



# **Request for Proposal (RFP) for Vulnerability and Patch Management System**

## **RFP # 25-0060**

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**City of Durham**

**August 27, 2025**

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# **Request for Proposal (RFP) for Vulnerability and Patch Management System.**

**10. Date of RFP:** August 27,2025

**20. Project Manager and Contact with City; Questions about this RFP.** Direct questions and concerns to

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

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## **DESCRIPTION OF PROJECT AND NATURE OF RFP**

### **30. Project.**

City of Durham (hereinafter “City”), desires to procure and implement a Vulnerability and Patch Management system to support enhanced visibility into new vulnerabilities and a proactive approach for addressing these. The current method for identifying vulnerabilities is decentralized and does not have a set approach to address these. Due to this, the team is eager to procure a solution that will allow it to enhance the City’s defenses and strengthen the overall security posture. This solution will provide a means for proactively identifying and prioritizing vulnerabilities and providing automation for patch deployments. The engagement with the City will consist of software installation, configuration, tuning and City staff support. Procuring a Vulnerability and Patch Management system is part of an overall Cyber Security program enhancement project.

### Existing Technology Environment

The City of Durham maintains a modern and diverse IT infrastructure to support its municipal operations. The following is a summary of the current technology environment relevant to the implementation of a Vulnerability Management Solution:

#### **1. Network Infrastructure (LAN/WAN):**

The City operates a high-speed Ethernet-based LAN using managed switches with VLAN segmentation for departments and functions. Core sites are connected via fiber-optic WAN links managed by internal network operations.

#### **2. Server Operating Systems:**

- a. Windows Server
- b. Linux
- c. A limited number of legacy systems on Windows Server 2012 R2 (in the process of decommissioning)
- d. Select systems using Linux distributions (Ubuntu, CentOS) for web and security appliances

#### **3. Desktop Operating Systems:**

- a. Windows 10 (majority of endpoints)
- b. Windows 11 (gradual rollout currently underway)
- c. Some specialized use of MacOS and Linux in select departments

#### **4. Virtualization & Cloud Platforms:**

- a. VMware vSphere for server virtualization
- b. Microsoft Azure for hybrid cloud operations
- c. Microsoft 365 (Exchange Online, OneDrive, SharePoint)
- d. Nutanix

**5. Security Tools in Use:**

- a. Endpoint Detection and Response (EDR) platform
- b. Multi-Factor Authentication (MFA) via Microsoft Authenticator and Conditional Access Policies in Entra ID (Azure AD)
- c. Centralized logging via SIEM
- d. Next-Generation Firewalls
- e. Email Security Gateway

**6. Patch Management:**

- a. Windows Server Update Services (WSUS) for internal patching
- b. Manual processes for non-Windows systems (Linux, third-party apps)

**7. Asset Management:**

- a. IT asset inventory managed through ITSM

This existing technology landscape should be considered when proposing a vulnerability management solution that integrates efficiently into our environment, with support for both current and legacy systems, cloud components, and hybrid configurations.

**Current Pain Points**

1. Lack of centralized and real-time visibility into application-level security vulnerabilities
2. Time consuming process of manual identification of vulnerabilities
3. Process of identifying vulnerabilities is prone to human error.
4. Manual update process from multiple consoles creates room for delayed security patches

**Future State**

1. Use of automated ranking of vulnerabilities to address the most import vulnerabilities first.
2. Simplify and automate the deployment of security patches across the network, reducing manual effort and enhancing operational efficiency.
3. Compliance to NIST 800-53 (Security Framework)
4. Improve the overall cyber security posture of City.

**40. Scope of Work.**

The City is looking for a comprehensive and best practice solution to provide Vulnerability Management and Patch Management services. The following section details the scope of work and requirements of the City of Durham but is meant as an initial guide for the proposal. Respond with a description of how you will meet each requirement. Your responses will be scored based on the Evaluation Criteria listed in sections 180 – 230.

The City of Durham seeks to procure a comprehensive Vulnerability Management Solution to enhance its cybersecurity posture by identifying, assessing, prioritizing, and facilitating the remediation of vulnerabilities across its IT environment.

The selected vendor will be responsible for providing a solution that meets the following functional and technical objectives:

**Functional Requirements**

**1. Asset Discovery and Information Gathering**

- a. Information Gathering.
  - i. Indicate if your tool can gather information about a system.
  - ii. Indicate what techniques your tool supports, such as whois, DNS, and IP assignments.
- b. Asset Identification.
  - i. Indicate if your tool can perform identification of organization assets such as:
  - ii. Traditional network devices: workstations, servers, desktops, copiers, routers, switches, IOT etc.

- iii. Mobile devices: smart phones, laptops, tablets, etc.
- iv. Cloud environments: web applications, hosted storage, hosted platforms, etc.
- v. Hosts in targeted subnets
- c. Asset Information.
  - i. Indicate if your tool can identify information and systems on the identified assets such as:
  - ii. Latest OS
  - iii. All applications on a device/host
  - iv. All devices/hosts
  - v. Services
  - vi. Vulnerabilities
- d. Asset Discovery Techniques.
  - i. Indicate your tool's asset discovery techniques and methods. Indicate which of the following discovery techniques your tool supports:
  - ii. Banner grabbing and binary grabbing
  - iii. OS-specific protocols
  - iv. TCP/IP stack fingerprinting
  - v. Passive techniques such as packet spoofing
  - vi. Data fingerprinting
- e. Asset Categorization. Indicate if your tool can support categorizing of identified assets. Indicate if asset categorization is done in real time or near real time. Indicate what attributes are used to categorize an asset (e.g. OS, location, MAC address, types of device).
- f. Asset Tagging.
  - i. Indicate if your tool is able to tag and thus organize assets into groups such as device type, similar business impacts, or some other organization-defined characteristics. The tool must be able to:
  - ii. Assign tags in real time
  - iii. Modify and customize tags
  - iv. Automatically tag assets based on some predefined attributes
  - v. Dynamically tag assets with customizable rules
  - vi. Automatically group assets based on characteristics
  - vii. Enable group scanning, reporting, and remediating based on asset tags
- g. Asset Cataloging.
  - i. Indicate if your tool can support cataloging of identified assets into a native asset database that exists on the tool itself. Indicate which of the following attributes are recorded as part of the cataloging of assets:
  - ii. IP address ranges
  - iii. Corresponding systems
  - iv. System owners
  - v. Latest OS
  - vi. All applications on a device/host
  - vii. All devices/hosts
  - viii. Services
  - ix. Vulnerabilities

## 2. Vulnerability Database Coverage

- a. Database Support.
  - i. Indicate which of the following third-party vulnerability databases or third-party information databases your tool supports to enhance vulnerability detection:
  - ii. Common Vulnerabilities and Exposures (CVE)
  - iii. Open Vulnerability and Assessment Language (OVAL)
  - iv. Open Source Vulnerability Database (OSVDB)
  - v. SANS Institute
  - vi. FBI Top 20
  - vii. United States Government Configuration Baseline (USGCB)
  - viii. Center for Internet Security (CIS)
  - ix. Defense Information Systems Agency (DISA) Security Technical Implementation Guide (STIG)
  - x. Open Web Application Security Project (OWASP)
  - xi. National Vulnerability Database (NVD)
  - xii. United States Computer Emergency Readiness Team (CERT) Vulnerability Database
  - xiii. Exploit database that collects Proof of Concepts (e.g. [www.exploits-db.com](http://www.exploits-db.com))

- b. Frequency of Updates. Indicate how frequently the tool will be updated with identified vulnerability signatures or other detection attributes. Specify how these update frequencies vary based on the deployment option of the tool.
- c. Vendor Vulnerability Research. Indicate your in-house vulnerability research efforts such as how many full-time threat and vulnerability research staff you have, whether you have a dedicated research facility, and what this team's history of collaboration with law enforcement agencies is.
- d. Emergency Updates. Indicate if there is a process for emergency updates to your tools in the face of high-impact vulnerabilities (e.g. Heartbleed).

### 3. Vulnerability Detection

- a. Indicate which of the following detection methods your tool supports. If you support any of the following, please describe how:
  - i. Configuration auditing
  - ii. Patch auditing
  - iii. Target profiling
  - iv. Browser-based scanning
  - v. Perimeter monitoring
  - vi. SSL Validation
  - vii. Certificate validation
  - viii. Incorrect configuration uses
  - ix. Expired/outdated
  - x. Self-authenticated
  - xi. Weak ciphers
  - xii. Certificates signed by untrusted third parties
  - xiii. Web log analysis
  - xiv. File integrity monitoring
  - xv. Process and system monitoring
  - xvi. Endpoint monitoring
  - xvii. Application monitoring
  - xviii. User activity monitoring
  - xix. Configuration assessment/policy configuration assessment/policy configuration management
  - xx. Remotely assess and verify settings, such as configuration settings or password complexity of a domain group policy
  - xxi. OS discovery and assessment techniques
  - xxii. Banner grabbing
  - xxiii. Binary grabbing
  - xxiv. OS specific protocols
  - xxv. TCP/IP stack fingerprinting
  - xxvi. OS fingerprinting – identifying the version type and any services running on the system
  - xxvii. Packet spoofing
  - xxviii. TCP and UDP service checking including those on non-default ports and with fake banners
  - xxix. HTTP Application Fingerprinting
  - xxx. Leverage software ID, service pack ID, installed patches, etc.
  - xxxi. OS and HTTP fingerprint data correlation
  - xxxii. Port scanning
  - xxxiii. Custom generated vulnerability signature detection by the client
  - xxxiv. Correlation of detected vulnerabilities across the IT stack
  - xxxv. Back door detection
  - xxxvi. Baseline vulnerability conditions for network devices, applications, and databases
- b. Please note any other vulnerability detection methods your tool may support.
- c. Detection Support Length. Indicate how long you will support a vulnerability detection method or a specific environment. This includes operating system versions, devices, and detection methods.
- d. False Positive. Indicate how your tool will lessen false positives.

### 4. Scanning Method

- a. Agent-Based Scanning
  - i. Indicate if your tool supports agent-based scanning. Indicate if the agent is a persistent software/permanent agent or dissolvable temporary agent. Indicate if your tool supports the following:
    - ii. Vulnerability analysis performed on the endpoint itself (data is evaluated on the endpoint rather than being sent somewhere else for analysis)

- iii. Directing endpoint data to another place for analysis (data is taken from the endpoint and forwarded onto a vulnerability analysis engine)
- iv. Continuous scanning when connected to the internet without the need for a VPN
- v. Limited endpoint footprint
- vi. Ease of agent installation
- vii. Frequency of agent updating
- b. Authenticated Active Scanning
  - i. Indicate if your tool supports the use of authenticated credential login to devices to perform vulnerability scanning. Indicate and please describe how you support the following:
  - ii. Secure management of credentials
  - iii. Integration with a credential management tool
  - iv. Authenticated scans of devices, applications, and web applications
  - v. Limited device, application, or web application resource (memory, CPU, etc.) impact
- c. Unauthenticated Active Scanning. Indicate if your tool supports unauthenticated scans of devices that are performed actively to detect vulnerabilities.
- d. Passive Scanning. Indicate if your tool supports passive scanning of network traffic and other network components to detect vulnerabilities.
- e. Scanning Support
  - i. Indicate if your tool supports the following:
  - ii. Scheduled scans
  - iii. Ability to stop and restart scans
  - iv. Ability to scan multiple network segments simultaneously
  - v. Ability to scan a system with changing IP addresses

## 5. Environment Support

- a. Virtual Environment Scanning Support
  - i. Indicate your tool's ability to scan virtual environments.
  - ii. Indicate if this support is limited to predefined environments that are established by virtual machine vendors.
  - iii. Indicate if you support customizable scans based on policy profiles or templates per multi-tenant customer in virtual environments.
- b. Application Scanning Support
  - i. Indicate your tool's ability to scan applications.
  - ii. Indicate if this functionality is met through an add-on module or feature.
  - iii. Indicate your tool's ability to scan web-based applications.
- c. Device Support
  - i. Indicate what types of devices your tool supports scanning for. This includes:
  - ii. Network devices: Routers, switches, servers, databases, wireless access points, etc.
  - iii. Security technologies: SIEM, NAC, Web Gateways, Email Gateways, Firewalls, IDPS, DLP, GRC, etc.
  - iv. Network services
- d. Mobile Device Support
- e. Indicate what types of mobile devices your tool supports scanning for. This includes laptops, smart phones, and tablets.
- f. Cloud Environment Support
  - i. Indicate what instances of cloud environments your tool supports scanning for. This includes:
  - ii. Infrastructure as a Service Environments (AWS, Azure, etc.)
  - iii. Platform as a Service (Office 365, Salesforce, etc.)
  - iv. Software as a Service (NetSuite, Workday, Dropbox, etc.)
- g. Platform Support
  - i. Indicate what platform types your tool supports scanning for. This includes:
  - ii. Operating system support for Windows, Linux, Unix, MAC OS X, iOS, Android
  - iii. IPv6 support
- h. Operating Technologies Support
  - i. Indicate what specific operating technology instances your tool supports scanning for. This includes:
  - ii. SCADA specific systems

## 6. Prioritization Methods

- a. Indicate how your solution prioritizes detected vulnerabilities.
- b. Indicate if your tool's vulnerability prioritization supports the following:
  - i. Vulnerability with known exploits. The solution must allow for filtering and prioritization based on:

- ii. Exploits in use in the world (ExploitKits and zero days)
- iii. Commercial exploits tools (Canvas, Core, Metasploit)
- iv. Proof of concepts (Exploit DB)
- v. Business system criticality. The solution must allow for filtering and prioritization based on the criticality of the affected system. The criticality of the system is:
  - vi. Determined and provided by the client (through some asset tagging)
  - vii. Determined by real-time business criticality assessment capabilities
- viii. Data sensitivity. The solution must allow for filtering and prioritization based on the sensitivity of the affected data. The data sensitivity is:
  - ix. Determined and provided by the client
  - x. Determined by real time data sensitivity assessment capabilities

## 7. Remediation Capabilities

- a. The tool must provide remediation with recommendations and information on patches, configuration changes, and other workarounds as well as remediation options through integration with various technologies (see Integration requirements).
- b. Patching. Indicate if the tool can support the efficient identification of patches to apply.
  - i. Indicate how this patching is performed, i.e. whether it is through authenticated remote management, agent-based patching, or some other functionality.
  - ii. Indicate which of the following applies to your solution for management of the patches before deployment:
    - iii. The tool generates connections with patch sources to allow a direct patching from the source to the asset requiring patching.
    - iv. The tool pre-downloads patches from sources based on its asset inventory knowledge of the organization's assets.
    - v. Indicate if the tool's patching functionality includes:
    - vi. Knowledge of which patches are cumulative and contain or supersede older patches (take this information into consideration when providing remediation options and prioritization of the remediation).
    - vii. "One click" remediation options for patches.
    - viii. Integration with dedicated patch management systems or service management solutions where your tool identifies missing patches and the integrated solutions manage and push out the actual patches.
- c. Configuration Changes. Indicate how your tool supports the identification and recommendation to perform configuration changes to an asset in order to remediate its vulnerabilities.
- d. Remediation Tracking. Indicate how your tool supports the tracking of vulnerability remediation efforts.
 

Indicate if your tool supports:

  - i. A native ticketing system that allows tracking of remediation efforts
  - ii. Tagging of vulnerabilities with defined timeframes to ignore
  - iii. Integration with third-party ticketing systems to support vulnerability remediation tracking
- e. Automated Remediation. Indicate if the tool supports automated remediation capabilities that are defined and customizable by the user.
- f. Vulnerability/Exploit Testing. Indicate if the tool supports vulnerability/exploit testing after detection but before remediation efforts. This is to allow the client to validate the vulnerability/exploit themselves.
- g. Remediation Validation. Indicate if the tool supports any validation or checking of remediation efforts to see if the remediation efforts worked.

## 8. Management

- a. Centralized Management. Indicate if your solution supports the ability to centralize the management and reporting of more than one scanning engine to a centralized module.
- b. Compliance Support. Indicate which of the following compliance and regulatory frameworks your tool supports through out of the box scanning rules, reports, and management capabilities:
  - i. PCI
  - ii. CIS
  - iii. NIST
  - iv. ISO
  - v. COBIT
- c. User Access. Indicate how your tool supports multiple user interface views for different user groups. Indicate if your tool supports role-based access control (RBAC) of the system allowing multiple groups to use the system in different ways. Indicate how many failed login attempts are allowed to the tool before an account lockout. Indicate what the process is for account lockout to the tool.

- d. Vulnerability Tracking. Indicate how vulnerabilities are tracked over time, whether or not they are remediated. Indicate what the mechanism is to support this tracking capability. Indicate how hosts with changing IP addresses are managed for reporting and tracking.
- e. Exception Management. Indicate how the tool tracks exceptions for not remediating a vulnerability. Indicate if the tool supports the following:
  - i. Recording who approves the exception
  - ii. Management of multiple exceptions to the same asset as the same exception (e.g. another exception for a Windows 2003 server is managed together rather than separately)
- f. Policy Engine. Indicate which of the following the tool supports:
  - i. Out-of-the-box policy rule templates
  - ii. Customization of existing templates
  - iii. Custom defined scanning modules
  - iv. Scan scheduling
  - v. Original policy generation including policies based on:
  - vi. What is being scanned
  - vii. When it is being scanned
  - viii. What the reports are that are being generated by the scan
  - ix. Specific vulnerability scanning (e.g. Heartbleed)
- g. Multi-Tenancy. Indicate how multitenant hosts with the same IP address are managed from a tracking and reporting perspective.
- h. Storage Requirements. Indicate if the tool supports native storage of scanned asset information and reports. Indicate what the size and length limitations of the tool's native storage capabilities are. Indicate if extended storage can be added onto the tool. Indicate if separate storage can be integrated to the tool. Indicate if any data protection occurs such as data encryption for data that is being stored at rest.
- i. Data in Transit Protection. Indicate if the tool supports encryption of data moving from agents or endpoints to the appliance or hosted cloud environment.
- j. Tool Logging. Indicate if the tool supports logging of tool activity or user activity monitoring of the tool.

## 9. Reporting

- a. Reporting Coverage. Indicate if your tool includes the following when generating reports:
  - i. Description of the vulnerability
  - ii. Severity of the vulnerability
  - iii. The threat of the vulnerability to the system it was detected on
  - iv. Detailed steps on remediation
  - v. Information about if exploit kits exist for the vulnerability
  - vi. Host IP address
  - vii. Domain name
  - viii. How the vulnerability was identified.
  - ix. Reference IDs of the vulnerability (e.g. CVE or NVD ID numbers)
  - x. CVSS and reference
  - xi. Anything unique about the vulnerability
  - xii. Determination of whether the vulnerability is confirmed or whether it is potential, including test command to validate the vulnerability
  - xiii. Data flow information of connected systems
- b. Reporting Categorization. Indicate if the tool can support reporting of vulnerabilities by vulnerability categorizations. Indicate which of the following is supported:
  - i. Reporting by exploits in use in the wild – ExploitKits and zero days
  - ii. Reporting by commercial exploit tools – Canvas, Core, Metasploit
  - iii. Reporting by proof of concepts – Exploit DB
  - iv. Reporting of vulnerability by asset
  - v. Reporting of vulnerability by asset inventory
  - vi. Reporting of vulnerability by prioritization
  - vii. Reporting of vulnerability by remediation
  - viii. Reporting of vulnerability by control standard
  - ix. Reporting of vulnerability by baseline comparison
  - x. Reporting of vulnerability by custom definition
- c. Compliance Reporting. Indicate if out-of-the-box reporting templates exist for any of the following compliance or regulatory frameworks:
  - i. PCI
  - ii. CIS
  - iii. NIST

- iv. ISO
  - v. COBIT
- d. Report Types. Indicate which of the following report types the tool supports. Please provide a description of what is included for each report type:
  - i. Executive reports
  - ii. Trending reports
  - iii. Baseline reports
  - iv. Vulnerability reports
  - v. Patch reports
  - vi. Asset reports
- e. Report Customization. Indicate if the tool supports customized reporting based on user-defined parameters. Indicate if out-of-the-box reporting templates can be customized. Indicate if advanced customization via SQL statements is supported. Indicate if there is easy data manipulation for reporting purposes.
- f. Report Format. Indicate which of the following format types are supported:
  - i. HTML
  - ii. PDF
  - iii. CSV
  - iv. XML
- g. Report Generation. Indicate which of the following reporting functionalities are supported:
  - i. Automatic report generation and distribution to selected individuals
  - ii. The setup of multiple rules for different reporting timeframes and different audiences
  - iii. Multiple options for distribution (e.g. email)
  - iv. Google-like search of results and reports for keywords
- h. Describe what happens if a report is interrupted or if a scan is incomplete when a report is meant to be generated.
  - i. Scalability
  - j. Indicate which of the following ways the tool can scale:
    - i. Addition of modules or components to the main appliance
    - ii. Additional appliances
    - iii. Additional sensors or aggregators
  - k. Indicate how the tool can scale up to scan more of each of the following. Indicate specific thresholds that require scaling for each:
    - i. Systems/assets
    - ii. IP addresses
    - iii. Network segments
    - iv. Physical locations

## 10. Integration

- a. Indicate which of the following tools or systems your tool can integrate with:
  - i. Ticketing and workflow systems
  - ii. IDPS
  - iii. Web application firewalls
  - iv. Patch management systems
  - v. Mobile device management (MDM) systems
  - vi. Credentials management tools
  - vii. Governance, risk, and compliance (GRC) systems
  - viii. Configuration management databases (CMDB)
  - ix. Network topology and risk analysis products
  - x. Security information event management (SIEM) systems
  - xi. Penetration testing platforms
  - xii. Hardware/asset inventory systems
- b. Indicate which of the following describes your integration capabilities:
  - i. An out-of-the-box open API was developed to enable custom integrations by the user
  - ii. Specific partner relationships have been developed with other vendors for integration purposes

## Architecture

1. Modules and Components
  - a. Indicate what modules or components are included or are part of the tool to provide the aforementioned functionality.
2. Deployment Options. Indicate which of the following deployment options the tool supports:
  - a. Cloud Hosted Scanner. Indicate which of the following apply to your tool:
    - i. Delivered "as-a-service" model in which the vendor hosts the scanner in a cloud environment.
    - ii. The scanner can be deployed to a third-party hosted infrastructure environment such as AWS or Azure.
  - b. On-Premises. Indicate if your tool can be delivered as an on-premises appliance that will be hosted, managed, and owned by the client.
  - c. Virtualized. Indicate if your tool can be delivered in a virtualized environment that will be hosted, managed, and owned by the client. State specific virtual machines that are supported.
  - d. Managed Service. Indicate if your tool can be remotely managed and monitored by a managed security service provider (MSSP). Specify who can provide this service (e.g. the vendor, dedicated MSSPs, security consulting and service firms).

## Training, Installation, and Maintenance Support

1. Installation Support
  - a. Indicate which of the following installation support services you offer as part of a vulnerability scanner purchase:
    - i. Initial setup
    - ii. System configuration
    - iii. Knowledge transfer to client administrators
2. System Training
  - a. Formal in-house training
  - b. The following topics must be covered in system training:
    - i. Administrative capabilities
    - ii. System management
    - iii. Performing scans
    - iv. Policy writing and customization
    - v. Report generation and customization
    - vi. Integration with other systems
3. Maintenance and Operations Support
  - a. Indicate which of the following maintenance and operations support functions are provided:
    - i. 24x7x365 customer support
    - ii. Tiered support levels – at least three levels
    - iii. Support provided either by manufacturer or fully qualified third-party vendor technician
    - iv. Technical support or troubleshooting support within 12 hours of request time
    - v. Phone, email, web portal, and onsite support solicitation options
    - vi. Hardware replacement
    - vii. Software upgrades

## **50. Compensation Amount and Schedule**

The timing of the payment or payments will be determined by a contract based on the project scope of work and budget. Provide separate pricing for the following, regardless of whether the items will be bundled:

- Software license costs
- Initial configuration and set-up
- Hosting fees, if applicable and pricing model (by user, enterprise, module, etc.)
- Training costs
- Ongoing technical support/ maintenance costs, by year

- Additional requirements or service
- Optional functionality.

If pricing is tiered, please provide specific listing of services and associated functions and pricing for each tier. Vendor will indicate which items are optional.

**60. Definitions in this RFP: City, RFP, Proposal, Candidate, Contractor, Should.** Unless the context indicates otherwise – (a) The expressions “RFP,” “this RFP,” and “the RFP” 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 RFP. (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 RFP. 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 RFP 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 RFP 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 RFP. It is the City’s intention to use the contract that is attached as Exhibit A, modified and filled in to reflect the RFP 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.

If federal assistance or funds are used in conjunction with the services provided by the candidate, clauses for contracts involving federal financial assistance shall be incorporated into contract. The Candidate is required to be familiar with these federal assistance clauses and to comply with them.

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

#### Definitions.

In this section (Trade Secrets and Confidentiality) –

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

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

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

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

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

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

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

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

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

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

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

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

**85. Reserved.**

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

**100. Insurance.**

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

**Commercial General Liability** – Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement excluding or limiting Product/Completed Operations, Contractual Liability, Cross Liability, or Personal and Advertising Injury Liability.

**Automobile Liability** – Limits of no less than \$1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned, and Hired automobiles. In the event the Contractor does not own automobiles, the 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 by separate Auto Liability policy. Automobile coverage is necessary only if vehicles are used in the provision of services under this contract or are brought on a City site.

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

**Workers' Compensation & Employers Liability** – The Contractor agrees to maintain Worker's Compensation Insurance in accordance with Chapter 97 of the North Carolina General Statutes and with Employer Liability limits of no less than \$1,000,000 for each accident, each employee, and policy limit. This policy must include a waiver of subrogation.

**Cyber Liability** – Limits of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate.

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

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

City of Durham  
Attn: Technology Solutions  
101 City Hall Plaza  
Durham, NC 27701

All primary insurance carriers must be authorized to do business in North Carolina. As used in this contract, “Business Day” is defined as any day other than Saturdays, Sundays, and any legal holiday recognized by the City pursuant to City Code Section 42-16, as amended.

**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, whether or not it is the lowest dollar proposal.
- 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 RFP, including the UBE portions.
- C. Where the City asks or tells candidates to do stated things, such as that a proposal should follow a stated format or that the candidate should do stated things in seeking the contract, the City may reject a proposal because it does not comply with those requests, so the candidate is adding to its risk of rejection by non-compliance. Still, the City may, in its discretion, waive non-compliance. This subsection (C) does not limit subsections (A) and (B).
- D. Of course, once a contract is signed, the parties to the contract may enforce the contract according to its terms as allowed by applicable law.

**SCHEDULE**

**120. Schedule.**

This schedule is the City's best estimate of the schedule that will be followed. If a component of this schedule is delayed, the rest of the schedule will be shifted by the same number of days.

The City expects that the winning candidate will be able to provide a fully operational Vulnerability and Patch Management System by March 16, 2026

Timeline for RFP Process
Solicitation of proposals from Candidates by the City of Durham: August 27th
Pre-bid conference date: September 8 <sup>th</sup> at 11 AM ET
Deadline for Questions: September 12th
Receive Proposal / RFP Close Date: September 29 <sup>th</sup>
Proposal Evaluation Committee to complete its evaluation; 30 days past previous step
City Council authorizes the City Manager to sign the contract; 60 days past previous step

City Manager and successful candidate sign contract; 30 days past previous step

**130. Keeping Proposals Open.** All proposals will remain open and valid for the City to accept for a period of 150 days after the deadline for submission of proposals. The Project Manager may release candidates from this obligation by a written letter that specifically refers to this paragraph if he or she determines that the candidate and/or the proposal will not meet the City's needs.

**140. Deadline to Submit Proposals.** Candidates should see that their proposals are received via email to [deborah.finken@durhamnc.gov](mailto:deborah.finken@durhamnc.gov) by 5:00pm EST, September 29,2025.

#### GETTING MORE INFORMATION ON THE PROJECT AND RFP PROCESS

**150. Questions.** Questions about the RFP and the RFP process should be submitted to the project manager identified at the beginning of this RFP, [Deborah.Finken@durhamnc.gov](mailto:Deborah.Finken@durhamnc.gov) and must be received by 1 PM ET on September 12,2025.

**160. Pre-submittal conferences, meetings, and site visits.**

The city will conduct a Pre-Bid Conference on September 8<sup>th</sup> at 11am via Microsoft Teams (details below) Attendees should be already familiar with this RFP. The meeting will be recorded for future reference:

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#### Microsoft Teams

##### [Join the meeting now](#)

Meeting ID: 226 783 922 670 9

Passcode: ev3y9tC6

**170. Updates and revisions to RFP**

If you have supplied the Project Manager with your preferred method of contact (email, fax, etc.), updates to this RFP ("addendums" or "addenda") will be sent to you in that manner. This RFP and addendums are normally posted on the City's website, on the Purchasing Division's webpage. Check that webpage to see that you have received all addenda at: <https://durhamnc.gov/bids.aspx>

#### EVALUATION CRITERIA

**180. Evaluation Criteria.** 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.

Phase 1 Compliance – Proposals that do not meet the City's IT standards or do not provide responses to the UBE forms will not be considered.

Phase 2 Business Value

- Demonstrated understanding of purpose, scope, expected deliverables, and ability to meet them
- Completeness of a plan to implement a generative AI solution for Durham One Call
- Vendor experience and staff qualifications
- Cost proposal
- Complete proposal
- Equal Business Opportunity Program Participation

Phase 3 Reference Checks

Phase 4 Ranked vendor by scoring and select finalist

#### EVALUATION CRITERIA (Sections 190-230)

##### **190. Understanding of the Project**

Proposals will be evaluated against the questions set out below.

- (a) How well has the candidate demonstrated a thorough understanding of the purpose and scope of the project?
- (b) How well has the candidate identified issues and potential problems related to the project?

- (c) How well has the candidate demonstrated that it understands the deliverables the City expects it to provide?
- (d) How well has the candidate demonstrated that it understands the City's schedule and can meet it?
- (e) Adherence to the City's UBE program.

## **200. Methodology Used for the Project**

Proposals will be evaluated against the questions set out below.

- (a) How well does the methodology depict a logical approach to fulfilling the requirements of the RFP?
- (b) How well does the methodology match and contribute to achieving the objectives set out in the RFP?
- (c) How well does the methodology interface with the schedule in the RFP?

## **210. Management Plan for the Project**

Proposals will be evaluated against the questions set out below.

- (a) How well does the management plan support all of the project requirements and logically lead to the deliverables required in the RFP?
- (b) How well is accountability completely and clearly defined?
- (c) Is the organization of the project team clear?
- (d) How well does the management plan illustrate the lines of authority and communication?
- (e) To what extent does the candidate already have the hardware, equipment, and licenses necessary to perform the contract?
- (f) Does it appear that the candidate can meet the schedule set out in the RFP?
- (g) Has the candidate offered alternate deliverables and gone beyond the minimum tasks necessary to meet the objectives of the RFP?
- (h) Is the proposal practical, feasible, and within budget?
- (i) How well have potential problems been identified?
- (j) Is the proposal responsive to all material requirements in the RFP?

## **220. Experience and Qualifications**

Proposals will be evaluated against the questions set out below.

*Questions regarding the personnel.*

- (a) Do the individuals assigned to the project have experience on similar projects?
- (b) Are resumes complete and do they demonstrate backgrounds that are desirable for individuals engaged in the work the project requires?
- (c) How extensive are the applicable education and experience of the personnel designated to work on the project?
- (d) How knowledgeable are the candidate's personnel of the local area and how many individuals have worked in the area previously?

*Questions regarding the candidate:*

- (e) How well has the candidate demonstrated experience in completing similar projects on time and within budget?
- (f) How successful is the general history of the candidate regarding timely and successful completion of projects?
- (g) Has the candidate provided letters of reference from clients?
- (h) How reasonable are the candidate's cost estimates?
- (i) If subcontractors will perform work on the contract, how well do they measure up to the evaluation used for the candidate?

## **230. Contract Cost – 20 points**

The lowest cost proposal will receive the maximum number of points allocated to cost. Cost is one of a number of factors, so a candidate with the lowest cost cannot count on being selected.

### **CONTENTS OF PROPOSAL**

## **240. Contents of Proposal.**

The proposal should include sections, numbered as follows:

1. **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 proposal.
2. **Legal Status of the Candidate and Signers.** State the full, exact name of the candidate. State whether the candidate is an individual, corporation, limited partnership, general partnership, limited liability company, professional corporation, professional association, etc. If it is anything other than an individual or a general partnership, specify the State under which the entity is organized. If the State under which the entity is organized is not North Carolina, specify whether the candidate has received a certificate of authority from the N. C. Secretary of State to transact business in North Carolina. State whether the entity is in existence at the time the proposal is submitted, and if not, whether and when the candidate intends to officially form the entity. State the names and titles of the individuals who will sign the contract with the City.
3. **Qualifications, References, and Licenses.** This part should include the candidate's experience on similar projects and include references and how to contact them.

List the candidate's current licenses that are pertinent to this project.

4. **Project Team, Location of Work, and Subcontracting.** State the names and qualifications of the individuals who will have responsibility for this project.

4.5. **Workforce Diversity Questionnaire.** Complete the *Contractor Workforce Diversity Questionnaire* ("Diversity Questionnaire") and provide it with your Proposal. The Diversity Questionnaire will not be used as a factor in determining a recommendation for award; however, the completed Diversity Questionnaire will be required of the Contractor before any contract will be authorized for execution. It is recommended that the Diversity Questionnaire be submitted at the same time as the Proposal in order to facilitate the processing of the Contractor's information. This form is not included as part of any submittal page maximum. Contractor Workforce Diversity Form is available here: [online form](#).

Proposals should state to what extent, if any, the work may be subcontracted.

5. **Methods and Procedures.** Include the work break down structure and outline the schedule for this project.

6. **Compensation.** Explain the entire compensation arrangement that you propose.

7. **Assumptions regarding City of Durham Actions and Participation.** If your proposal assumes that the City will take certain actions, provide facilities, or do anything else, you should state these assumptions explicitly.

### **8. UBE Participation.** Equal Business Opportunity Program

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

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

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

The Department of Finance is responsible for the Equal Business Opportunity Program. All questions about "Equal Business Opportunity Program Procurement Forms" should be referred to department staff at (919) 560-4180.

**9. Financial Condition, Insurance, Bonds, and Taxes.** *The City may reject proposals from candidates that are overdue on City property taxes.*

**10. 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.

**11. Non-collusion.**

Sign the following and include it with your response:

**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 bona fide 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:

**COVER LETTER WITH PROPOSAL**

**250. Cover letter.** The proposal should contain a cover letter, signed by a principal of the candidate. The cover letter should contain the following statement:

The undersigned, whose title and position with the candidate are stated next to or beneath his or her signature, has the authority to submit this proposal (including this cover letter) on behalf of the candidate in response to the City of Durham's Request for Proposals.

Unless otherwise clearly stated in this response to the RFP, our proposal accepts the terms and conditions stated in the RFP, including the description of services to be performed and the provisions of the contract to be signed.

The cover letter should contain one of the following two paragraphs A or B. If (i) the cover letter lacks both paragraph A and paragraph B, or (ii) the cover letter contains paragraph A but fails to comply with the instructions in the section of the RFP titled "Trade Secrets and Confidentiality," the City may treat everything it receives from the candidate as NOT trade secret or confidential, and the City may disclose to the public everything it receives from the candidate.

A. With respect to all trade secrets that the candidate may submit to the City in connection with this proposal or the contract, if the contract is awarded to the candidate, the candidate shall comply with the section of the RFP titled "Trade Secrets and Confidentiality," including all of its subsections, including the subsection titled "Defense of City." The candidate acknowledges that the City will rely on the preceding sentence.

**-or-**

B. The candidate is not submitting any trade secrets to the City in connection with this proposal or the contract; if the contract is awarded to the candidate, the candidate will not submit any trade secrets to the City in connection with this proposal or the contract. The candidate acknowledges that the City will rely on the preceding sentence.

A. This proposal is an offer that cannot be revoked before 60 days 4:30 PM after the receipt of proposals. The City may allow the candidate to withdraw the offer by sending written withdrawal permission that refers specifically to this provision.

**-or-**

B. This proposal is not an offer, and the candidate retains the right to decline to enter into a contract with the City for this project.

**260. Addendums.** The cover letter should list the last addendum that the City issues for this RFP, with a statement such as *The undersigned candidate has read all the addendums issued by the City for this RFP, through and including Addendum No. \_\_\_\_\_*. In that blank the candidate should list the number of the last addendum

#### **HOW TO SUBMIT A PROPOSAL**

**270. How to submit a proposal.**

Candidates must submit their proposal to the Project Manager via email to:

Email Address: [deborah.finken@durhamnc.gov](mailto:deborah.finken@durhamnc.gov)

Subject Line: RFP – Vulnerability and Patch Management System, RFP 25-0060

Proposals must be received no later than 5:00 PM, on September 25, 2025, via email.

**280. Format.** Responses should follow the layout and numbering of the RFP to facilitate proposal review. Documents must be one of the following formats: Microsoft Office compatible, Adobe Acrobat PDF compatible. Macros or dynamic references to material stored outside of the submitted document will not be reviewed.

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

**300. Candidate to Bear Expense; No Claims against City.** No candidate will have any claims or rights against the City arising out of the participation by a candidate in the proposal process. No candidate will have any claims or rights against the City for the City's failure to award a contract to it or for awarding a contract to another person, firm, or corporation, regardless of whether the other person, firm, or corporation participated in the RFP process or did not submit a proposal that complied with the RFP. 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 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 \$21.90 per hour through June 30, 2026. The City will re-set the rate for the period after June 30, 2026.

---- End of RFP ---

## Exhibit A

### [**Model Services Contract**]

#### **CONTRACT FOR Vulnerability and Patch Management System**

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

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

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

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

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

*a limited partnership organized 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 news about the contractor's principal office or place of business.]*

Sec. 1. Background and Purpose.

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

Sec. 3. Reserved.

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

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

The City shall pay the Contractor for the Work as follows: The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section. The total dollar amount to be paid under this contract by the City to the Contractor shall not exceed \$154,000.]

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

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

(i) the amount of interest due to the Subcontractor under subsection (a), and/or

(ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the City to the Contractor.

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

(c) Nothing in this section (titled “Prompt Payment to Subcontractors”) shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective 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 retainerage 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 certified statements and notarization if so specified.

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

**Commercial General Liability** – Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement excluding or limiting Product/Completed Operations, Contractual Liability, Cross Liability, or Personal and Advertising Injury Liability.

**Automobile Liability** – Limits of no less than \$1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned, and Hired automobiles. In the event the Contractor does not own automobiles, the 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 by separate Auto Liability policy.

Automobile coverage is necessary only if vehicles are used in the provision of services under this contract or are brought on a City site.

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

**Workers' Compensation & Employers Liability** – The Contractor agrees to maintain Worker's Compensation Insurance in accordance with Chapter 97 of the North Carolina General Statutes and with Employer Liability limits of no less than \$1,000,000 for each accident, each employee, and policy limit. This policy must include a waiver of subrogation.

**Cyber Liability** – Limits of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate.

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

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

City of Durham  
Attn: Technology Solutions  
101 City Hall Plaza  
Durham, NC 27701

All primary insurance carriers must be authorized to do business in North Carolina. As used in this contract, "Business Day" is defined as any day other than Saturdays, Sundays, and any legal holiday recognized by the City pursuant to City Code Section 42-16, as amended.

Sec. 8. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule required by this contract, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section. [City staff – *Regarding the first sentence of this section: It is possible that – and acceptable if – the schedule is not called “schedule.” The schedule may be scattered about the contract. Try to indicate where the schedule is; an improved sentence might read: If the Contractor fails to perform the Work in accordance with the schedule required by this contract, including the schedule required by section \_\_\_, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City’s rights and remedies.\*]*]

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

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

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

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

Sec. 10. Notice.

(a) 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 U.S.C. 7502(f)(2), or United States Postal Service (USPS). (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 (f) below, 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 Notice Period Is Less than 9 Days. If a required notice period is less than 9 days, the sender is requested to make reasonable attempts, before or promptly after giving notice under subsection (b), also to orally communicate the substance of the contents of the written notice, in person or by telephone. Failure to satisfy this subsection shall not render the written notice invalid.

(d) 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.

(e) 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.

(f) Addresses. Subject to change pursuant to subsection (e), the addresses for these notices are:

To the City:

[Insert name and department]

City of Durham

101 City Hall Plaza

Durham, NC 27701-3329

The fax number is (919) \_\_\_\_\_

Email:

To the Contractor:

[Insert name and address]

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

Email:

Sec. 11. Indemnification. (a) In general. The terms of subsection (c) (Standard Indemnification Provision) below shall apply to the Contractor, subject to subsections (d) through (k), where applicable.

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

Contractor – Each party to this contract except the City of Durham.

Construction agreement -- any promise or agreement in, or in connection with, a contract or agreement relative to the design, planning, construction, alteration, repair, or maintenance of a building, structure, highway, road, appurtenance, or appliance, including moving, demolition, and excavating connected therewith.

Defend –In this Section except in subsection (c), 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.

Derivative parties -- with respect to a party, any of that party's subcontractors, agents, employees, or other persons or entities for which the party may be liable or responsible as a result of any statutory, tort, or contractual duty.

Design professional -- a person or entity who is licensed under and provides professional services regulated by Chapters 83A, 89A, 89C, 89E, or 89F of the N. C. General Statutes.

Design professional agreement -- any promise or agreement in, or in connection with, a contract or agreement with a design professional to provide design professional services.

Design professional services -- a service or work performed by a design professional for which licensure is required under Chapters 83A, 89A, 89C, 89E, or 89F of the N. C. General Statutes.

Fault – a breach of contract; negligent, reckless, or intentional act or omission constituting a tort under applicable statutes or common law; or violations of applicable statutes or regulations.

Indemnitees -- City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.

Subcontractor – any person or entity, of any tier, providing labor or material through the Contractor for use on the project at issue in the applicable construction agreement or design professional agreement.

(c) Standard Indemnification Provision. (i) 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 “c,” the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (ii) “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 (titled “Indemnification”) directly against the Contractor, but not against the City of Durham.

(d) Restriction regarding Indemnitees’ Negligence. This contract shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

(e) Restriction regarding Fault in Construction Agreements and Design Professional Agreements. If this contract is a construction agreement or design professional agreement, 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.

(f) 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.

(g) 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 (d) (Restriction regarding Indemnitees’ Negligence) and subsection (e) (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.

(h) 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 Chapter 44A of the N.C. General Statutes.

(i) Other Provisions. Every provision in this contract that violates subsection (d) (Restriction regarding Indemnitees' Negligence), subsection (e) (Restriction regarding Fault in Construction Agreements and Design Professional Agreements), or subsection (f) (Restriction Regarding Negligence of Design Professionals) shall be construed and revised to the extent that it is lawful in order to make the provision conform with those subsections.

(j) 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.

(k) Compliance with Law. This Section shall be applied to the maximum extent allowed by law but it shall be construed and limited as necessary to comply with N.C.G.S. § 22B-1. This Section is not to be construed in favor or against any party as the drafter. The preceding sentence is not intended to imply or direct how the remainder of this Section or of this contract is to be construed.

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

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

Sec. 14. State Law Provisions.

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

Sec. 15. Miscellaneous.

(a) Choice of Law and Forum; Service of Process. (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina 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 (i). (ii) If the Contractor is an artificial person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. The

Contractor hereby appoints as one of those agents the person it designates to receive notice pursuant to section 10 (Notice). If the Contractor fails to appoint a person to receive such notice or the person cannot be served using reasonable diligence, the Contractor appoints the Durham City Clerk as Agent for Service of Process. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor shall instruct each Agent for Service of Process 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 (ii) does not apply while the Contractor maintains a registered agent in North Carolina by filing with the office of the N. C. Secretary of State and that registered agent can be found with due diligence at the registered office.

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

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

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

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

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

(g) Notice of City Policy. 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.

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

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

(j) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar day. (8) The word "Work" is defined in Section 2. (9) The word "Holiday" means legal holiday observed by the City of Durham pursuant to City Code section 42-16 or any successor provision. (10) A definition in this contract will not apply to the extent the context requires otherwise.

(k) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited

circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(l) 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. 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.

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

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

ATTEST:

CITY OF DURHAM

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

preaudit certificate, if applicable \_\_\_\_\_



## Exhibit B

### Equal Business Opportunity Program Procurement Forms