. *[INCLUDE ONLY IF APPLICABLE]*

(i) "Project Manager" refers to the Contractor's responsibilities of the planning, procurement and execution of the work as defined in this contract.

Sec. 2. Services and Scope to be Performed. Presumption that Duty is Contractor's. The Contractor shall _____perform Work as outlined in Exhibit B, Scope of Work]. 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. Term of Contract. The contract term shall begin _____ [month] ____ [day], 20____ and end _____ [month] ____ [day], 20____. *[Insert calendar dates for the start and end of the term.*

Sec. 4. Contractor's Billings to City. Compensation. (a) The City shall pay the Contractor for the Work as follows_____. The total dollar amount to be paid under this contract by the City to the Contractor shall not exceed \$_____. The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section or by Section 14 (Termination for Convenience ("TFC")).

(b) 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 clearly show project name, the City's project/accounting number, and any other information reasonably requested by the City. Within thirty days after the City receives an invoice, the City shall send the Contractor a check or electronic funds transfer in payment for all undisputed amounts contained in the invoice.

Sec. 5. Insurance. *[City staff –to be filled in]*

Sec. 6. Exhibits. The following exhibits are made a part of this contract:

- Exhibit A – Non-Collusion Affidavit containing 1 page.
- Exhibit B – Scope of Work, containing _____ page(s).
- Exhibit C – Compensation Milestones and Payment Schedule, containing 1 page.
- Exhibit D – Special Provisions, containing 3 pages.

Except in the case of exhibits containing required federal clauses, if there is conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Sec. 7. Notice Addresses. For purposes of Section 12 of the General Conditions (Notice), and subject to change pursuant to subsection 12(d), the addresses for these notices are as follows:

To the City:

[Insert name and department]

City of Durham

101 City Hall Plaza

Durham, NC 27701-3329

The phone number is (919) _____

Email:

To the Contractor:

[Insert name and address]

The phone number is _____.

Email:

Sec. 8. Special Provisions. Exhibit D

GENERAL CONDITIONS

Sec. 9. 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. 10. Performance of Work by City. If this contract requires the Work be completed according to a schedule, and the Contractor fails to perform the Work in accordance with the required schedule, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 11. 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, each subcontractor shall have the right to enforce this subsection (a) directly against the Contractor but not against the City.

(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 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 construction not remedied; disputed work; third party claims filed or reasonable evidence that claim will be filed; failure of subcontractor to make timely payments for labor, equipment, and materials; damage to Contractor or another subcontractor; reasonable evidence that subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by the City.

(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. 12. Notice.

(a) In General. 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.

(b) Means of Delivery of Notice. (i) Common Carrier. All such notices shall be in writing and sent by common carrier or personal delivery. Those sent by common carrier shall include instructions to obtain the recipient's signature and/or a signature at the recipient's address. Common carrier means UPS, FedEx, a designated delivery service authorized pursuant to 26 United States Code 7502(f)(2), or United States Postal Service. (ii) Notice given by Personal Delivery. If the sender causes the notice to be hand delivered to a natural person 18 years or older at the address of the Contractor indicated under subsection Section 7 (Notice Addresses) above, notice is deemed given. (iii) Common Carrier Leaves Notice. If the sender obtains a signature through a common carrier pursuant to subsection (i), notice is deemed given. If, however, the common carrier does not obtain such a signature between 8:30 AM – 4:30 PM Monday-Friday on a day that is not a Holiday but leaves the notice in a place that it deems safe without obtaining a signature, this process constitutes delivery of the notice provided that the sender also sends the notice by email or fax. Notice is deemed given on the later of (x) the leaving of the notice by the common carrier and (y) the email or fax. A notice is deemed emailed on the date that the sender attempts to send it. A notice is deemed faxed at the earlier of when successfully received or when faxing is unsuccessfully attempted three times at least ten minutes apart. (iv) Requested Additional Method. Regardless of the method of giving notice, the sender is requested but not required to also send it by fax or email.

(c) When Undeliverable Notice Is Deemed Sent by Common Carrier. If a notice sent by common carrier is undeliverable because the address or other information provided to the sender by the other party (the intended recipient) is incorrect, incomplete, or out of date, or for any other reason; and the

sender also sends the notice by fax or email, notice is deemed given on the later of (x) the sender's placing the notice in the custody of the common carrier and (y) the fax or email. A notice is deemed emailed on the date that the sender attempts to send it. A notice is deemed faxed at the earlier of when successfully received or when faxing is unsuccessfully attempted three times at least ten minutes apart.

(d) Change of Address. A change of address, fax number, email address, telephone number, or person to receive notice shall be made by notice given to the other party.

Sec. 13. Indemnification. (a) Standard Indemnification Provision. This section shall be applied to the maximum extent allowed by law, but it shall be construed and limited as necessary to comply with § 22B-1 of the North Carolina General Statutes ("NCGS"). The Contractor shall defend, indemnify, and hold 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 its Derivative Parties. In performing its duties under this subsection, the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. "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 attorney's 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. By appropriate litigation, each Indemnitee, severally, shall have the right to enforce this section directly against the Contractor, but not against the City.

(b) Definitions. These definitions apply to this section only unless otherwise stated.

- (i) The words "Construction Agreement", "Derivative Parties", "Design Professional", "Design Professional Agreement", "Design Professional Services", "Fault", and "Subcontractor" as used in this section shall have the meanings defined by NCGS §22B-1.
- (ii) "Contractor" – Each party to this Agreement except the City of Durham.
- (iii) "Indemnitees" means the City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.
- (iv) In this section, except as used in subsection (a), "Defend" means to pay for or furnish counsel at the expense of the Contractor to defend any of the Indemnitees against claims alleged or brought against any of the Indemnitees by a third party alleged or brought in any court or other tribunal, including forms of alternative dispute resolution required by law or contract, before the court or tribunal has reached a final determination of fault.

(c) Insurance Contracts and Bonds. This section does not affect an insurance contract, workers' compensation, or any other agreement issued by an insurer; and this section does not apply to lien or bond claims asserted under NCGS Chapter 44A.

(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) If this contract is a Construction Agreement or a Design Professional Agreement, the following restrictions and qualifications apply to the Standard Indemnification Provision of subsection (a):

- (i) Restriction regarding Indemnitees' Negligence. Contractor shall not be required 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.
- (ii) Restriction regarding Fault in Construction Agreements and Design Professional Agreements. Nothing in this contract requires the Contractor to indemnify or hold harmless Indemnitees or any other person or entity against losses, damages, or expenses unless the fault of the Contractor or its Derivative Parties is a proximate cause of the loss, damage, or expense indemnified.
 - (iii) Restriction regarding Negligence of Design Professionals. Nothing in this contract requires the Contractor, provided that it is a design professional, to defend Indemnitees or any other person or entity against liability or claims for damages, or expenses, including attorney's fees, proximately caused or allegedly caused by the professional negligence, in whole or in part, of the Contractor, the City, or their Derivative Parties, whether the claim is alleged or brought in tort or contract.
 - (iv) Liability When at Fault. The parties intend that nothing in this contract shall be construed to exclude from any indemnity or hold harmless provisions enforceable under subsection (e)(i) (Restriction regarding Indemnitees' Negligence) and subsection (e)(ii) (Restriction regarding Fault in Construction Agreements and Design Professional Agreements) any attorneys' fees, litigation or arbitration expenses, or court costs actually incurred by the City to defend against third party claims alleged in any court, tribunal, or alternative dispute resolution procedure required of the City by law or by contract, if the fault of the Contractor or its Derivative Parties is a proximate cause of the attorney's fees, litigation or arbitration expenses, or court costs to be indemnified. Every provision in this contract that violates the parties' intent expressed in the preceding sentence shall be construed and revised to the extent that it is lawful in order to make the provision conform with such intent.
 - (v) Other Provisions. Every provision in this contract that violates this subsection (e) shall be construed and revised to the extent that it is lawful in order to make the provision conform with those subsections.

Sec. 14. 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 that amount will exclude profit for the Contractor. Within 30 days of the Contractor's receipt of notice of TFC, the City shall pay the Contractor one hundred dollars (\$100) as a TFC fee. The City shall pay the Contractor for all Work performed up to the termination date indicated in the TFC notice, except to the extent Work has been paid for previously. 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. 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. 15. E-Verify Requirements. (a) If this contract is awarded pursuant to 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.

Sec. 16. Choice of Law and Forum; Service of Process.

(a) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina and not the United Nations Convention on Contracts for the International Sale of Goods. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice in Durham County. Such actions shall neither be commenced in nor removed to federal court. The preceding two sentences do not apply to actions to enforce a judgment entered in actions heard pursuant to this subsection (a).

(b) If the Contractor is a business entity (for instance, the Contractor is a corporation or limited liability company), this subsection (b) applies. "Agent Authorized to Accept Service of Process" ("Agent") 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. The Contractor hereby appoints as one of those Agents the person it designates to receive notice pursuant to Section 7 (Notice Addresses). If the Contractor fails to appoint an Agent or the Agent cannot be served using reasonable diligence, the Contractor appoints the Durham City Clerk as its Agent. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent is designated as its non-exclusive Agent. The Contractor shall instruct each Agent that when the Agent receives the process, summons, or complaint, the Agent shall promptly send it to the Contractor using a means for giving notice under this contract, provided that when the City Clerk is the Agent, the City shall issue such instructions. This subsection (b) does not apply while the Contractor maintains a registered agent in North Carolina by filing with the office of the North Carolina Secretary of State and that registered agent can be found with due diligence at the registered office.

Sec. 17. 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.

Sec. 18. 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.

Sec. 19. Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

Sec. 20. 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.

Sec. 21. Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

Sec. 22. Notice of City Policy. Compliance with Non-Discrimination Ordinance. 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. The Contractor shall comply with all applicable provisions of Chapter 34 of the Durham City code (Non-Discrimination) and shall explicitly require the same of its subcontractors in their subcontracts.

Sec. 23. 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.

Sec. 24. Limited Third-Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not for any other person, except to the extent otherwise expressly stated in this contract.

Sec. 25. Principles of Interpretation and Definitions. (a) 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. (b) References to a "Section" or "section" shall mean a section of this contract. (c) "Contract" and "Agreement", whether or not capitalized, refer to this instrument. (d) "Duties" includes obligations. (e) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (f) The word "shall" is mandatory. (g) The word "day" means calendar day. (h) The word "Holiday" means legal holiday observed by the City pursuant to City Code section 42-16 or any successor provision. (i) A definition in this contract will not apply to the extent the context requires otherwise.

Sec. 26. 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 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.

Sec. 27. Public Health Emergency Declarations. This section shall take effect upon the declaration of a state of emergency made pursuant to applicable law, code, or ordinance by any federal, state, county, or city official, due to a public health emergency, such as an epidemic, pandemic, or endemic disease. The Contractor shall comply with the written procedures and policies adopted by the City department or office primarily responsible for administering this contract. The Contractor shall ensure that all assigned temporary employees and subcontractors comply with the written procedures and policies while performing the Work on City property.

Sec. 28. City 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 the City Manager or a deputy City Manager without City Council action.

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 _____

[Insert signature block and notarization for vendor here. See Form - Vender Signature & Notary Acknowledgement]

Signature block can be found on CODI here:
[Employee Services City Attorney \(durhamnc.gov\)](http://durhamnc.gov)

Exhibit A
TITLE OF CONTRACT
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 or bidder named below both in submitting this proposal and in making this Non-collusion Affidavit. To the best of my knowledge and belief, (1) the candidate or bidder has not violated N. C. General Statute section 133-24 in connection with the proposal, (2) the candidate or bidder 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 or bidder intends to do the work with its own bonafide employees or subcontractors and is not bidding or making a proposal for the benefit of another contractor. The neuter includes the masculine and the feminine. The candidate or bidder to which this Non-Collusion Affidavit refers is:

(insert name of candidate or bidder)

(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 B

TITLE OF CONTRACT

Scope of Work

The City of Durham agrees to provide funding to the Contractor to design, fabricate, and install public Artwork(s). The Contractor will: develop a community-informed public art piece or public art piece(s) that will connect visually to the *[INSERT SITE AND PROJECT][EXAMPLE: site and/or interpret cultural aspects of the site; beautify the exterior of the building through site-specific public art and/or public art elements; and/or provide hands-on opportunities for adults and children through community engagement sessions.]*

The Contractor shall design a public art piece or public art pieces to be displayed and installed at *[INSERT SITE AND STREET ADDRESS]*. The Final Artwork will be representative of the Final Design submission to the City of Durham and Durham Public Art Committee. 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. The Contractor shall deliver the program of services set forth below which includes the following:

Preliminary Work and Artwork Preparation.

- a. The City shall be responsible for providing the Contractor, at no expense, copies of existing designs, drawings, reports, list of required permits, and other existing relevant data and/or materials, if any, which is needed by Contractor in order to perform the scope of services in this Contract.
- b. The Contractor shall consult with the Contract Administrator for the project to ensure that the Artwork design conforms to both the aesthetic and structural requirements of the Site.
- c. In coordination with the Contract Administrator, the Contractor shall consult with local planning and inspections departments to ensure that the Artwork design, fabrication and installation will conform to all building codes and ordinances, if applicable.
- d. The Contractor shall act as the overall Project Manager and collaborate with residents, stakeholders, Artist Mentee *[IF APPLICABLE]* and others to lead visioning sessions and determine the goals and overall design of the Artwork.
- e. The Contractor shall collaborate with an Artist Mentee who will be selected collaboratively by the City and the Contractor. *[INCLUDE ONLY IF APPLICABLE]*
- f. The Contractor shall plan, coordinate, and execute community engagement for this project. If the Contractor selects a subcontractor or consultant to plan, coordinate, and/or execute community engagement, the Contractor shall submit this for review and approval in the proposed engagement plan. All community engagement proposals must be submitted to and approved by the City.
- g. The Contractor shall provide a written description of all subcontractors and their involvement in the project to the Contract Administrator. The City must approve any subcontractor (1) whose Work involves creative contributions to the project and/or (2) whose Work is valued over \$1,500.

Submission of Initial Design Proposal.

Upon completion of the preliminary work performed as listed above, the Contractor shall submit a

schedule for preparation and completion of the Initial Design Proposal, which schedule must be approved by the Contract Administrator. The Contractor will guide the style of the Initial Design Proposal. The Initial Design Proposal shall be submitted to the Contract Administrator by the deadline outlined in Exhibit C. The Initial Design Proposal shall include the following:

- a. a visual, representative rendering of the Artwork as it is to appear on the Site;
- b. an Artist statement or written description of the Artwork;
- c. a detailed description of the Artwork elements, materials, and method for fabrication and installation at the Site;
- d. a written description of all subcontractors involved in the project and their proposed scope of work;
- e. a written description of the proposed means of attaching and securing the Artwork to the Site, including any required Site preparations or modifications (description should include the proposed methodology for attachment and requirements);
- f. a description detailing the expected maintenance and operational requirements for the Final Artwork;
- g. a schedule for the design and budget of the Final Artwork; and,
- h. a written description of the community engagement completed by the Contractor, including number of community members involved in the process.

If text is included in the Initial Design Proposal, the Contractor warrants and promises to the City that the Artwork shall comprise of original work by the Contractor and that the Artwork is, or will be, unique, and will not infringe any copyright, trademark, trade dress rights, patent, right of privacy, or right of publicity. The City must review and approve all text and reserves the right to reject text from the Initial Design Proposal based on City Policy.

The Contractor shall submit the Initial Design Proposal to the Contract Administrator for review in accordance with the approved schedule. As part of the review process, the City may require that the Contractor receive input and comments from community stakeholders selected by the City about the Initial Design Proposal. Where applicable, the City shall provide the Contractor with written comments and recommendations concerning the Initial Design Proposal. The City may thereafter direct the Contractor to proceed with the Final Design Proposal contingent upon the Contractor satisfactorily incorporating written comments and recommendations provided by the City into the Final Design Proposal.

Final Design Proposal.

(a) Schedule, contents and submission of Final Design Proposal. After the City has reviewed and commented on the Initial Design Proposal, the Contractor shall submit a schedule for preparation and completion of the Final Design Proposal, which schedule must be approved by the Contract Administrator. The Final Design Proposal shall comprise all of the elements of the Initial Design Proposal, including incorporation of all comments and recommendations of the City, if provided, and must be submitted in the necessary format to be fabricated. The Final Design Proposal shall be submitted to the Contract Administrator by the deadline outlined in Exhibit B. The Final Design Proposal shall include:

- a. the Final Artwork dimensions;
- b. estimated weight;
- c. Final Artwork title;

- d. a detailed cost estimate of the materials, construction, and installation of the Final Artwork (collectively identified as the “Final Artwork Construction Cost”);
- e. lighting proposal, including budget, if applicable.

The Final Design Proposal shall include, if required by the Contract Administrator:

- f. structural drawings detailing the methods of construction;
- g. sealed engineering drawings and specifications detailing the means and method of attachment of the Final Artwork to the Site (hereinafter, “Engineering Details”).

The Engineering Details must be sealed by a professional engineer licensed in the State of North Carolina. The City must approve the Final Artwork Construction Cost as part of its review of the Final Design Proposal discussed below. The Contractor acknowledges that approval of the Final Artwork Construction Estimate shall be evaluated in part in correlation with the total compensation contemplated within Exhibit B. In other words, the City wants to verify that the total compensation provided under the contract is commensurate with the actual cost value of total design, materials, construction and installation of the Final Artwork.

(b) Review of the Final Design Proposal by the City. The City reserves the right to reject any or all of the Final Design Proposal. If the City rejects portion(s) of the Final Design Proposal, the City shall provide in writing reasons for the rejection. As part of the City’s review of the Final Design Proposal, it may request from the Contractor any backup documentation the Contractor relied upon in preparing the Final Design Proposal. Such documentation may include details relating to the Final Artwork Construction Cost estimate. In response to the City’s written comments, recommendations, or rejections of the Final Design Proposal, the Contractor shall make necessary revisions and corrections in order to submit a “Revised Final Design Proposal” for approval by the City. The Revised Final Design Proposal will reflect changes made to address the City’s stated reasons for prior rejection. This process of back-and-forth review and re-submission shall be repeated, in the reasonable discretion of the City, until it is satisfied that the Contractor has adequately addressed the City’s comments and recommendations.

(c) City Acceptance of Final Design Proposal. Once the Contractor has prepared a Final Design Proposal to the satisfaction of the City, the Contract Administrator shall provide a written notice to proceed (NTP) to the Contractor, after which the Contractor will be authorized to begin fabricating and assembling the Final Artwork for permanent installation at the Site. At all times, the Contractor shall coordinate with the Contract Administrator as well as necessary City Departments, identified by the Contract Administrator.

Exhibit C

TITLE OF CONTRACT

Compensation Milestones and Payment Schedule

	PROJECT MILESTONE	ARTIST FEES	SUPPLIES AND MATERIALS	COMMUNITY ENGAGEMENT [IF APPLICABLE]	ARTIST MENTEE STIPEND [IF APPLICABLE]	<i>Totals per project milestone</i>
1	Initial Design Proposal due by XXX					
2	Notice to Proceed to Final Design Proposal					
3	Final Design Proposal due by XXX Payment after Final Design Proposal Acceptance.					
5	Final Artwork Acceptance. Payment after acceptance of installation. Final Installation by XXX					
	Subtotals					
4.5	PROJECT TOTAL					

Exhibit D

TITLE OF CONTRACT

Special Provisions

Ownership, Copyrights, Visual Rights Related Final Artwork, Warranty, and Maintenance of the Final Artwork.

- 8.1 Title Ownership in the Final Artwork. Upon the satisfactory completion of the Final Artwork pursuant to the terms of this Contract and final payment by the City and Final Acceptance of the Final Artwork by the City, the City shall be deemed to have accepted the Final Artwork; full title and ownership of the Final Artwork shall transfer to the City; and the risk of loss or damage to the Final Artwork shall thereby transfer from the Contractor to the City.
- 8.2 Copyright Assignment. The Contractor hereby assigns to the City, without reservation, all copyrights in the Artwork, the Final Artwork and all related documents, drawings, models, photographs, and other expression created by the Contractor (“Instruments of Expression”) for completion of the Final Artwork. The City’s obligation to pay the Contractor is expressly conditioned upon the Contractor’s obtaining a valid written comprehensive assignment of copyrights from its consultants, contributors, and collaborators (collectively, “Consultants”) in terms identical to those that obligate the Contractor as expressed in this section, which copyrights the Contractor, in turn, hereby assigns to the City. The City, in return, hereby grants the Contractor and its Consultants a revocable, nonexclusive license to use and reproduce the Instruments of Expression (i) for purposes relating directly to the Contractor’s performance of its obligations under this contract; (ii) for the Contractor’s archival records; (iii) for the Contractor’s reproduction of drawings and photographs of the Final Artwork in the Contractor’s own marketing and promotional materials; and (iv) for educational and non-commercial purposes. This nonexclusive license shall terminate automatically upon the occurrence of either a breach of this Contract by the Contractor or upon termination of this Contract. This nonexclusive license is granted to the Contractor alone and shall not be assigned by the Contractor to any other person or entity. This nonexclusive license shall terminate automatically upon the Contractor’s assignment of this nonexclusive license to another person or its attempt to do so.
- 8.3 Waiver of Visual Rights in Final Work. Contractor unconditionally waives all rights, claims, and causes of action relating to any moral rights and non-assignable rights in the Final Artwork, including the Visual Artists Rights Act of 1990 (17 U.S.C. § 106A (2008)), as amended, together with all related past, present, and future causes of action related to the Final Artwork, including any and all rights of approval or consent with respect to any modification, alteration, disassembly, removal, distortion, mutilation, or destruction of the Final Artwork, except as expressly provided in this contract.
- 8.4 Warranty of Original Artwork. The Contractor warrants and promises to the City that the Artwork as represented in the Final Design Proposal shall comprise original work of the Contractor and that the Artwork is, or will be, unique, and will not (i) infringe any copyright, trademark, trade dress rights, patent, right of privacy, or right of publicity; (ii) contain any libelous or scandalous material; or (iii) infringe or violate any other right of

any third person, including other intellectual property or claims by third persons that the Artwork is proprietary to such third person. Contractor further warrants and promises that the Contractor is the sole and exclusive owner of all unencumbered right, title, and interest in and to the Artwork, and no other person has any rights (as an owner, licensee, or otherwise) in or to the Artwork, that the Contractor has obtained all necessary assignments and waivers from all other persons who may have been involved in the creation of the Artwork or otherwise may have a claim of ownership or copyright in or to the Artwork. The Contractor shall indemnify the City against any liability, loss, cost, expense, including attorney's fees, arising out of any claim of title or ownership in the Artwork, intellectual property interests in the Artwork, or rights in the Artwork, whether or not such claim is successful. If so requested by the City, the Contractor shall defend any such claim in the name of the City, but at the Contractor's expense. The terms of this Section 8 shall survive the expiration or termination of this Contract.

8.5 Quality and Workmanship of Final Artwork. Contractor warrants to the City that all Work performed will be performed in a workmanlike manner. The Contractor warrants that the Final Artwork, as designed, fabricated and installed, shall be free of defects in material and workmanship, including any defects consisting of qualities which cause or accelerate deterioration of the Artwork other than the inherent nature of the material of which it has been fabricated. The Contractor warrants that the Final Artwork shall be suitable in all respects for display, the purpose for which it was created hereunder and the Contractor is not aware of any serious flaws or conservation problems in any works previously created by the Contractor which are composed of like or similar materials, or in which the Contractor used similar materials or methods to be utilized in the fabrication of the Final Artwork.

8.6 Maintenance. The Contractor warrants to the City that the Final Artwork will require little or no ongoing maintenance except as otherwise disclosed in writing to the City in the Final Design Proposal or any written notices hereof. The City and any future owner, successor, donee, assignee or transferee of the City shall agree to make reasonable efforts to perform regular inspections of the Final Artwork and, to the extent the City determines appropriate, the Contractor will be given the opportunity to perform substantial restoration of the work.

8.7 Artist Mentee: Scope of Participation, Prompt Provision of Consideration, Compliance Affidavit. *[INCLUDE ONLY IF APPLICABLE]*

(a) Scope of Participation: The Contractor shall provide support and management of Artist Mentee participation in creation of the public Artwork, with the following objectives:
The Contractor shall provide educational enrichment and skill building opportunities to Artist Mentee related to art, public art, community engagement, and creative place-making.
The Contractor shall schedule all meetings and activities (frequency, duration, and location of meetings) with the Artist Mentee in a timely manner. The Contractor is expected to establish a communication plan that provides for communication with the Artist Mentee on a regular schedule according to the project needs.

(b) Stipend to Artist Mentee Consideration: The Artist Mentee who participates in the project as agreed upon with the City and the Contractor shall be eligible to receive a

stipend for said participation based on submitted deliverables to the Contractor in an amount not to exceed \$XXX (XXX Dollars/00 cents).

