



**DURHAM COUNTY, NORTH CAROLINA
NON-PROFIT GRANT AGREEMENT 2024-2025**

This Grant Agreement is made as of the 1st day of July 2024, between the COUNTY OF DURHAM, a political subdivision of the State of North Carolina ("GRANTOR") and DURHAM PUBLIC SCHOOLS FOUNDATION a North Carolina not-for-profit corporation, EID# 82-2803464 ("GRANTEE").

W I T N E S S E T H:

WHEREAS The GRANTOR desires to provide funding to certain non-profit agencies for the provision of public services to Durham County residents; and

WHEREAS, GRANTEE has been chosen by the Durham County Board of County Commissioners to be a recipient of Durham County non-profit funding for fiscal year 2024.

NOW, THEREFORE, in consideration of the mutual recitals, promises, and covenants set forth herein, the parties hereto agree as follows:

1. **Amount and Terms of Grant.** The GRANTOR agrees, subject to the terms and conditions of this Agreement, to provide the GRANTEE the sum of **One Hundred Twenty-Seven Thousand Fifty Dollars (\$127,050.00)** ("Grant Funds") to provide funding for the program as described in the GRANTEE's Grant Application, (amended as applicable) which Application as amended if applicable, is hereby incorporated into this Agreement by reference and made an integral part hereof ("Program" or "Program Services"). The GRANTOR does not make any warranty, either express or implied, that the proceeds of the Grant Funds will be sufficient to pay all or any particular portion of the cost of the Program.

The amount of the Grant Funds has been determined by the GRANTOR in reliance upon annual expenditures, revenues and projections of the GRANTEE with respect to the Program as set forth in the Grantee's Grant Application.

2. **No Partnership.** Nothing in this Grant Agreement is intended or shall be considered to create a joint venture or partnership between the GRANTOR and the GRANTEE nor be interpreted to deem either the agent of the other or to make the GRANTOR in any way responsible for the duties, responsibilities, obligations, liabilities, debts or losses of the GRANTEE.

3. **Unconditional Obligations.** The obligations of the GRANTEE to perform and observe this Grant Agreement and any other agreements on its part contained herein shall be absolute and unconditional. Until such time as all obligations of the GRANTEE provided in this Grant Agreement are met, the GRANTEE (i) shall perform and observe all of its other agreements obligations contained in this Grant Agreement and (ii) shall observe any obligation or covenant, whether expressed or implied, or any duty, liability, obligation or covenant arising out of or connected with this Grant Agreement.

4. **Program Services.** The parties hereto agree that the purpose of this Grant Agreement is to provide Grant Funds to the GRANTEE to enable it to perform a public service. The GRANTEE shall perform the Program services, which are hereby deemed to be for a public purpose. Should the services change, GRANTEE shall first seek approval from the Board of County Commissioners through the County Manager. None of the Grant Funds authorized hereby may be used for any purpose not specifically determined to be a public purpose, and in no circumstances may they be used except in accordance with the requirements of Paragraph 5, below.

5. **Use of Grant funds.** The GRANTEE shall expend GRANTOR Grant Funds only for the performance of the services or functions of the Program. For purposes of this Grant Agreement, allowable expenses shall **not** include the following:

- Corporate debts/Mortgage payments
- Contingencies
- Contributions and donations
- Entertainment costs
- Fines and penalties
- Interest and other financial costs
- Legislative expenses

All Programs shall be secular and GRANTEE shall have the obligation to ensure compliance with this provision by employees or anyone under GRANTEE's control. GRANTEE shall refrain from using Grant Funds to fund religious worship, instruction, or proselytization. The failure of GRANTEE to comply with this provision shall be deemed a material breach of this agreement.

6. **Term of Grant Agreement.** The Term of this Grant Agreement shall begin on the date first written above and, unless sooner terminated as provided herein, shall expire on June 30, 2025, or upon compliance with all of the provisions of this Grant Agreement, whichever shall occur last (the "Term").

7. **Payment.** Unless otherwise first approved in writing by the GRANTOR's Chief Financial Officer, GRANTOR shall make equal quarterly payments to the GRANTEE on or before October 31, 2024; December 1, 2024; March 1, 2025; June 1, 2025. Except for the first payment, payments will be made upon acceptance by the County of GRANTEE's financial and program reports as required for the previous quarter. The GRANTOR, in its sole discretion, may delay or cancel such payments for failure by the GRANTEE to comply with any of the provisions of this Grant Agreement.

8. **Payments Do Not Constitute a Waiver.** No payment of Grant Funds hereunder shall constitute a waiver of any of the conditions of the GRANTOR's obligation to make further payments nor, in the event the GRANTEE is unable to satisfy any condition required hereunder, shall any such payment have the effect of precluding the GRANTOR from thereafter declaring such inability to satisfy to be a breach of this Grant Agreement.

9. **Financial Recordkeeping/Reporting.** The GRANTEE, at GRANTEE's sole expense, shall account to the satisfaction of the County Manager for all Grant Funds received from the GRANTOR under this Grant Agreement and all expenditures made from Grant Funds.

Such accounting shall be in a form prescribed by the County Manager and shall include an affidavit from the chief officer of the GRANTEE providing and attesting to the financial condition of the organization and the expenditure of Grant Funds. **Grantee shall provide the County Manager with quarterly financial statements on or before November 15, 2024; February 15, 2025; May 15, 2025; and August 15, 2025.** The GRANTEE shall provide such other information, records or documentation as

the County Manager may require. Non-compliance with this section shall be deemed a material breach of this Grant Agreement resulting in termination of the Grant with no further funding.

GRANTEE shall submit the quarterly financial reports to:

**Durham County Administrative Complex
Attn: Budget and Management Services
200 E. Main Street, 4th Floor
Durham, N.C. 27701
Telephone: 919-560-7065**

Additionally, the GRANTEE shall allow the GRANTOR's Internal Auditor access to the records and information required hereunder and shall facilitate a review of the accounting and program operations as may be required. The GRANTOR shall have the right to conduct site visits within one (1) week of request to do so.

GRANTEE shall retain financial and program records for a minimum period of three (3) years following the expiration or earlier termination of this Grant Agreement. Nothing in this section shall be construed to relieve the GRANTEE from other applicable reporting requirements established by law.

10. **Program Reporting.** GRANTEE shall submit quarterly Program reports regarding the progress of the Program, progress toward Program outcomes and performance measures related to the success of the Program. The Program reports should focus on those Program goals and measures identified in the GRANTEE'S Funding Application, as amended if applicable, and provide updated data through each quarter. **The Program reports shall be provided to the Durham County Manager's Office, on or before November 15, 2024; February 15, 2025; May 15, 2025; and August 15, 2025.** Non-compliance with this section shall be deemed a material breach of this Grant Agreement resulting in termination of the Grant with no further funding.

GRANTEE shall submit the program report to:

**Durham County Administrative Complex
Attn: Budget and Management Services
200 E. Main Street, 4th Floor
Durham, N.C. 27701
Telephone: 919-560-7065**

GRANTEE, together with GRANTOR may review Program and performance measures from time to time and make suggestions for improvement as necessary. Program and performance measures may be changed in writing upon mutual agreement between the GRANTEE and GRANTOR.

11. **Warranties of GRANTOR.** GRANTOR warrants and represents that it is a political subdivision of the State of North Carolina and that it has duly authorized the execution and delivery of this Grant Agreement. The GRANTOR further warrants and covenants the GRANTOR will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in this Grant Agreement and in all proceedings of the GRANTOR pertaining to this Grant Agreement.

12. **Warranties of the GRANTEE:** The GRANTEE hereby makes the following warranties and representations to induce the GRANTOR to enter into this Grant Agreement:

- a. GRANTEE is a North Carolina not-for-profit corporation duly organized and existing under and by virtue of the laws of the State of North Carolina ("State).

- b. Grantee is exempt under sec. 501(c)(3) of the Internal Revenue Code.
- c. GRANTEE is not in violation of any provision of its articles of incorporation or any laws of the State relevant to the transactions contemplated by this Grant Agreement.
- d. GRANTEE has full power and authority to execute and deliver this Grant Agreement and to carry out the Programs and obligations provided for herein. The execution and delivery of this Grant Agreement has by proper action been duly authorized by the GRANTEE and all actions necessary have been taken to constitute this Grant Agreement when executed and delivered by the respective parties thereto, valid and binding obligations of the GRANTEE.
- e. The execution, delivery and performance by the GRANTEE of this Grant Agreement and the consummation of the Programs and obligations contemplated hereby will not violate any provision of law or regulation applicable to the GRANTEE, or of any writ or decree of any court or governmental authority, or of the articles of incorporation and by-laws of the GRANTEE, or of any mortgage, indenture contract, agreement or other undertaking to which the GRANTEE is a party or which purports to be binding upon the GRANTEE or upon any of its assets.
- f. GRANTEE shall do or cause to be done all things necessary to preserve, maintain and keep in full force and affect its legal existence and comply with all laws applicable to it so long as it remains obligated to the GRANTOR under this Grant Agreement.
- g. All information in the GRANTEE's Grant Application or otherwise given by the GRANTEE to the GRANTOR regarding the Program, is and shall be true and correct. GRANTEE has not and shall not hereafter neglect to inform the GRANTOR of any material information pertaining to the Program.
- h. GRANTEE at the GRANTEE's expense shall assist the GRANTOR in obtaining any information or documentation required to verify the statements and comments made in this Grant Agreement. GRANTEE hereby consents to any inspection of the Program required for such verification and agrees to supply any information or documentation required for such verification within the GRANTEE's control as the GRANTOR may request.
- i. GRANTEE hereby acknowledges that GRANTEE has received a copy of Durham County's Non-profit Policy ("Policy"), has read and understands the Policy and that by entering into this Grant Agreement, GRANTEE agrees to comply with the Policy's terms and conditions. GRANTEE's failure to comply with any provision of the Policy may be deemed a material breach of this Grant Agreement.
- j. If applicable, Grantee has obtained and will maintain a Solicitation License from the NC Secretary of State throughout the Term of this Agreement.
- k. No funds provided hereunder shall be used to promote or provide any religious belief. GRANTEE shall refrain from any religious teaching, instruction, indoctrination, proselytizing, exposure or discussion in its Program for which Grant Funds are expended. All Programs shall be secular and GRANTEE shall have the obligation to ensure compliance with this provision by employees or anyone under GRANTEE's control. The failure of GRANTEE to comply with this provision shall be deemed a material breach of this agreement.

13. **Special Conditions.** GRANTEE shall meet any special conditions, which are attached hereto and incorporated herein.

14. **Repayment of Funds.** GRANTEE shall repay to the GRANTOR the full amount of any Grant Funds lost, misapplied, or inadequately accounted for in violation of this Grant Agreement.

15. **Insurance Requirements.** GRANTEE shall procure and maintain for the duration of the contract the following insurance coverage from an insurance company(s) possessing a rating of A-VI or higher from

the A.M. Best Company or an equivalent rating service. All of the policies required of the GRANTEE shall contain a waiver of subrogation provision to waive all rights of recovery under subrogation or otherwise against the GRANTOR. GRANTEE shall advise the GRANTOR of any cancellation, non-renewal, or material change in any policy within ten (10) days of notification of such action and provide updated certificates of insurance evidencing renewals within fifteen (15) days of expiration. All of the policies required of the GRANTEE shall be primary and the GRANTEE agrees that any insurance or self-funded liability programs maintained by the GRANTOR shall be non-contributing with respect to the GRANTEE's insurance.

a. Commercial General Liability

Shall be a limit of not less than **\$1,000,000** per occurrence and **\$2,000,000** aggregate. Coverage must be in a form providing coverage not less than the standard Insurance Services Office Form CG 00 01 and include products and completed operations, property damage, bodily injury, and personal & advertising injury. The products-completed operations coverage shall be provided for a minimum of one year following final acceptance of the work.

b. Commercial Automobile Liability

Shall be a limit of not less than **\$1,000,000** per occurrence for any (Code 1) vehicle, or if GRANTEE has no owned autos, hired, (Code 8) and non-owned autos (Code 9).

c. Worker's Compensation and Employers Liability

Shall be at North Carolina statutory limits. GRANTEE shall satisfy all compulsory requirements relating to workers compensation in any jurisdiction in which benefits may be claimed. Employers Liability shall be a limit of not less than **\$1,000,000** per accident for bodily injury or disease.

Insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. GRANTEE, upon request, shall furnish GRANTOR with complete copies of insurance policies required. By requiring insurance herein, the GRANTOR does not represent that coverage and limits will necessarily be adequate to protect GRANTEE, and such coverage and limits shall not be deemed as a limitation on GRANTEE's liability under the indemnities granted to the GRANTOR in this Contract. Any umbrella or excess liability coverage must be at least as broad as the primary coverage and contain all coverage provisions that are required of the primary coverage.

The failure of the GRANTOR at any time to enforce the insurance provisions, to demand such certificates of insurance, or to identify a deficiency shall not constitute a waiver of those provisions, nor reduce the obligations of the GRANTEE to maintain such insurance or to meet its obligations under the indemnification provisions.

The GRANTEE shall provide the GRANTOR a valid certificate of insurance, in advance of the performance of any work, exhibiting coverage as required by the GRANTOR. Providing and maintaining adequate insurance coverage is a material obligation of the GRANTEE. GRANTEE shall require its subcontractors to maintain insurance coverage required herein or cover the subcontractors under the GRANTEE's policies. The Certificate of Insurance shall be provided on the industry standard form (ACORD 25).

Notwithstanding the foregoing, nothing contained in this section shall be deemed to constitute a waiver of the governmental immunity of the County, which immunity is hereby reserved to the County.

16. **Indemnification.** To the fullest extent permitted by law, GRANTOR hereby reserves the right to recover legal expenses including attorney fees, litigation expenses and court costs as well as actual damages

or losses suffered by GRANTOR, if GRANTEE is found to be a proximate cause of damages or losses suffered by GRANTOR, resulting from GRANTEE's performance during the execution of this Contract.

17. **Applicable Laws.** GRANTEE shall be responsible for compliance with all applicable federal, state and local laws, regulations and ordinances during the performance of the Programs, services and functions funded in whole or in part by this Grant Agreement including North Carolina bid laws and any state or federal tax reporting requirements.

18. **Conflict of Interest.** No officials or employees of the GRANTEE may obtain or receive, directly or indirectly, any personal or financial interest, benefit or gain from the Grant Funds other than salaries and normal benefits, either for themselves or those with whom they have family or business ties.

19. **Equal Employment Opportunity.** GRANTEE shall not discriminate against any employee or applicant for employment because of age, race, sex, sexual orientation, gender identity or expression, creed, national origin or ancestry, marital or familial status, pregnancy, military status, religious belief or non-belief, or disability. GRANTEE shall take affirmative action to ensure that qualified applicants are employed and that employees are treated fairly and legally during employment with regard to their age, race sex, sexual orientation, gender identity or expression, creed, national origin or ancestry, marital or familial status, pregnancy, military status, religious belief or non-belief, or disability. In the event GRANTEE is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Contract may be canceled, terminated or suspended in whole or in part by COUNTY, and GRANTEE may be declared ineligible for further GRANTOR Grant Funds. **GRANTEE certifies that GRANTEE shall abide by Durham County Ordinance Article I, Sections 15-1 through 15-85. Failure to abide by said Ordinance is a breach of this contract and grounds for terminating the contract for cause and without fault or liability to COUNTY.**

20. **Affordable Care Act Requirements (Applicable Only to Staffing Agencies).** Beginning in 2015, employers with 100 or more full-time equivalent employees (50 or more beginning in 2016) must offer health insurance coverage that is affordable and provides "minimum value" to full-time employees and dependents as defined by the Patient Protection and Affordable Care Act or face penalties. Staffing companies under contract with Durham County are required to provide affordable minimum essential coverage as defined by the Patient Protection and Affordable Care Act and to indemnify Durham County against any 4980H penalties that result from their failure to provide the appropriate coverage. By signing this contract as a Staffing Company, GRANTEE shall comply with the aforementioned health insurance coverage requirements of the Affordable Care Act and to indemnify the County against any associated 4980H penalties. Please complete Exhibit A and return with this contract.

21. **Employment Advertising Requirements.** GRANTEE shall post local job openings, in connection with this contract, with the City of Durham's Office of Economic and Workforce Development, the North Carolina Department of Commerce-Division of Employment Services (formerly ESC, Employment Security Commission) and with the Durham County Department of Social Services throughout term of this Agreement; provided that the foregoing requirement does not limit GRANTEE's ability to advertise and/or otherwise post job openings with other organizations or media outlets.

22. **E-Verify.** As a condition of Grant Funding, GRANTEE shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if GRANTEE provides the Program Services utilizing a subcontractor, GRANTEE shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes as well. GRANTEE shall verify, by affidavit, compliance of the terms of this section upon request by the GRANTOR.

23. **Dispute Resolution Procedure.** To prevent disputes and litigation, it is agreed by the parties that any claim or dispute between the GRANTOR and the GRANTEE, arising from this agreement shall be sent to the Durham County Manager who shall appoint a qualified mediator to address the issue. Such request shall be submitted to the County Manager in writing within ten (10) days of the claim or dispute. Upon receipt of a timely written claim, the Manager, or the County Manager's designee, shall notify the Mediator who will conduct a mediation and notify the GRANTEE in writing of the decision within forty-five (45) calendar days from the date of the submission of the claim or dispute, unless the Mediator requires additional time to gather information or allow the parties to provide additional information. The Mediator's orders, decisions and decrees shall be non-binding. Mediation, pursuant to this provision, shall be a pre-condition to initiating litigation concerning the dispute. During the pendency of any dispute and after a determination thereof, the parties to the dispute shall act in good faith to mitigate any potential damages. The costs of the mediation shall be divided equally between the parties to the dispute.

The mediation session shall be private and shall be held in Durham County, North Carolina. Mediation under this provision shall not be the cause for a delay of services and/or materials being provided which is the focus of the dispute.

If the disputed issue cannot be resolved in mediation or either party disagrees with the results of the mediation, the parties may seek resolution in the General Court of Justice in the County of Durham and the State of North Carolina. If a party fails to comply in strict accordance with the requirements of this provision, the non-complying party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.

24. **Termination.**

- a. For Convenience. Either party may terminate this Agreement for convenience prior to the end of the Term by giving five (5) days written notice of termination to the other party. In the event of termination for convenience, GRANTOR shall make no further disbursement of Grant funds to GRANTEE beyond those already approved at the time of termination, and GRANTEE specifically waives all rights to any future funds obligated under this Agreement.
- b. For Cause. In the event GRANTEE, through any cause, fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the GRANTEE shall violate any of the covenants, agreements or representations of the Agreement, GRANTOR shall, on the first such failure, notify the GRANTEE in writing advising GRANTEE of its failure to fulfill a the obligation and GRANTEE shall have the right to cure such failure within 5 business days of the receipt of such notice. If GRANTEE fails to cure the failure within 5 business days or GRANTEE fails for a second time to fulfill the same or different obligation, GRANTOR may immediately terminate this Agreement. Notice of termination shall be provided to GRANTEE in writing and specifying the effective date of termination.

If GRANTOR terminates the Agreement for Cause, GRANTEE shall repay to the GRANTOR all Grant Funds paid to GRANTEE under this agreement within 30 days of the effective date of termination.

- c. Effect of Termination. Termination of this Agreement, either for Convenience or for Cause, shall not form the basis of any claim for loss of anticipated profits by either party, nor relieve GRANTEE from the reporting requirements or liability to refund Grant Funds in the event of misuse contained in sections 4, 8, and 9 of this Agreement.

25. **Notices.** Unless otherwise stated herein, when any notice or consent is required to be given under the terms of this Grant Agreement, such notice or consent shall be in writing and shall be effective only upon actual receipt by the party to whom notice is given. Such notice shall be delivered to the addresses below or to such other persons or addresses as the parties may, from time to time, establish in writing:

To GRANTOR: Durham County Manager
Durham County Administrative Complex
200 East Main Street, 2nd Floor
Durham, NC 27701

To GRANTEE: Durham Public Schools Foundation
Attention: Accounts Receivable
411 W. Chapel Hill Street, Suite C2
Durham, NC 27701

26. **Assignment.** GRANTEE may not assign, transfer or delegate any of its duties, obligations or responsibilities under this Grant Agreement without the prior written consent of the GRANTOR.

27. **Waiver.** No action or failure to act by the GRANTOR or GRANTEE shall constitute an obligation or duty afforded them under this Grant Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach hereunder, except as may be specifically agreed to in writing by the non-breaching party.

28. **Exercise of Functions.** Nothing contained in this Grant Agreement shall in any way stop, limit or impair the GRANTOR from exercising or performing any regulatory, policing or other governmental functions.

29. **Time of the Essence.** Time is of the essence with respect to each and every covenant, agreement and obligation of GRANTEE under this Grant Agreement.

30. **Governing Law.** This Grant Agreement shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Grant Agreement shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina.

31. **Headings.** All headings that appear after paragraph numbers in this Grant Agreement are included for convenience only and shall not affect the meaning or interpretation of any of the provisions of the Grant Agreement.

32. **Survival.** The provisions of Paragraphs 9, 14, and 15 hereof shall survive any termination of this agreement.

33. **Corporate Existence.** GRANTEE warrants that it is a corporation duly organized, validly existing, and in good standing under the laws of the State of North Carolina and is duly qualified to do business in the State of North Carolina and has full power and authority to enter into and fulfill all the terms and conditions of this contract.

34. **Corporate Authority.** By execution hereof, the person signing for GRANTEE below certifies that he/she has read this contract and that he/she is duly authorized to execute this contract on behalf of the GRANTEE.

35. **Required Provisions for Contracts/Agreements/Grants Utilizing Federal Funds.** Pursuant to the Federal Uniform Guidance Appendix II to 2 CFR Part 200, if Federal Funds are involved in this Contract/Agreement/Grant Agreement, by executing this Contract/Agreement/Grant Agreement, the Contractor/Vendor/Grantee, certifies that it agrees to and is in compliance with the provisions specified in **Exhibit B – Federal Uniform Guidance Contract Provisions Certification.**

36. **Whole Agreement.** This Grant Agreement, including the attached Insurance Addendum (if applicable), and GRANTEE’S Grant Application (amended as applicable), shall be the whole agreement between the GRANTOR and the GRANTEE with respect to the matters set forth herein and the Grant Funds.

IN TESTIMONY WHEREOF, the parties have expressed their agreement to these terms by causing this 2023-2024 NON-PROFIT GRANT AGREEMENT to be executed by their duly authorized officer or agent.

GRANTOR: DURHAM COUNTY

ATTESTED:

By: _____
Dr. Kimberly J. Sowell, County Manager

By: _____
Monica Wallace, Clerk to the Board

Date of Signature _____

Date of Signature _____

**GRANTEE: DURHAM PUBLIC SCHOOLS
FOUNDATION**

ATTESTED:

By: _____
Erika Wilkins, Executive Director

By: _____
**Cris Rivera, Director of Finance
and Operations**

Date of Signature: _____

Date of Signature:

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Crystally Wright, Interim County Chief Financial Officer