

STATE OF NORTH CAROLINA
COUNTY OF WAKE

APPRENTICE/INTERN PROGRAM
Non Capital
PUBLIC BODY GRANT AGREEMENT

**NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION**

DOT PROGRAM NUMBER: DOT-11

and

PROJECT NUMBER: 13-DG-046

CITY OF DURHAM

WBS ELEMENT: 36223.6.10.1

AGREEMENT ID:

THIS AGREEMENT made this the ____ day of _____, 20____, (hereinafter referred to as AGREEMENT) by and between the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as "Department", an agency of the State of North Carolina) and the **CITY OF DURHAM** (hereinafter referred to as the "Contractor").

WHEREAS, Article 2B of Chapter 136 of the North Carolina General Statutes designated the Department of Transportation as the agency of the State of North Carolina responsible for administering all Federal and/or State programs relating to public transportation, and granted the Department authority to do all things required under applicable Federal and/or State legislation to properly administer the public transportation within the State of North Carolina; and

WHEREAS, the Department has established an Apprenticeship/Intern Program that allows college students enrolled in NC colleges and universities to apply for paid Apprentice/Intern positions with approved transportation agencies throughout the State; WHEREAS, the NCDOT Board of Transportation has approved the funding, scope and sponsorship for **CITY OF DURHAM** to serve as a Sponsor of the Apprenticeship/Internship Program;

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the Department and the Contractor agree as follows:

Section 1. Purpose of Agreement. The purpose of this Agreement is to state the terms, conditions and mutual undertakings of the parties as to the manner in which the Apprenticeship/Internship Program (herein Referred to as: "the Project") will be undertaken and completed.

Section 2. Scope of Project. The Contractor shall undertake and complete the Project as described below and in the approved Project Budget, incorporated into this Agreement as Attachment A, filed with and approved by the Department, and in accordance with the Project application and the terms and conditions of this Agreement. Nothing shall be construed under the terms of this Agreement by the Department or the Contractor that shall cause any conflict with Department, State, or Federal statutes, rules, or regulations.

A. **The City of Durham apprentice will work with Triangle Transit Authority (TTA) and Durham Area Transit Authority (DATA). The apprentice will review activities performed by TTA, including service changes, designing better service for Durham and the marketing of the services to the general public. The apprentice will also work collaboratively with TTA staff in understanding proposals suggested by TTA and, in turn, discuss those proposals with DATA staff and city officials when needed. The apprentice will attend all service review meetings held internally by TTA staff and participate in all public meetings aimed at educating the public about proposed service changes.**

Section 3: Project Budget/Cost.

The total cost of the Project approved by the Department is

THIRTY TWO-THOUSAND FOUR HUNDRED THIRTY-TWO DOLLARS (\$32,432) as set forth in the Project Description and Budget, incorporated into this Agreement as Attachment A.

Administration WBS	Administration Total	Administration State (90%)	Administration Local (10%)
36223.6.10.1	\$32,432	\$29,188	\$3,244
Agreement#			
Project Total	Project Total	Project Total State	Project Total Local
	\$32,432	\$29,188	\$3,244

Section 4: Period of Performance. The period of performance for all

expenditures under this Agreement shall extend from **June 1, 2012 to May 31, 2013** unless written authorization to the contrary is provided by the Department. Any requests to change the Period of Performance must be made in accordance with the policies and procedures established by the Department or FTA. The Contractor shall commence, carry on, and complete the approved Project with all practicable dispatch, in a sound, economical, and efficient manner.

Section 5: Contractor's Responsibilities: The Contractor agrees to comply with the terms of the agreement and maintain sufficient, legal, financial, technical and managerial capability to:

- a) Plan and manage on-the-job training for the apprentice/intern.
- (b) Provide guidance and direction to the Apprentice/Intern, including the development and management of an agreement between the Contractor and the apprentice/intern detailing at a minimum the policies and procedures, work tasks, work hours, pay record/period, location of work, special project, supervisor, reporting requirements necessary to carryout the work and goals of the Apprenticeship/Internship;
- (c) Prepare and submit reports indicating status of Apprentice/Intern work and activities to NCDOT at a minimum monthly;
- (d) Provide payment on a schedule to the Apprentice/Intern in accordance with the project budget and at specified times determined by the Contractor;
- e) Submit Request for Reimbursement Quarterly to the Department with supporting documentation (timesheet and work task) in accordance with NCDOT policies and procedures;
- f) Comply with the terms of this agreement, the Approved Project Budget, the Project schedules, and applicable Federal and State laws, regulations, and directives.

Section 6. Compliance with State Laws, Regulations and Directives. The Contractor agrees to comply with the following State administrative requirements:

- (1) Title 19A North Carolina Administrative Code (N.C.A.C.)
Subchapter 5B at (<http://reports.oah.state.nc.us/ncac.asp>).

a) Application of State, and Local Laws, Regulations, and Directives.

To achieve compliance with changing federal and state requirements, the

Contractor makes note that federal, state and local requirements may change and the changed requirements will apply to this Agreement as required.

b) Contractor's Primary Responsibility to Comply with State Requirements. Irrespective of involvement by any other participant in the Project, the Contractor agrees that it, rather than the participant, is ultimately responsible for compliance with all applicable Federal and State laws, regulations, and directives, except to the extent that the Department determines otherwise in writing. Unless otherwise authorized in writing by the Department, the Contractor shall not assign any portion of the work to be performed under this Agreement, or execute any contract, amendment, or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement without the prior written concurrence of the Department. Further, the Contractor shall incorporate the provisions of this Agreement into any lease arrangement and shall not enter into any lease arrangement without the prior concurrence of the Department. Any lease approved by the Department shall be subject to the conditions or limitations governing the lease as set forth by the Department. If the Contractor leases any Project asset to another party, the Contractor agrees to retain ownership of the leased asset, and assure that the Lessee will use the Project asset to provide mass transportation service, either through a "Lease and Supervisory Agreement" between the Contractor and Lessee, or another similar document. The Contractor agrees to provide a copy of any relevant documents.

- (1) Significant Participation by a Third Party Contractor. Although the Contractor may enter into a third party contract, after obtaining approval from the Department, in which the third party contractor agrees to provide property or services in support of the Project, or even carry out Project activities normally performed by the Contractor (such as in a turnkey contract), the Contractor agrees that it, rather than the third party contractor, is ultimately responsible to the Department for compliance with all applicable Federal and State laws, regulations, and

directives, except to the extent that the Department determines otherwise in writing.

- (2) Significant Participation by a Subcontractor. Although the Contractor may delegate any or almost all Project responsibilities to one or more subcontractors, the Contractor agrees that it, rather than the subcontractor, is ultimately responsible for compliance with all applicable Federal and State laws, regulations, and directives, except to the extent that the Department determines otherwise in writing.

c) Contractor's Responsibility to Extend Federal and State Requirements to Other Entities.

- (1) Entities Affected. Only entities that are signatories to this Agreement for the Project are parties to this agreement. To achieve compliance with certain Federal and State laws, regulations, or directives, however, other Project participants, such as subrecipients and third party contractors, will necessarily be involved. Accordingly, the Contractor agrees to take the appropriate measures necessary to ensure that all Project participants comply with applicable Federal and State laws, regulations, and directives affecting their performance, except to the extent the Department determines otherwise in writing.
- (2) Documents Affected. The applicability provisions of Federal and State laws, regulations, and directives determine the extent to which their provisions affect a Project participant. Thus, the Contractor agrees to include adequate provisions to ensure that each Project participant complies with those Federal and State laws, regulations, and directives, except to the extent that the Department determines otherwise in writing. In addition, the Contractor also agrees to require its third party contractors and subrecipients to include adequate provisions to ensure compliance with applicable Federal and State laws, regulations, and directives in each lower tier subcontract and subagreement for the Project, except to the extent that the Department

determines otherwise in writing. Additional requirements include the following:

(a) Third Party Contracts. Because Project activities performed by a third party contractor must comply with all applicable Federal and State laws, regulations, and directives, except to the extent the Department determines otherwise in writing, the Contractor agrees to include appropriate clauses in each third party contract stating the third party contractor's responsibilities under Federal and State laws, regulations, and directives, including any provisions directing the third party contractor to extend applicable requirements to its subcontractors at the lowest tier necessary. When the third party contract requires the third party contractor to undertake responsibilities for the Project usually performed by the Contractor, the Contractor agrees to include in that third party contract those requirements applicable to the Contractor imposed by the Grant Agreement for the Project and extend those requirements throughout each tier except as the Department determines otherwise in writing.

b) Sub-agreements. Because Project activities performed by a Sub-contractor/ sub-recipient must comply with all applicable Federal and State laws, regulations, and directives except to the extent that the Department determines otherwise in writing, the Contractor agrees as follows:

1 Written Sub-agreement. The Contractor agrees to enter into a written agreement with each subrecipient (sub-agreement) stating the terms and conditions of assistance by which the Project will be undertaken and completed.

2. Compliance with Federal/State Requirements. The Contractor agrees to implement the Project in a manner that will not compromise the Contractor's compliance with Federal and State laws, regulations, and directives applicable to the Project and the Contractor's obligations

under this Agreement for the Project. Therefore, the Contractor agrees to include in each sub-agreement appropriate clauses directing the sub-recipient to comply with those requirements applicable to the Contractor imposed by this Agreement for the Project and extend those requirements as necessary to any lower level sub-agreement or any third party contractor at each tier, except as the Department determines otherwise in writing.

d) No Federal/ Government Obligations to Third Parties. In connection with the performance of the Project, the Contractor agrees that, absent the – Federal/State Government's express written consent, the Federal/State Government shall not be subject to any obligations or liabilities to any subrecipient, third party contractor, or other person or entity that is not a party to this Agreement for the Project. Notwithstanding that the Federal/State Government may have concurred in or approved any solicitation, subagreement, or third party contract, the Federal/State Government has no obligations or liabilities to such entity, including any subrecipient or third party contractor.

Section 7. Reporting.

a. Reports. The Contractor shall advise the Department regarding the progress of the Project at a minimum quarterly and at such time and in such a manner as the Department may require. Such reporting and documentation may include, but not be limited to: apprentice/intern schedule, work task/assignments, project progress/status reports, and/or evaluations. The Contractor shall collect and submit to the Department at such time as it may require, such financial statements, data, records, timesheets, contracts, and other documents related to the Project as may be deemed necessary by the Department. Such reports shall include narrative and financial statements of sufficient substance to be in conformance with the reporting requirements of the Department. Progress reports throughout the useful life of the project shall be used, in part, to document execution of the project as outlined

in the Scope of Work. Failure to fully implement the project in the manner directed by the Department shall constitute a breach of contract, and after written notification by the Department, may result in termination of the Agreement or any such remedy as the Department deems appropriate.

Section 8. Project Expenditures/Request for Reimbursement.

- a. General. The Department shall reimburse the Contractor for allowable costs for work performed under the terms of this Agreement which shall be financed with State funds. The Contractor shall expend funds provided in this Agreement in accordance with the approved Project Budget, included as Attachment A to this Agreement. It is understood and agreed that the work conducted pursuant to this Agreement shall be done on an actual cost basis by the Contractor. Expenditures submitted for reimbursement shall include all eligible cost incurred within the Period Covered. The Period Covered represents the monthly or quarterly timeframe in which the project reports expenditures to the Department. The amount of reimbursement from the Department shall not exceed the funds budgeted in the approved Project Budget. The Contractor shall initiate and prosecute to completion all actions necessary to enable the Contractor to provide its share of project costs at or prior to the time that such funds are needed to meet project costs.
- b. Payment. In order to assist the Contractor in financing the costs of the project, the Department shall reimburse the Contractor up to the percentage specified in the Approved Project Budget of allowable administrative costs, which shall be determined by available funding. The Contractor shall submit itemized invoices to the Department not more frequently than monthly, nor less frequently than quarterly, reporting on the Department's Uniform Public Transportation Accounting System (UPTAS) invoicing forms furnished by the Department for work performed under this Agreement. Expenditures submitted for reimbursement shall include all eligible cost incurred within the Period Covered. Failure to request reimbursement for expenses incurred within the Period Covered may result in non-payment. All requests for

reimbursement must be submitted within (30) days following the end of the project's reporting period. Additional forms must be submitted with reimbursement requests to report on contracting activities with Historically Underutilized Business (HUB) and Minority Business and Women Business Enterprise (MBE/WBE) firms. Invoices shall be supported by documentation of costs unless otherwise waived by the Department. All requests must be submitted within thirty (30) days following the end of the quarter. Failure to request reimbursement for eligible projects costs as outlined may result in termination of the Project. Invoices shall be approved by the Department's Public Transportation Division and reviewed by the Department's External Audit Branch prior to payment. A retainage of five percent (5%) of the approved payment may be withheld until the approved Project is completed, accepted, and the final audit has been made.

c. Excluded Costs. The Contractor understands and agrees that, except to the extent the Department determines otherwise in writing, ineligible costs will be treated as follows:

(1) In determining the amount of State assistance the Department will provide, the Department will exclude:

- (a) Any cost that is not included in the latest Approved Project Budget;
- (b) Any Project cost incurred by the Contractor before the Effective Date of the Grant;
- (c) Any cost for Project property or services received in connection with a third party contract or subagreement with a subrecipient that must be approved by the Department, or other arrangement required to be, but has not been, concurred in or approved in writing by the Department;
- (d) Any cost ineligible for Department participation as provided by applicable Federal, State laws, regulations, or directives.

(e) The Contractor shall limit reimbursement for meals, lodging and travel to the rates established by the State of North

Carolina Travel Policy. Costs incurred by the Contractor in excess of these rates shall be borne by the Contractor. Any reimbursement request for travel, meals, conferences and seminar facilities must be accompanied by documentation that explains the cost relationship to the grant scope. The Public Transportation Division shall make the final determination that such documentation is adequate or that additional documentation is needed.

(2) The Contractor understands and agrees that payment to the Contractor for any Project cost does not constitute the Federal/State Government's final decision about whether that cost is allowable and eligible for payment and does not constitute a waiver of any violation by the Contractor of the terms of this Agreement. The Contractor acknowledges that the Federal/State Government will not make a final determination about the allowability and eligibility of any cost until an audit of the Project has been completed. If the Federal/State Government determines that the Contractor is not entitled to receive any portion of the State assistance the Contractor has requested or provided, the Department will notify the Contractor in writing, stating its reasons. The Contractor agrees that Project closeout will not alter the Contractor's responsibility to return any funds due the State Government as a result of later refunds, corrections, or other transactions; nor will Project closeout alter the State Government's right to disallow costs and recover funds on the basis of a later audit or other review. Unless prohibited by Federal and State law or regulation, the State Government may recover any State assistance funds made available for the Project as necessary to satisfy any outstanding monetary claims that the State Government may have against the Contractor.

d. State Claims, Excess Payments, Disallowed Costs, including Interest.

(1) Contractor's Responsibility to Pay. Upon notification to the

Contractor that specific amounts are owed to the State Government, whether for excess payments of State assistance, disallowed costs, or funds recovered from third parties or elsewhere, the Contractor agrees to remit to the Department promptly the amounts owed, including applicable interest and any penalties and administrative charges.

(2) Amount of Interest. The Contractor agrees to remit to the Department interest owed as determined in accordance with N.C.G.S. 147-86.23.

e. De-obligation of Funds. The Contractor agrees that the Department may de-obligate unexpended State funds before Project closeout.

Section 9. Accounting Records.

- a. Establishment and Maintenance of Accounting Records. The Contractor shall establish and maintain separate accounts for the public transportation program, either independently or within the existing accounting system. All costs charged to the program shall be in accordance with most current approved Project Budget and shall be reported to the Department in accordance with UPTAS.
- b. Documentation of Project Costs. All costs charged to the Project, including any approved services performed by the Contractor or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature and propriety of the charges, as referenced in 49 C.F.R. 18, the Office of Management and Budget Circulars A-87, "Costs Principles for State, Local, and Indian Tribal Governments" and A-102 "Grants and Cooperative Agreements with State and Local Governments."
- c. Allowable Costs. Expenditures made by the Contractor shall be reimbursed as allowable costs to the extent they meet all of the requirements set forth below. They must be:
 - (1) Consistent with the Project Description, plans, specifications, Project Budget and all other provisions of this Agreement;

- (3) Necessary in order to accomplish the Project;
- (4) Reasonable in amount for the goods or services purchased;
- (5) Actual net costs to the Contractor, i.e., the price paid minus any refunds (e.g., refundable sales and use taxes pursuant to N.C.G.S. 105-164.14), rebates, or other items of value received by the Contractor that have the effect of reducing the cost actually incurred;
- (6) Incurred (and be for work performed) within the period of performance of this Agreement unless specific authorization from the Department to the contrary is received;
- (7) In conformance with the standards for allowability of costs set forth in Office of Management and Budget (OMB) Circular A-87 "Cost Principles for State, Local, and Indian Tribal Governments;"
- (8) Satisfactorily documented; and
- (9) Treated uniformly and consistently under accounting principles and procedures approved or prescribed by the Department.

Section 10: Accounting System, Record Retention.

- a. Adequate Accounting System. The Contractor will be responsible for having an adequate cost accounting system, and the ongoing burden of proof of adequacy for such system shall be upon the Contractor. Prior to payment of any invoices, The Department or its representatives will determine whether or not the Contractor has an adequate cost accounting system. Such determination shall be documented. In the event of a negative finding during such determining proceedings, the Department may suspend, revoke, or place conditions upon its determination, and/or may recommend or require remedial actions as appropriate.
- b. Record Retention. The Contractor and its third party contractors shall retain all records pertaining to this Project for a period of five (5) years from the date of final payment to the Contractor, or until all audit exceptions have been resolved, whichever is longer, in accordance with "Records Retention and Disposition Schedule – Public Transportation Systems and Authorities, April 1, 2006," at (<http://www.ah.dcr.state.nc.us/records/local/>).

- c. Access to Records of Contractor and Subcontractors. The Contractor shall permit and shall require its third party contractors to permit the Department or its authorized representatives to inspect all work, materials, payrolls, and other data and records with regard to the Project, and to audit the books, records, and accounts of the Contractor pertaining to the Project. The Department shall reserve the right to reject any and all materials and workmanship for defects and incompatibility with Project Description or excessive cost. The Department shall notify the Contractor, in writing, if the project, materials and/or workmanship are found to be unacceptable. The Contractor shall have ninety (90) days from notification to correct defects or to provide acceptable materials and/or workmanship. Failure by the Contractor to provide acceptable materials and/or workmanship, or to correct noted defects, shall constitute a breach of contract.

Section 11. Amendments/Revisions to the Project. The Contractor agrees that a change in Project circumstances, project information, scope, and/or budget causing an inconsistency with the terms of this Agreement for the Project will require an amendment or revision to this Agreement for the Project signed by the original signatories or their authorized designees or successors. The Contractor agrees that the project will not incur any costs associated with the amendment or revision before receiving notification of approval from the Department. The Contractor agrees that any requests for amendments and or revisions will be submitted in accordance with the policies and procedures established by FTA and the Department. The Contractor acknowledges that failure to abide by these provisions may result in denial of funding.

Section 12: Changes in Project Performance (i.e., Disputes, Breaches, Defaults, or Litigation). The Contractor agrees to notify the Department immediately, in writing, of any change in local law, conditions (including its legal, financial, or technical capacity), or any other event that may adversely affect the Contractor's ability to perform the Project as provided in this Agreement for the Project. The Contractor also agrees to notify the Department immediately, in writing, of any current or prospective major dispute, breach, default, or litigation that may adversely affect the State Government's

interests in the Project or the State Government's administration or enforcement of State laws or regulations; and agrees to inform the Department, also in writing, before naming the State Government as a party to litigation for any reason, in any forum.

Section 13. Project Completion, Audit, Settlement, and Closeout.

- a. Project Completion. Within ninety (90) calendar days following Project completion, the end of the Project's period of performance, or termination by the Department, the Contractor agrees to submit a final reimbursement request to the Department for eligible Project expenses.
- b. Financial Reporting and Audit Requirements. In accordance with OMB Circular A-133, "Audits of State, Local Governments and Non-Profit Organizations," revised on June 27, 2003, and N.C.G.S. 159-34, the Contractor shall have its accounts audited as soon as possible after the close of each fiscal year by an independent auditor. The Contractor agrees to submit the required number of copies of the audit-reporting package to the Local Government Commission four months after the Contractor's fiscal year-end.
- c. Audit Costs. Unless prohibited by law, the costs of audits made in accordance with the provisions of OMB Circular A-133 are allowable charges to State awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with cost principles outlined in OMB Circular A-87 "Cost Principles for State, Local, and Indian Tribal Governments." The cost of any audit not conducted in accordance with OMB Circular A-133 and N.C.G.S. 159-34 is unallowable and shall not be charged to State grants.
- d. Funds Owed to the Department. The Contractor agrees to remit to the Department any excess payments made to the Contractor, any costs disallowed by the Department, and any amounts recovered by the Contractor from third parties or from other sources, as well as any penalties and any interest required by Subsection 4d of this Agreement.
- e. Project Closeout. Project closeout occurs when the Department issues the final project payment or acknowledges that the Contractor has remitted

the proper refund. The Contractor agrees that Project closeout by the Department does not invalidate any continuing requirements imposed by this Agreement. The Contractor agrees that Project closeout does not alter the reporting and record retention requirements of this Section 10 of this Agreement.

Section 14. Ethics.

a. Code of Ethics. The Contractor agrees to maintain a written code or standards of conduct that shall govern the actions of its officers, employees, board members, or agents engaged in the award or administration of third party contracts or sub-agreements financed with Federal/State assistance. The Contractor agrees that its code or standards of conduct shall specify that its officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential third party contractor at any tier or subrecipient at any tier or agent thereof. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the firm selected for award. The Contractor may set de minimis rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. The Contractor agrees that its code or standards shall also prohibit its officers, employees, board members, or agents from using their respective positions in a manner that presents a real or apparent personal or organizational conflict of interest or personal gain. As permitted by Federal/State or local law or regulations, the Contractor agrees that its code or standards of conduct shall include penalties, sanctions, or other disciplinary actions for violations by its officers, employees, board members, or their agents, or its third party contractors or subrecipients or their agents.

1. Gifts. It is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offer or, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources,

Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

- (1) have a contract with a governmental agency; or
- (2) have performed under such a contract within the past year; or
- (3) anticipate bidding on such a contract in the future.

State Executive Order 24 and G.S. Sec. 133-32.

- (1) Personal Conflicts of Interest. The Contractor agrees that its code or standards of conduct shall prohibit the Contractor's employees, officers, board members, or agents from participating in the selection, award, or administration of any third party contract or subagreement supported by State assistance if a real or apparent conflict of interest would be involved. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the firm selected for award.
 - (2) Organizational Conflicts of Interest. The Contractor agrees that its code or standards of conduct shall include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract or subagreement may, without some restrictions on future activities, result in an unfair competitive advantage to the third party contractor or subrecipient or impair its objectivity in performing the contract work.
- b. Debarment and Suspension. The Contractor agrees to comply, and assures the compliance of each third party contractor and subrecipient at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Government wide Debarment and Suspension (Non-procurement)," 49 C.F.R. Part 29. The Contractor agrees to, and assures that its third party contractors and subrecipients will, review

the Excluded Parties Listing System at (<http://epls.arnet.gov/>) before entering into any contracts.

- c. Bonus or Commission. The Contractor affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its State assistance application for the Project.
- d. Lobbying Restrictions. The Contractor agrees that:
 - (1) It will comply, and will assure the compliance of each third party contractor at any tier and each subrecipient at any tier, with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352, and
 - (2) To the extent applicable, it will comply with Federal/State laws and regulations prohibiting the use of State assistance for activities designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels.
- e. Employee Political Activity. To the extent applicable, the Contractor
- d. False or Fraudulent Statements or Claims. The Contractor acknowledges and agrees that:
 - (1) Civil Fraud. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection with the Project. By executing this Agreement for the Project, the Contractor certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Contractor also understands that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the State Government concerning the Project, the State Government reserves the right to impose on the Contractor the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the State Government deems appropriate.
 - (2) Criminal Fraud. If the Contractor makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the State Government or

includes a false, fictitious, or fraudulent statement or representation in any agreement with the State Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal/State Government reserves the right to impose on the Contractor the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001 or other applicable Federal/State law to the extent the Federal/State Government deems appropriate.

Section 15. Civil Rights. The Contractor agrees to comply with all applicable civil rights laws and implementing regulations including, but not limited to, the following:

- a. Nondiscrimination in Public Transportation Programs. The Contractor agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
- b. Nondiscrimination – Title VI of the Civil Rights Act. The Contractor agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21.
- c. Equal Employment Opportunity. The Contractor agrees to comply, and assures the compliance of each third party contractor at any tier of the Project and each subrecipient at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and implementing Federal regulations and any subsequent amendments thereto. The Contractor agrees that it will not discriminate against any employee or applicant for employment

because of race, color, creed, sex, disability, age, or national origin. The Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

d. Minority and Women Business Enterprise (MBE/WBE).

(1) Policy. It is the policy of the North Carolina Department of Transportation that Minority Business Enterprises and Women Business Enterprises (MBE/WBEs) as defined in *GS 136-28.4* shall have the equal opportunity to compete fairly for and to participate in the performance of contracts financed by State Funds. The Contractor is also encouraged to give every opportunity to allow MBE/WBE participation in Supplemental Agreements.

(2) Obligation. The Contractor, sub-consultant, and subcontractor shall not discriminate on the basis of race, religion, color, creed, national origin, sex, handicapping condition or age in the performance of this contract. The Contractor shall comply with applicable requirements of *GS 136-28.4* in the award and administration of federally assisted contracts. Failure by the Contractor to comply with these requirements is a material breach of this contract, which will result in the termination of this contract or such other remedy, as the Department deems necessary.

(3) Goals. Even though specific MBE/WBE goals are not established for this project, the Department encourages the Contractor to have participation from MBE/WBE contractors and/or suppliers.

(4) Listing of MBE/WBE Sub-contractors. The Contractor at the time the Letter of Interest is submitted, shall submit a listing of all known MBE/WBE contractors that will participate in the performance of the identified work. The participation shall be submitted on the Department's Form RS-2. In the event the contractor has no

MBE/WBE participation, the contractor shall indicate this on the Form RS-2 by entering the word 'None' or the number 'zero' and the form shall be signed. Form RS-2 may be accessed on the website at <https://apps.dot.state.nc.us/quickfind/forms/Default.aspx>.

(5) Certified Transportation Firms Directory. Real-time information about contractors doing business with the Department and contractors that are certified through North Carolina's Unified Certification Program is available in the Directory of Transportation Firms. The Directory can be accessed by the link on the Department's homepage or by entering <https://apps.dot.state.nc.us/vendor/directory> in the address bar of your web browser. Only firms identified as MBE/WBE certified in the Directory shall be listed in the proposal.

The listing of an individual firm in the Department's directory shall not be construed as an endorsement of the contractor's capability to perform certain work.

(6) Reporting MBE/WBE Enterprise Participation. When payments are made to MBE/WBE contractors, including material suppliers, contractors at all levels (Contractor, sub-consultant or sub-contractor) shall provide the Contract Administrator with an accounting of said payments. The accounting shall be listed on the Department's Subcontractor Payment Information Form (Form DBE-IS). In the event the contractor has no MBE/WBE participation, the contractor shall indicate this on the Form DBE-IS by entering the word 'None' or the number 'zero' and the form shall be signed. Form DBE-IS may be accessed on the website at

<https://apps.dot.state.nc.us/quickfind/forms/Default.aspx>.

A responsible fiscal officer of the payee Contractor, sub-consultant or subcontractor who can attest to the date and amounts of the payments shall certify that the accounting is correct. A copy of an acceptable report may be obtained from the Department of Transportation. This information shall be submitted as part of the requests for payments made to the Department.

- e. Access for Individuals with Disabilities. The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that

elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities. In addition, the Contractor agrees to comply with applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Department determines otherwise in writing, as follows:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart

101-19;

(7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

(9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;

(10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

(11) Federal civil rights and nondiscrimination directives implementing the foregoing regulations.

- f. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1174 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4581 et seq., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd-3 and 290ee-3, and any subsequent amendments to these acts.
- g. Access to Services for Persons with Limited English Proficiency. To the extent applicable and except to the extent that the Department determines otherwise in writing, the Contractor agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 Fed. Reg. 6733 et seq., January 22, 2001.
- h. Environmental Justice. The Contractor agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address

Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Department determines otherwise in writing.

- i. Other Nondiscrimination Laws. The Contractor agrees to comply with all applicable provisions of other Federal laws, regulations, and directives pertaining to and prohibiting discrimination that are applicable, except to the extent the Department determines otherwise in writing.

Section 16. Limitations of Agreement. This Agreement shall be subject to the availability of State funds and contingent upon the terms and conditions of this Agreement.

Section 17: Severability. If any provision of this Agreement for the Project is determined invalid, the remainder of that Agreement shall not be affected if that remainder would continue to conform to the requirements of applicable Federal/State laws or regulations.

Section 18: Termination.

a. The Department of Transportation. In the event of the Contractor's noncompliance with any of the provisions of this Agreement, the Department may suspend or terminate the Agreement by giving the Contractor thirty (30) days advance notice. Any failure to make reasonable progress on the Project or violation of this Agreement for the Project that endangers substantial performance of the Project shall provide sufficient grounds for the Department to terminate the Agreement for the Project. In general, termination of State assistance for the Project will not invalidate obligations properly incurred by the Contractor before the termination date to the extent those obligations cannot be canceled. If, however, the Department determines that the Contractor has willfully misused State assistance by failing to make adequate progress, failing to make reasonable and appropriate use of Project property, or failing to comply with the terms of this Agreement for the Project, the Department reserves the right to require the Contractor to refund the entire amount of State assistance provided for the Project or any lesser amount as the Department may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Agreement for the Project. The Department, before issuing notice of Agreement termination, shall allow the Contractor a reasonable opportunity to correct

for noncompliance. Upon noncompliance with the nondiscrimination section (Section 8) of this Agreement or with any of the said rules, regulations or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for contracts in accordance with procedures authorized in Executive Orders No. 11246 and No. 11375, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

b. The Contractor. The Contractor may terminate its participation in the Project by notifying and receiving the concurrence of the Department thirty (30) days in advance of the termination.

Section 19. Contract Administrators. All notices permitted or required to be given by one Party to the other and all questions about this Agreement from one Party to the other shall be addressed and delivered to the other Party's Contract Administrator. The name, postal address, street address, telephone number, fax number, and email address of the Parties' respective initial Contract Administrators are set out below. Either Party may change the name, postal address, street address, telephone number, fax number, or email address of its Contract Administrator by giving timely written notice to the other Party.

For the Department:

IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Name: MR CHARLIE C. WRIGHT Title: FINANCIAL MANAGER Agency: NCDOT/PTD MSC: 1550 MSC City/Zip: RALEIGH NC 27699-1550 Phone: 919-733-4713, EXTENSION 277 Fax: 919-733-2304 Email: CCWRIGHT@NCDOT.GOV	Name: MR CHARLIE C. WRIGHT Title: FINANCIAL MANAGER Agency: NCDOT/PTD Street: TRANSPORTATION BLDG Address: 1 S WILMINGTON ST RM 524 City: RALEIGH NC

For the Contractor:

IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Name: Title: Agency: Postal Address: City/Zip: Phone: Fax: Email:	Name: Title: Agency: Street Address: City:

Section 20 Ethics Policy "N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization."

IN WITNESS WHEREOF, this Agreement has been executed by the Department, an agency of the State of North Carolina, and the Contractor by and through a duly authorized representative, and is effective the date and year first above written.

CITY OF DURHAM

CONTRACTOR'S FEDERAL TAX ID NUMBER:

CONTRACTOR'S FISCAL YEAR END:

BY:

TITLE:

CITY MANAGER

(SEAL)

ATTEST:

TITLE:

DEPARTMENT OF TRANSPORTATION

BY:

TITLE: DEPUTY SECRETARY FOR TRANSIT

ATTEST:

TITLE:

SECRETARY