



Call for Artists: Request for Interest (RFI) Living History Performance Project at Beechwood Cemetery in Durham, NC

**RFI Deadline to Apply:
Monday, December 2, 2024
3:00 PM Eastern Time**

The City of Durham's Cultural and Public Art Program (referred to as "City") is seeking an Artist or Artist Team composed of a Researcher, Writer, and Performers (referred to as "Candidates") with experience in theatre, storytelling, and community-based engagement. The City seeks this Artist or Artist Team to develop, write and perform biographical monologues and scenes for the Grand Opening of the Columbarium at Beechwood Cemetery, 3300 Fayetteville St, Durham, NC, 27707.

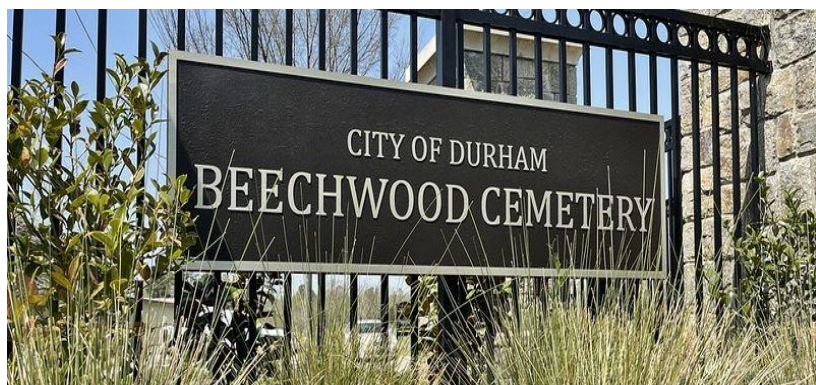


Figure 1: Photograph of Beechwood Cemetery Gates at 3300 Fayetteville Street.

SELECTED CONTENTS

20. Project Manager and Contact with City, Questions about this RFI	1
DESCRIPTION OF PROJECT AND NATURE OF RFI	2
30. Project	2
31. Site Description	2
32. Project Background	3
33. Community Engagement	3
40. Scope of Work	3
50. Compensation Amount	5
60. Definitions in this RFI: City, RFI, Proposal, Candidate, Contractor, Should	5
70. Contract	6
70.1 Interpretation and translation services.....	6
100. Insurance Requirements of Selected Candidate(s)	6
110. Discretion of the City	7
SCHEDULE	8
120. Schedule	8
140. Deadline to Receive Submissions	8
GETTING MORE INFORMATION ON THE PROJECT AND RFI PROCESS	9
150. Questions	9
160. Pre-submittal Conferences	9
EVALUATION CRITERIA	10
180. Evaluation Criteria	10
190. Call for Artists/RFI Eligibility	11
200. Project Agencies	11
240. RFI Submission Requirements	12
300. Candidate to Bear Expense: No Claims Against City	14
310. State Treasurer’s Lists Regarding Iran and Boycott of Israel	14
320. Notice Under the Americans with Disabilities Act	15
330. Values of City of Durham regarding Treatment of Employees of Contractors	15
SAMPLE CONTRACT & NON-COLLUSION AFFIDAVIT.....	16

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

Direct questions and concerns to:

Att: Jo Palazuelos-Krukowski

Cultural and Public Art Program Coordinator
Arts Culture and Sustainable Communities Division
General Services Department
2011 Fay Street
DURHAM NC 27704

Office Contact: (919) 560-4197 ext. 21201

Email Address: jo.palazuelos.krukowski@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 and Public Art Program Manager
Arts Culture and Sustainable Communities Division
General Services
2011 Fay Street
DURHAM NC 27704

Office Contact: (919) 560-4197 ext. 21245

Email Address: rebecca.holmes@durhamnc.gov

DESCRIPTION OF PROJECT AND NATURE OF RFI

30. Project

The [City of Durham's Cultural and Public Art Program](#) is (referred to as "City") is seeking an Artist or Artist Team composed of a Researcher, Writer, and Performers (referred to as "Candidates") with experience in research, theatre, storytelling, and community-based engagement. The City seeks this Artist or Artist Team to develop, write and perform biographical monologues and scenes for the Grand Opening of the Columbarium at Beechwood Cemetery, 3300 Fayetteville St, Durham, NC, 27707.

This event resuscitates the true stories of Durham's remarkable citizens in honor of the Expansion of Beechwood Cemetery. Material for a series of biographical monologues and one scene would be researched and curated by the Researcher, who would then share that curated material with the Playwright. This Playwright will utilize that content, adapting it to write these three original monologues and one scene with Beechwood subjects as their focus. The finalized monologues and scenes would then be performed by local Actors as part of Beechwood's Columbarium Grand Opening Celebration in late May 2025.

The selected Candidate Team will work to:

- Conduct historical research and interviews regarding the history of Durham's Beechwood Cemetery and those buried there from 1924 to the present;
- Adapt the aforementioned research into three biographical monologues and one scene that celebrates the achievements and lives of those interred at Beechwood; and
- Perform these monologues and scenes for the Grand Opening of the Columbarium at Beechwood Cemetery in May 2025. These monologues will be videorecorded and made available online on the Cultural and Public Art Program's website for public viewing.

You can find more information on the Beechwood Cemetery Living History Performance Project at the City of Durham website here: <https://www.durhamnc.gov/5325/>

31. Site Description

Beechwood Cemetery, measuring nearly 25 acres, was founded as the first City-owned cemetery 1924 to serve the Black residential community in Durham. During its establishment, many burials were relocated from the overcrowded sections of private cemeteries like Violet Park, Geer Cemetery, Fitzgerald Cemetery, and Hickstown Cemetery to Beechwood. The cemetery is the final resting place for some of North Carolina's most prominent African American historical figures and leaders, such as John Merrick, founder of the North Carolina Mutual Life Insurance Company; C.C. Spaulding, its General Manager and President; and Dr. James E. Shepard, founder and President of the National Religious Training School, which became North Carolina Central University. It is located next to White Rock Baptist Church and features beautiful views, veterans' sections, flat markers, upright headstones, art sculptures, and mausoleums.



Figure 2: Photograph of Beechwood Cemetery Gates at 3300 Fayetteville Street.

32. Project Background

Though the City was established in 1869, Durham failed to provide a public cemetery for its African American residents for over fifty years. Maplewood Cemetery, founded in 1872, was one of the city's initial municipal projects but was reserved solely for white residents. To address this inequity, Durham's burgeoning Black community took proactive steps, securing land outside city limits to establish Geer Cemetery in 1877. Despite persistent demands for a more inclusive burial ground, it was not until late 1926 that land was acquired for a new facility, which took about two years to prepare before the first burials began in late 1928. Beechwood Cemetery, as it became known, has since served as the final resting place for over 10,000 people, including notable African American figures such as John Merrick, C.C. Spaulding, and James E. Shepard.

A number of historical tours and cultural events take place at Maplewood Cemetery every year, and the Columbarium Expansion has generated an important opportunity to celebrate the histories of those buried at Beechwood.

A historical performance honors and preserves the legacy of Beechwood Cemetery. This event, scheduled in tandem with Beechwood's expansion, celebrates the significant contributions of those interred: it also recognizes the hard-won achievements of Durham's storied and diverse community.

33. Community Engagement

To reflect the community's voice in the public art component, the selected Candidate(s) will communicate with descendants of the subjects of the Beechwood performance series as outlined in the "Scope of Work" section. The selected Candidate(s) will be expected to engage with community members, archival associations, local and state libraries, and the City's cemeteries before finalizing their research-based monologue/scene scripts.

40. Scope of Work

The City is soliciting a team or firm to produce a series of biographical monologues and scenes based on the lives of select individuals buried in Beechwood Cemetery, Durham, NC for community performance.

Section 1A. *Team Composition*

A team composed of a Researcher, a Playwright, and a pool of up to five Actors will be selected to collect research on those interred at Beechwood Cemetery and develop that historical material for performance at the Grand Opening of the Cemetery's new Columbarium in May 2025. The team may be composed such that one individual may serve as both Researcher and Playwright. The team may also be composed such that one individual serves as Researcher, Playwright, and Actor.

Section 2A. *Researcher Responsibilities*

The Researcher will be responsible for first devoting four weeks starting in January 2025 to collecting relevant information on the lives of those buried in Beechwood's historically black cemetery from residents, living descendants, and cemetery employees, as well as researching material from local records, online archives, and libraries. The Researcher will curate this material in an accessible way, focusing on particularly moving/inspiring life histories for the team's Playwright by February 2025. The Researcher will continue to serve as a resource to the Playwright for an additional four to eight weeks as the Playwright develops script material until approximately mid-April. The Researcher will be paid for a total of approximately 62 hours of labor.

Section 2B. *Researcher Qualifications*

The City would prefer the Researcher have had experience working with individuals gathering biographical/historical information as well as researching archival material.

Section 3A. *Playwright Responsibilities*

The team's Playwright will first spend four weeks starting in February 2025 working with the Researcher and mining this curated content as source material. They will use this material to write three original 4-to-10-minute biographical monologue scripts and one original 5-to-20-minute closing biographical scene script that collectively captures the spirit of Beechwood's most storied residents. These monologues and this scene will illustrate these subjects' lifetime hardships and victories to represent the tapestry of Durham's dynamic history. Monologues and scenes will honor these figures from the past, representing their stories with dignity and respect. Initial drafts of scripts will be shared in mid-March 2025, which will be followed by an additional month for feedback and script development. The Playwright will submit these initial scripts for preliminary approval by Project Manager Jo Palazuelos-Krukowski and by living descendants of those whose histories are featured in the performance. The Playwright will submit final scripts for City approval in mid-April 2025. The Playwright will be paid for a total of approximately 80 hours of labor.

Section 3B. *Playwright Qualifications*

The City would prefer the Playwright to have had experience in creative writing and/or in writing original scripts for performance for community programs, academic settings, festivals, theatre, film, or television.

Section 4A. Actor Responsibilities

The team's pool of up to five local Actors will perform these pieces for the public as part of the celebrations for the Grand Opening of the Columbarium, currently scheduled for late May 2025. They are expected to engage in 2 hours of weekly rehearsals directed by the Project Manager for four-to-six weeks starting mid-to-late April, allotting 2 hours for the final performance. The performance would take place in front of the newly constructed Columbarium itself, with chairs set up for guests and a rented microphone/PA system set up to provide amplification and sound. These Actors' monologues and scenes will be captured on video for posterity and uploaded to the Culture and Public Art Program's website. Actors will be expected to each contribute a total of approximately 10 hours for rehearsals and live performance.

Section 4B. Actor Qualifications

The team's Actors will preferably have had experience in performing in or presenting for community programs, academic settings, festivals, film or television.

50. Compensation Amount

The selected Artist or Artist Team will have an estimated total public art project budget of up to \$5,000, inclusive of all costs associated with this public art performance project including, but not limited to: Artist fees, insurance that meets the standards of the City of Durham, materials, costs, transportation, performance of the artwork, community engagement, and documentation of the artwork on site.

A planned budget of \$4,500 within the total contract amount of \$5,000 may be allocated towards Artist fees. Fees will be negotiated based on the research, scripts, and performances completed by the Artist or Artist Team. The selected Artist or Artist Team will sign a contract with the City not to exceed the amount of \$5,000. A total compensation and payment schedule will be negotiated with the successful Candidate.

The City will not be providing reimbursement for travel or project supplies.

The current drafted budget for Artists fees is structured to be distributed as follows (with a \$20 per hour rate). Specific compensation is to be negotiated during the selection process.

- i. \$1,250 Allotted for Local Researcher (approximately 62 hours for interviews, research, and compilation)
 - o The Researcher will be paid \$625 upon contract signing and \$625 upon delivery of research and completed provision of requisite support to Playwright.
- ii. \$2,000 Allotted for Local Playwright (approximately 80 hours for writing three monologues and 1 scene)
 - o The Playwright will be paid \$1,000 upon contract signing and \$1,000 upon approval of finalized scripts by the City.
- iii. \$1,250 Allotted for Local Actors, \$250 per Actor (approximately 6 hours of rehearsal, 2 hours for live performance, 2 hours for videography, 10 hours total per Actor)
 - o Each Actor will be paid \$250 after completion of the monologue/scene performance and their videography.

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 “proposal” or “Bid” 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 proposal or that is considering submitting a proposal. (e) The word “Contractor” or “contractor” is the person, firm, or corporation with which the City enters into a contract to provide the services sought by this 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 proposal. 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

Please see page 16 for reference.

70.1 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: **Friday, November 22, 2024.**

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: **Viernes, 22 de Noviembre, 2024.**

80-90 Reserved

This section intentionally left blank.

100. Insurance Requirements of Selected Candidate(s)

(a) Automobile Liability Insurance

Selected Candidate(s) **will 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.

(b) Commercial General Liability Insurance

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 selected 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”.

(c) Worker's Compensation & Employers Liability Insurance

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 (i) reject any, any part of, or all proposals, or (ii) accept that proposal which the City deems to be in its best interest.

B. Notwithstanding anything to the contrary in this document or in any addendums to this document, unless the contrary provision refers specifically to this provision, the City reserves the right (i) to negotiate changes of any nature with any candidate with respect to any term, condition, or provision in this document and/or in any proposals, whether or not something is stated to be mandatory and whether or not it is said that a proposal will be rejected if certain information or documentation is not submitted with it, and (ii) to enter into an agreement for some or all of the work with one or more persons, firms, or corporations that do not submit proposals. For example, all deadlines are for the administrative convenience or needs of the City and may be waived by the City in its discretion. This subparagraph B applies to the entire RFI.

C. Where the City asks or tells candidates to do stated things, such as that a proposal should follow a stated format or that the candidate should do stated things in seeking the contract, the City may reject a proposal because it does not comply with those requests, so the candidate is adding to its risk of rejection by non-compliance. Still, the City may, in its discretion, waive non-compliance. This subsection (C) does not limit subsections (A) and (B).

D. Once a contract is signed, the parties to the contract may enforce the contract according to its terms as allowed by applicable law.

SCHEDULE

120. Schedule

This performance is currently scheduled for late May 2025 in tandem with the events planned for Beechwood's Columbarium Grand Opening. If the Columbarium's Grand Opening is delayed to a later date, the schedule will be adjusted accordingly. The City expects that the contract will require the services to be completed by the 31st of May 2025. The contract will end in late Summer in the event of delays.

Pre-Qualified Artist Registry/RFI Release/Promotion	Friday, November 1, 2024
Pre-Submittal Meeting for Potential Applicants	Wednesday, November 13, 2024
Pre-Qualified Artist Registry/RFI Deadline Last date for receipt of proposals	Monday, December 2, 2024
Confirmation of RFQ Receipt from City of Durham to Candidates	Monday, December 2, 2024
Artist Selection Panel Finalized	Friday, December 6, 2024
Review Committee to meet to evaluate submissions (14 Days after RFI Deadline)	Monday, December 16, 2024
City to notify Artist(s) of decision	Friday, December 20, 2024
City and Artist develop contract	Friday, December 27, 2024
City Approval of Contact (21 Days after Review Committee Evaluation)	Monday, January 6, 2025
City and Artist(s) to Enter into Contract (4 Days After City Authorization)	Friday, January 10, 2025
City Council Approval (cycle)	Friday, January 21, 2025
Script Development	January 2024 - March 2025
Initial Script Drafts shared with Community (Descendants & PM)	Monday, March 17, 2025
Artists Submit Final Script to City for Final Approval	Monday, April 14, 2025
Auditions and Rehearsals	April - May 2025
Columbarium Opening/Performance/Video Recording	Late May 2025

130. Reserved

This section intentionally left blank.

140. Deadline to Receive Submissions

Candidates should see that their proposals are received via Submittable by **3:00 PM ET on December 2, 2024** via [Submittable](#).

Please **email any questions** to Project Manager Jo Palazuelos-Krukowski (jo.palazuelos.krukowski@durhamnc.gov) with the following subject line: “Public Art RFI: Beechwood Living History Performance Project” **by Friday, November 29, 2024 at 5:00 PM.**

The Project Manager will distribute all questions and answers to those respondents who have requested RFIs 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 3:00 PM**, it is the responsibility of the Candidate(s) to contact the City to confirm submission by **Monday, December 2, 2024 at 3:00 PM** 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. Pre-submittal Conference

If candidates have questions about the RFI application process, they are welcome to attend the City’s pre-submittal meeting for the Beechwood Living History Performance Project.

The City will conduct a **virtual pre-submittal meeting on Zoom on Wednesday, November 13 at 6:00 PM**. Attendees should already be familiar with this RFI. Attendance is recommended: the City may consider attendance in deciding on the award of the contract.

Topic: Beechwood Cemetery Living History Performance Project Pre-Submittal Meeting

Time: Nov 13, 2024 06:00 PM Eastern Time (US and Canada)

Zoom Meeting Link:

<https://us06web.zoom.us/j/84535694307?pwd=MQ6oroJQiWaGBGBOj8wxYOI10qIVQk.1>

Meeting ID: 845 3569 4307

Passcode: Beechwood

170. Reserved

This section intentionally left blank.

EVALUATION CRITERIA

180. Evaluation Criteria

A panel of community members, City staff and others will use evaluation criteria to review the applications. 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. The Evaluation Criteria are intended to be used to make a recommendation to the entity or person (the City Manager or the City Council) who will award the contract, but who are not bound to use these criteria or to award on the basis of the recommendation. The City reserves the right to change the criteria and to otherwise vary from this procedure as it determines to be in the City's interest.

1. The Review Committee will include community members and staff from the City including representatives from the City of Durham's General Services Department, 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) **Research Background/Experience (10 points)**
 - Experience, success, and/or interest in scholarly, investigative, or journalistic research.
 - b) **Creative Writing Background/Experience (10 points)**
 - Experience, success, and/or interest in the process of writing creatively for performance.
 - Experience, success, and/or interest in local history and adaptation for performance.
 - c) **Performance Background/Experience (10 points)**
 - Experience, success, and/or interest in performance and presentations for the stage, film, web, television, or community.
 - d) **Community Connections & Engagement (10 Points)**
 - Examples of past community engagement.
 - Experience, success, and/or interest in community engagement in the process of creating public performances and/or artwork.
 - e) **Written Statements (10 points)**
 - Well-composed and clearly articulated ideas.
 - Demonstrated passion for the goals of this project.
 - Inspired and inspiring language.
 - Expressed comprehension of this performance project's role in honoring Durham's rich history and culturally diverse community.
4. The Review Committee may invite up to five (5) Team 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 (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 Researchers, Writers, or Performers or partnered with Researchers, Writers, or Performers 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 Agencies

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 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](#).

Cemeteries Management

The Cemeteries Management Division operates as part of the General Services Department and maintains the City's two cemeteries, Maplewood and Beechwood. Operations include burials, lot sales, grounds maintenance, and landscaping. Maplewood and Beechwood Cemeteries offer traditional burial and cremation options. The public is invited to visit the cemeteries or call for more information. Existing burials and burial services information is available by contacting the main cemeteries office at Maplewood from Monday through Friday from 7:30 AM to 4 PM. The office is located at 1621 Duke University Road in Durham, NC 27701 and can be reached at (919) 560-4156.

To learn more, visit the [Cemeteries Management Division website here](#).

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 at the [City's Strategic Plan website](#).

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. The Researcher/Writer/Performers are encouraged to include information on how they may identify and engage Durham's sites for archival and library research. They are also encouraged to include information as to how they may identify and engage residents and community contacts within Durham and neighborhoods regarding the research and performance project.
- **Portfolio samples:** Submission of past research and creative work 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 (research-related, writing-related, or performance-related), with the option to submit up to ten (10) images or documents of no more than ten (10) previously

completed projects. The samples may be created/produced by independent team members, by part of the team, or by the team as a whole. Samples may include selections from previous original research articles, creative or non-fiction writings, plays, publications, and images or videos of performances done for live audiences, for film and television, or online.

- Each work sample of research, writing, or performance should include a summary that includes:
 - the piece's title
 - a 50-word description of the piece
 - the piece's location (where it was researched, written, published, or performed)
 - the piece's date of composition, publication, release, or performance

***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(s). State whether each 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.
- **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:** If you are chosen as the selected candidate, this *NON-COLLUSION AFFIDAVIT* must be completed 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 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. Reserved

This section Intentionally left blank.

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 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. 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 ensure 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.
 5. 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 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 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 written research, scripts, photographs, depictions, descriptions, samples, video and audio recordings, and any other representation of the Contractor’s work pursuant to this Contract that is subject to copyright, which is intended to be created, performed, and recorded 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 Script Proposal” refers to the initial submittal of the proposed Script as it is anticipated to appear in print and in performance at the Site. The Initial Script Proposal includes a proposed script of the required monologues and scene and sufficient details to provide an accurate representation of how the Final Script should be performed. The detailed requirements of the Initial Design Proposal are described in Exhibit B, Scope of Work.

(d) “Final Script Proposal” refers to the proposal accepted by the City representing the Final Performance to be performed at the Site. The Final Script Proposal shall serve as the textual basis for the performance, photographs, video and audio recording of the Final Artwork and shall include the spoken text and stage directions of the Final Artwork elements for performance at the Site.

(e) “Final Performance” refers to the script composed of three monologues and one scene in its final, completed form, performed at the Site by the Team’s Actors, as well as all photographs, recorded

video and audio of the script in performance, and written documentation of research and archival collection. Reference to the Final Performance may include, however, any and all aspects of the Performance whether or not wholly representative of the Final Performance, such as securing applicable permits or obtaining other required approvals.

(f) "Site" refers to Beechwood Cemetery at 3300 Fayetteville Street, Durham, NC 27707.

(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) "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.

Exhibit E – Grant of Title and Ownership to the City, containing 1 page

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 candidate (as individual or business) here. See Form - Candidate 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

BEECHWOOD CEMETERY EXPANSION LIVING HISTORY PERFORMANCE PROJECT CONTRACT

Scope of Work

The City of Durham agrees to provide funding to the Contractor to research, write, and perform a biographical series of three monologues and one scene that will be enacted and videorecorded at Beechwood Cemetery. The Contractor will develop a community-informed public performance piece composed of these monologues and scene that will connect historically, culturally, and thematically to Beechwood Cemetery.

The Contractor shall research, write, and perform a public performance at Beechwood Cemetery, 3300 Fayetteville Street, Durham NC, 27707 which will be recorded and uploaded to the City of Durham's Cultural and Public Art Program website. The Final Performance will be representative of the Final Script Proposal 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 Research Preparation

- a. The City shall be responsible for providing the Contractor, at no expense, copies of existing research, reports, script drafts, final scripts, and other existing relevant data and/or materials, if any, which are needed by Contractor in order to perform the scope of services in this Contract.
- b. The Contractor shall engage in approximately 62 hours of research in service of adapting biographical information on selected subjects interred at Beechwood Cemetery for public performance.
- c. The Contractor shall engage in the collection of research from some or all of, but not limited to, the following avenues: cemetery records, site visits, public, private and university libraries, local historical organizations, museums, and/or physical and digital archives, as well as interviews with cemetery employees, descendants of those buried at Beechwood, and/or Durham residents.
- d. The Contractor shall package the collected research so that it is accessible and usable to those responsible for adapting biographical material into three 4-to-10-minute monologues and one 5-to-20 minute scene.
- e. The Contractor shall consult with the Contract Administrator for the project to ensure that any preliminary ideas regarding the research undertaking and concepts for the enactment of the performance conforms to both the physical and cultural specifications of the Site.
- d. The Contractor shall plan, coordinate, and execute the community engagement that they feel is necessary 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 Playwright's Initial Script Draft Proposal

Upon completion of the preliminary work performed as listed above, the Contractor shall submit a schedule for preparation and completion of the Initial Script Proposal, which schedule must be approved by the Contract Administrator. The Contractor will create the content of the Initial Script Proposal. The Initial Script Proposal shall be submitted to the Contract Administrator by the deadline outlined in Exhibit C. The Initial Script Draft Proposal shall include the following:

- a. An approximately 250-word Artist statement or written description of the proposed Script
- b. A written description of the Researcher, Playwright, and preliminary casting of Actors involved in the project;
- c. Four drafted scripts, approximately three monologues 4-to-10 minutes in length and one scene featuring two to five characters 5-to-20 minutes in length, with individuals interred at Beechwood Cemetery as the central subjects of each script.
- d. Express written approval from known descendants of the subjects featured in the monologues and scene to have the stories of their ancestors written in script form, performed at the Final Performance, and recorded for upload on the Cultural and Public Art Program website. If a subject's descendants are unidentifiable or no longer living, express written approval must be given from the Project Manager.

The Contractor warrants and promises to the City that the Scripts shall comprise of original work by the Contractor and that the Script 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 Script Draft Proposal based on City Policy.

The Contractor shall submit the Initial Script 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 Script Draft Proposal. Where applicable, the City shall provide the Contractor with written comments and recommendations concerning the Initial Script Draft Proposal. The City may thereafter direct the Contractor to proceed with the Final Script Proposal contingent upon the Contractor satisfactorily incorporating written comments and recommendations provided by the City into the Final Design Proposal.

Final Script Proposal

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

- a. the Final Script Title
- c. Final Script length when performed
- d. Four finalized scripts, approximately three monologues 4-to-10 minutes in length and one scene featuring two to five characters 5-to-20 minutes in length, with individuals interred at Beechwood Cemetery as the central subjects of each script.

- e. The final casting of Actors from the Team’s Actor pool for the Final Performance of the aforementioned three monologues and one scene.

(b) Review of the Final Script Proposal by the City. The City reserves the right to reject any or all of the Final Script Proposal. If the City rejects portion(s) of the Final Script Proposal, the City shall provide in writing reasons for the rejection. As part of the City’s review of the Final Script Proposal, it may request from the Contractor any backup documentation the Contractor relied upon in preparing the Final Script Proposal. In response to the City’s written comments, recommendations, or rejections of the Final Script Proposal, the Contractor shall make necessary revisions and corrections in order to submit a “Revised Final Script Proposal” for approval by the City. The Revised Final Script 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 Script Proposal. Once the Contractor has prepared a Final Script 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 rehearsing for the Final Performance at the Columbarium Grand Opening at Beechwood Cemetery. At all times, the Contractor shall coordinate with the Contract Administrator as well as necessary City Departments, identified by the Contract Administrator.

Final Rehearsal Period

(a) Rehearsal for the enactment of the Final Script for Performance. After the City has reviewed and accepted the Final Script Proposal, Actors will coordinate with the Project Manager to direct approximately 8 hours of in-person rehearsal over the course of a four-to-six-week period in preparation for the Final Performance at the Site. The Project Manager will provide direction and counsel for performance.

Final Performance

(a) Enactment of the Final Script for Performance. The Team’s Actors will perform the Final Script of three monologues and once scene in the Final Performance for the Grand Opening of the Columbarium at Beechwood Cemetery. These Actors’ monologues and scenes will be captured on video for posterity and uploaded to the Culture and Public Art Program’s website. Actors will be expected to each contribute a total of approximately 10 hours for rehearsals and live performance.

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]	Totals per project milestone
1	Initial Script Draft Proposal due by XXX					
2	Notice to Proceed to Final Script Proposal					
3	Final Script Proposal due by XXX Payment after Final Script Proposal Acceptance.					
5	Final Script Acceptance. Payment after performance. Final Performance 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 Script. Upon the satisfactory completion of the Final Script pursuant to the terms of this Contract and final payment by the City and Final Acceptance of the Final Script by the City, the City shall be deemed to have accepted the Final Performance and any video recordings, audio recordings, and photographs thereof; full title and ownership of the Final Script and Final Performance shall transfer to the City; and the risk of loss or damage to the FinalScript 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 Final Script, the Final Performance and all related documents, photographs, video recordings and other expression created by the Contractor (“Instruments of Expression”) for completion of the Final Performance. 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 Performance 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.

Any of the Contractor’s Artists and/or subcontractors hereby grant the City full title and ownership of the Final Script and Final Performance. All subcontractors shall be required to complete Exhibit E, Grant of full title and ownership to the City.

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 Script and Final Performance, 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 Script and Final Performance including any and all rights of approval or consent with respect to any modification, alteration, removal, distortion, or destruction of the Final Script and Final Performance, except as expressly provided in this contract.

8.4 Warranty of Original Script. The Contractor warrants and promises to the City that the Final Script as represented in the Final Script Proposal and in the Final Performance shall comprise original work of the Contractor and that the Final Script 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 Final Script, and no other person has any rights (as an owner, licensee, or otherwise) in or to the Final Script, that the Contractor has obtained all necessary assignments and waivers from all other persons who may have been involved in the creation of the Final Script or otherwise may have a claim of ownership or copyright in or to the Final Script. 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 Final Script, intellectual property interests in the Final Script, 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 Script and Final Performance. Contractor warrants to the City that all Work performed will be performed in a workmanlike manner. The Contractor warrants that the Final Script shall be formatted in Standard Playwriting Format. The Contractor warrants that the Final Script shall be suitable in all respects for performance.

Exhibit E

TITLE OF CONTRACT

Grant of Title and Ownership to the City

By signing this affidavit, I certify that I am the Artist and/or subcontractor that has contributed to the Final Artwork of the {INSERT CONTRACT NAME}. I hereby grant the City full title and ownership of the Final Artwork. I acknowledge that I will receive just consideration from the Contractor for the referenced Final Artwork and license.

(insert name of subcontractor/Artist)

(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: _____