

**STATE OF NORTH CAROLINA  
COUNTY OF DURHAM**

**INTER-GOVERNMENTAL AGREEMENT BETWEEN  
DURHAM COUNTY AND THE CITY OF DURHAM FOR  
CONSOLIDATION/MERGER OF TRANSPORTATION SERVICES**

**THIS INTER-GOVERNMENTAL AGREEMENT** is dated, made and entered into on this the 16<sup>th</sup> day of October, 2019 by the **COUNTY OF DURHAM** a political subdivision of the State of North Carolina (*County*) and the **CITY OF DURHAM**, a municipal corporation organized and existing under the laws of the State of North Carolina (*City*), and together collectively the County and the City may be referred to as the "*Parties*."

**Background.** This Agreement is entered pursuant to North Carolina General Statutes, Article 23, of Chapter 153A and Article 20, Part 1 of Chapter 160A.

It is the intent of the Parties to enter into this Agreement to transfer the County's Demand Response Transportation Service to the City's GoDurham transportation network, and achieve and accomplish objectives including, but not limited, to the following:

- a) Conveyance of authority from the County to the City to operate and perform the full complement of administrative responsibilities and operations of the Durham County ACCESS Demand Response Transportation System (also referred to as "Durham County ACCESS").
- b) Confirm the County's budgeted and designated funding and sources available to the City for delivery of Demand Response Transportation Services.
- c) Establish the financial and administrative procedures for the City to request Payment for the County Demand Response Transportation Services delivered.
- d) Establish the procedures for the City to report to the County the trips and expenditures for all Demand Response Transportation Service provided in compliance with local, federal and state policies.
- e) Transfer from the County the vehicle inventory, title, registration and lift-equipped vehicles to the City's Demand Response (ACCESS) service.
- f) Co-brand the Demand Response System, incorporating both Parties in the logo for inclusion on vehicles and in communication and marketing tools.
- g) Plan and convene briefings and public hearings with elected officials, the public and organizations to inform and receive comments on the consolidation.

Since 1998, Durham County ACCESS and the City of Durham's GoDurham (ACCESS) Paratransit Program have operated pursuant to an Interlocal Agreement that provides

transportation service through a coordinated model. Terms of the interlocal agreement enabled the County to utilize the City's designated Contractor to provide for the day-to-day operations of the County's Demand Response Transportation System, inclusive of the operation and maintenance of vehicles, insurance, reporting, and customer service. The coordinated service maximized efficiencies and cost-savings in operations and services.

In 2018, the County began formal discussions with the North Carolina Department of Transportation-Public Transportation Division (NCDOT-PTD) and the City of Durham GoDurham Access Transportation staff to determine the feasibility of the City completely taking over the County's Demand Response Transportation Service. The Parties concurred that the established coordinated model provided a structure that would allow the City to continue to fully manage and operate the City Demand Response Transportation Service as well as take on the additional responsibilities of administering the entire Demand Response Transportation Program of the County. Additionally, a full merger would allow continuity of service to rural Durham County residents while maximizing efficiency and cost-effectiveness in providing transportation services city and countywide.

For the reasons provided above, the City and County Staff recommend this Interlocal Agreement for full consolidation of the County and City Demand Response Transportation Services. This agreement supersedes all prior agreements: Interlocal Agreement Between the County of Durham and the City of Durham for Demand Response Transportation Services, August 30, 2016 and Vehicle Lease Agreement- Durham County and First Transit, January 9, 2019.

## **ARTICLE 1**

### **PURPOSE**

The purpose of this Agreement is to set forth the responsibilities of the Parties with respect to the consolidation and conveyance of authority from the County to the City to operate the Demand Response Transportation Service within the jurisdictional boundaries of Durham County and specific locations outside the County, as authorized by the Parties. The Agreement also describes, among other things, the Parties' obligation under the Consolidation/Merger with respect to financial, operational and administrative commitments during the term of the Agreement.

## **ARTICLE 2**

### **DEFINITIONS**

For purposes of this Agreement the terms listed below shall have the following meaning:

- a. **Agreement:** The Agreement includes Articles 1-18, the exhibits and documents that are expressly incorporated herein by reference.

- b. **Application(s)**: Customers complete applications for service and their names and pertinent information must have been provided to the Contractor prior to obtaining service.
- c. **Breach (material) or Default**: Refers to when either party fails to adhere to the terms of the Agreement even after adequate notice from the non-breaching party with reasonable opportunity to cure the alleged breach or default. The non-breaching/non-defaulting party is entitled to either leave the Agreement in place and enforcing its terms or to declare the Agreement terminated and seek remedies.
- d. **GoDurham ACCESS**: GoDurham ACCESS refers to the City of Durham's Paratransit service providing Demand Response Transportation Service for the City of Durham. Only riders who meet the criteria specified by the ADA and who have been certified as eligible can use the service.
- e. **GoDurham ACCESS Service Area**: GoDurham ACCESS operates service to all locations within the City of Durham and to any location outside the City that is three-quarters of a mile from any fixed-route service operated by GoDurham.
- f. **Coordinated Transportation System**: Refers to a transportation system where one fleet of vehicles is used to provide service to all system participants. Where City and County work together in coordination for greater efficient and effective utilization of all available resources such as funding, sharing of vehicles, staffing and facilities in the provision of safe and reliable Public Transportation Services for all citizens.
- g. **Consolidation/Merger**: means merging into one transportation system - Durham County ACCESS Demand Response Transportation Service within the City of Durham's GoDurham ACCESS.
- h. **Contractor**: The third-party Contractor(s) engaged by the City to perform the day to day operations of the Demand Response Transportation Services.
- i. **Customers**: County residents that apply and are approved for services based on grant and funding eligibility requirements.
- j. **Demand Response Transportation Funding**: Refers to the grants and Local Resources that the County makes available to the City to deliver the Demand Response Transportation Program.
- k. **Demand Response Transportation System**: Refers to the Durham County ACCESS transportation system as merged that provides door to door transportation service to eligible rural Durham county residents.

- l. **Demand Response Transportation Service:** Refers to the delivery of door to door accessible transportation provided to Durham County residents. All service is by application and reservations are required.
- m. **Demand Response Transportation Program:** Refers to the full complement of transportation services available to the rural public, the elderly, disabled, transportation disadvantaged with a trip purpose for medical, work and essential needs destinations.
- n. **Designated Recipient:** Refers to the County, an entity assigned by the state and or local agency or body to receive grant and transit funds for operations or capital purposes.
- o. **Direct Recipient:** Refers to County as the entity that receives funding and is responsible for administering the funds/grants.
- p. **Durham County ACCESS:** Refers to the County Demand Response Transportation System prior to the Effective Date of the merger.
- q. **Effective Date:** The date the provisions of this Agreement become effective, which date is October 14, 2019.
- r. **Enhanced Mobility of Seniors and Individuals with Disabilities (Section 5310) or 5310 Elderly and Disabled:** Federal grant program that provides funds to programs that enhance mobility for older adults and individuals with disabilities. It is intended to serve the needs of transit-dependent populations beyond traditional public transportation services and Americans with Disabilities Act (ADA) complementary transportation services. It is currently administered by the DCHC-MPO.
- s. **Liability Insurance Coverage Limits:** The state law required Liability Insurance for all Vehicles and comprehensive and collision insurance on Vehicles to cover the useful life of the equipment as required by FTA and NCDOT-PTD.
- t. **Local Resources:** Refers to the County Funds and Transit Sales Tax Funds identified and budgeted for funding Demand Response Transportation Service or Vehicles.
- u. **DCHC-MPO:** The Durham-Chapel Hill-Carrboro Metropolitan Planning Organization is the regional organization responsible for transportation planning for the western part of the Research Triangle area in North Carolina.
- v. **Payment.** Refers to the County's reimbursement to the City for funds expended in providing Demand Response Transportation.
- w. **Passenger Trips:** Refers to number of boarding's counted each time a customer rides a vehicle no matter how many Vehicles they use to travel from their origin to their destination.

- x. **Transportation Advisory Board:** Appointed by the City and County representing a diverse base of the community to provide leadership and guidance on the transportation needs, funding and service to residents.
- y. **Vehicles:** Refers to all lift equipped accessible passenger vehicles conveyed to the City to provide Demand Response Transportation Service.

### **ARTICLE 3 TERM AND TERMINATION**

**3.1 Term:** Notwithstanding the dates of signature, hereto, the term of this Agreement shall commence upon the Effective Date and extend for an initial term of 9 months, ending at midnight June 30, 2020 ("Initial Term"). It is the intent of the Parties that this agreement may be amended and/or extended beyond the Initial Term; however, given the uncertainties of the program, the City may decide it is not feasible to continue with the merger beyond the Initial Term. Nonetheless, the Parties agree to negotiate in good faith prior to the end of the Initial Term an amendment, renewal or extension of this Agreement to allow for additional, successive, renewable terms.

**3.2 Termination: for cause:** Either party may terminate this Agreement for a material breach of the terms of this Agreement or default by the other Party, but not before the non-breaching or non-defaulting Party gives the other written notice of the material breach or default and an opportunity to cure the material breach or default. For purposes of this Agreement material breach and default are defined in Article 2.

A written notice of material breach or default shall give the allegedly breaching or defaulting Party sixty (60) days to cure the breach or default before termination of this Agreement. If, however, the breach or default cannot, by its nature, be cured within such sixty (60) day period, but the breaching or defaulting Party commences and diligently pursues a cure promptly within the initial sixty (60) day cure period, then the non-breaching or non-defaulting Party shall not exercise its remedies or limit the rights of the breaching or defaulting Party unless such material breach or default remains uncured for more than ninety (90) days after the initial delivery of the original written notice of material breach or default.

**3.3 Termination of Obligations at end of Initial Term:** Notwithstanding anything to the contrary in this agreement, if the Parties are unable to negotiate an acceptable extension, amendment or renewal of this agreement, the responsibilities and obligations of the Parties under this agreement shall expire at the end of the Initial Term. However, the Parties agree to work with each other to complete all necessary unwinding and re-transferring of all assets, equipment and responsibilities such that the Parties are able to revert to their original positions before entering the agreement. Such unwinding activities shall include transferring possession and ownership of all Vehicles, equipment, and apparatus inventory back to the County; providing the County with all final accounting and expenditures incurred by the City until the end of the Initial Term; and cooperating with each other as necessary to ensure a smooth transition.



## **ARTICLE 4**

### **DEMAND RESPONSE TRANSPORTATION FUNDING SOURCES**

**4.1 Demand Response Transportation Program Funding and Grants:** The Parties agree that the County shall at a minimum make available to the City the grant and local funding as described in 4.2, 4.3, 4.4, 4.5, 4.6, 4.7 and 4.8 below. The grant and local funding amounts available to the City for the Initial Term are shown on Appendix A, "FY19-20 County City Merger Budget".

**4.2 State Funds – Rural Operating Assistance Program (ROAP):** The County as the Direct Recipient of the annual North Carolina Department of Transportation Public Transportation Division (NCDOT-PTD) Rural Operating Assistance Program (ROAP) Funds agrees to sub-allocate the ROAP Funds to the City in accordance with the ROAP guidelines. In accepting the ROAP funds, the County will provide, and the City agrees to comply with the grant and reporting requirements ROAP Funds–Appendix B.

**Trip Purpose:** Medical appointments, job interviews, fairs, job readiness activities/ training, transportation to work, Human Services agency appointments, essential needs and personal care.

Any changes in fares will be agreed upon by the Parties and conducted in accordance with State and Federal regulations.

**4.3 Rural General Public (RGP):** Population Served: Rural General Public Durham County

**Trip Purpose:** Medical appointments job interviews, job fairs, job readiness activities/ training, transportation to work, Human Services agency appointments, public hearings, essential needs, personal care.

Any changes in fares will be agreed upon by the Parties and conducted in accordance with State and Federal regulations.

**4.4 Work First Program:** Population Served: DSS clients transitioned from the Transportation Assistance for Needy Families (TANF) or Work First within 12 months, Workforce Development Program participants, "disadvantaged public" and or public, children of working parents transported to child care.

**Trip Purpose:** Job interviews, job fairs, job readiness activities/ training, GED classes, transportation to work.

Any changes in fares will be agreed upon by the Parties and conducted in accordance with State and Federal regulations.

**4.5 Triangle Tax District Funds:** The County as the Delegated Recipient of the dedicated funds managed by the Triangle Tax District agrees to make available to the City both the trip (Purchase of Service) and Capital funds budgeted in the Transit Work Plan. The City in accepting these funds agrees to provide trips to Durham County residents.

#### **Triangle Tax District Funds**

Population Served: Durham County residents, transportation disadvantaged, veterans.

Trip Purpose: **Medical appointments** job interviews, job fairs, job readiness activities/ training, transportation to work, Human Services agency appointments, public hearings, committee meetings, personal care.

Any changes in fares will be agreed upon by the Parties and conducted in accordance with State and Federal regulations.

#### **4.6 Durham County Contribution**

Population Served: Durham County Residents

Trip Purpose: **Medical appointments** job interviews, job fairs, job readiness activities/ training, transportation to work, Human Services agency appointments, public hearings, committee meetings, personal care.

Any changes in fares will be agreed upon by the Parties and conducted in accordance with State and Federal regulations.

**4.7 Durham County:** The County agrees to make available to the City County derived funds to support the Demand Response Transportation Program. The City in accepting these funds agrees to provide trips to Durham County residents. The Parties agree that such service will be provided in compliance with the program and funding guidelines and requirements. The Parties agree that the City is permitted to use funds to contract with private transportation providers. The City agrees to follow all state and federal procurement guidelines when selecting a contractor.

## **ARTICLE 5**

### **DEMAND RESPONSE TRANSPORTATION FUNDING OBLIGATIONS**

**5.1** In furtherance of its common interest with the City, the County agrees to make available to the City funds in Appendix A. The County's obligation to provide funds to the City to deliver the Demand Response Transportation under this Agreement is contingent upon the availability of

funding from all sources. While future funding is anticipated to remain at FY18-19 levels, annually the County and City shall develop and agree to a budget and address future funding needs to correspond to anticipated demand response trips. In the event that any one of the funding sources are not forthcoming to the County or the funding sources to the County are insufficient to fully reimburse the City for the services it is obligated to perform under this Agreement, then the City shall no longer be obligated to provide the service and the County and City will renegotiate the terms and conditions of this Agreement related to the County's funding.

**5.2** The Parties agree that the County shall provide funds to the City to exclusively provide Demand Response Transportation Passenger Trips to eligible Durham County residents residing within the jurisdictional area of Durham County. Further, both Parties agree that the Funds identified in Appendix A represent the maximum funds the County will reimburse the City in FY19-20. The Parties agree that future program funds for this purpose will be negotiated annually.

The Parties agree that the City shall apply for additional available grants to support the Demand Response Transportation needs of the County and maximize opportunities for funding through the 5307 grant for vehicle replacement and/or expansion of service and other federal, state and local grants.

**5.3 Responsibility for Costs unrelated to Demand Response Transportation Service:** The Parties agree that the City will be responsible for all other operations and maintenance costs and expenses unrelated to the provision of Demand Response Transportation Service.

## **ARTICLE 6 GRANT ADMINISTRATION**

The Parties agree that the City and County shall have the following responsibilities concerning Grant Administration under this Agreement:

**6.1 Applications:** The City agrees to prepare and submit to the County applications for the Rural Operating Assistance Program and Transit Tax funds. The County, as the Designated Recipient for these funds will review the City's submittal and transmit the final applications and supporting document to the grant and/or funding entity. The County will no longer apply for the 5310 Elderly and Disabled Federal grant. The City as the entity providing Demand Response Transportation Services shall prepare grant documents and apply for the 5310 Elderly and Disabled– multi-year grant administered through the DCHC-MPO. The City agrees that the purpose of the grant funds will be used to provide trips for medical, work, and other community priorities in rural Durham County and /or population defined in the Locally Coordinated Plan.

**6.2 Responsibility for Grant Reporting:** The City will be responsible for completing monthly and quarterly reports for grants identified in Section 5. The County will provide the City with the reporting template – Appendix C. The County agrees to receive the City's reports and monitor the trips and expenditures to assure transportation service are provided to eligible individuals and



funds expended solely for trips for Durham County Residents. These funds will be accounted for as prescribed by the County's accounting system.

**6.3 Grant Documents/Reports:** Durham County shall transfer to the City all applicable grant and funding documents of the past 5-years in accordance with grant requirements.

**6.4 Reporting/Record Keeping:** The City shall report monthly and quarterly as required by the grant procedures. In addition, the City shall maintain and complete accurate records and submit supporting documentation to the County on the Demand Response Transportation Service. Reporting at a minimum shall include:

**1 Fare Collection & Reporting:** The Parties agree to collect and report fares in accordance with the guidelines and policies established from the funding sources.

**2 Financial and Trip Reporting – Monthly:** The City shall prepare and submit invoices for reimbursement and support documentation to the County. The County will monitor and verify the trips and expenditures to assure transportation services are provided to eligible individuals and funds expended solely for trips for Durham County Residents. These funds will be accounted for as prescribed by the County's accounting system. Minimally an invoice shall include a monthly expenditure report, Identification of expenditures to budget and trips taken including detail of trips by funding source.

**3 Reporting Annually:** Both Parties agree that the City shall provide an annual performance report with the final funds invoice submission at the end of the fiscal year. The written narrative of the performance report should (1) document expenditures to budget for trips; (2) identify the type of trips provided; (3) comment on significant service delivery challenges. The City shall submit the annual report no later than August 30, of each year.

**4 Staffing:** The City agrees to provide necessary staff to administer the Demand Response Transportation Service administrative work. The County shall identify staff to process invoices, reports and assist the City with questions.

## **ARTICLE 7**

### **DEMAND RESPONSE TRANSPORTATION RATE**

**RATE PER TRIP:** Both Parties agree that the current rate established for FY 19-20 shall be \$26.00 per trip. The City acknowledges that this amount is the amount payable per trip and constitutes a limitation upon the County's obligation to compensate the City for its services related to this Agreement. This amount, however, does not constitute a limitation of any sort upon the City's obligation to perform all items of work required by or which can reasonably be inferred from the Agreement. Upon agreement of both Parties a substitute rate/cost model allocation may be adjusted for FY 20-21 and each year thereafter.

## **ARTICLE 8**

### **DEMAND RESPONSE TRANSPORTATION REIMBURSEMENT & REPORTING**

**8.1 Reimbursement:** The County agrees to make Payment to the City for Demand Response Service in accordance with the FY19-20 budget from Local County Funds, Transit Sales Tax and the Rural Operating Assistance Program (ROAP).

**(a) Monthly Request for Reimbursement:** The Parties agree that the City will submit hard copies and electronic request for reimbursements monthly. The City agrees to provide hard copies of original invoices supported by receipts, trip logs, funds expended and other documents to the designated County representative. No amount shall be paid to the City to reimburse non-trip expenses.

**(b) Request for Reimbursement shall include:**

- Invoices
- Trip to Expenditure Report
- Expenditure Report
- Transmittal memo stating the amount of funds requested for reimbursement and period covered for the expenditures.

Both Parties agree that the City shall submit all requests for reimbursement documents to the County no later than thirty days after the end of the month for funds expended during the subject period and the amount being requested for reimbursement. The City designated official must certify and sign the monthly and quarterly reports before submitting to the County. The County shall make Payment to the City within fourteen (14) days after receipt of a reimbursement request.

**8.2 Monthly Reports:** The City Agrees to submit at a minimum the following monthly reports at the time of invoicing:

**(a) Transmittal Memo: Appendix C**

**(b) Trip Reports: Appendix D**

**(c) Budget Report: Appendix E**

Each monthly report must be submitted to the County no later than thirty (30) days after the end of the prior month.

**8.3 Quarterly Reports:** The Parties agree that the City shall prepare and submit electronically Quarterly reports to the County after the end of each quarter. The quarterly progress report should include a brief narrative report of trips, populations served and any sub allocation for services provided another non-profit or human service organization. The quarterly progress report shall include a quarterly invoice and expenditure report.

Each report must be submitted to the County pursuant to the following schedule:

- October 31<sup>st</sup>
- January 31<sup>st</sup>

- April 30<sup>th</sup>
- August 31<sup>st</sup> \*(annual report)

In addition to the above, the **OPStats Data Reports** shall be submitted quarterly by the City. The data shall be recorded on the OpStats Report Form (Appendix F). This report includes data for the Demand Response Transportation trips provided to Durham County residents. This data shall include miles traveled, hours of service and number of trips for Demand Response Transportation Service provided to Durham County residents and exclusive of GoDurham's Paratransit data.

## **ARTICLE 9: ADMINISTRATION of DEMAND RESPONSE TRANSPORTATION SERVICES**

**9.1 Administration of Demand Response Transportation Services:** The Parties agree that the City shall provide the daily management and operations of Demand Response Services previously provided by the County. The City shall ensure reliable, efficient and safe transportation services in a coordinated model to County residents of Durham. The Parties understand that this Agreement may be pursuant to other agreements between the City and the North Carolina Department of Transportation-Public Transportation Division, Federal Transit Administration and/or other agencies and organizations that may contract for service through the City of Durham.

The County through this agreement conveys all authority for the administration and operation of Demand Response Transportation Service to the City.

**9.2 Customers Service /Applicants:** Durham County shall within thirty (30) day of the execution of this Interlocal Agreement, make available to the City all relevant information such as Applications, database, customer surveys and other pertinent files concerning applicants and authorized riders of Durham County ACCESS to assist the City in providing Demand Response Transportation Services.

The Parties agree that the City will utilize the Demand Response Transportation data and Applications to maintain the existing level of service to current riders.

**9.3 Facilities:** The City shall continue to provide and maintain a facility to house administration staff, operations and to store and maintain fleet automobiles.

**9.4 Program Auditing and Documentation:** Both Parties are responsible for providing sufficient program monitoring and oversight to ensure that funds are used for the intended purpose. The County will rely on quarterly milestone reporting information that identifies the number of Passenger Trips and expenditures by program. The County's Finance and/or Audit Divisions may conduct on-site audits of the Demand Response Transportation Program expenditures.

## **ARTICLE 10**

### **VEHICLES**

**10.1 Vehicles:** The Parties agree that the County will transfer vehicle inventory including titles, records and possession of all Durham County vehicles used in all transportation programs engaged in by County to the City. The City shall be solely responsible for the operation of each vehicle. The City shall maintain and operate all Durham County ACCESS vehicles used in the Coordinated Transportation System in accordance with state and federal guidelines and safety provisions. The City shall be responsible for payment of all fees, permits, inspections and registration required to operate the Vehicles. Notwithstanding this transfer of vehicle inventory, if at the end of the Initial Term, the Parties are unable to negotiate an agreeable extension, renewal or amendment to this agreement, and the County re-assumes operation of the County Demand Response Transportation System, all initial transfers of vehicle and equipment inventory to the City under this agreement will be re-transferred to the County.

The Parties agree that the City will be responsible to assure all vehicle operators are properly licensed for the service and meet all requirements for performing Demand Response Transportation Services as required by federal, state and local law, which shall include, but not be limited to the requirements of Chapter 14-90.

The City shall maintain and repair all Vehicles and other appurtenances used in the Coordinated Transportation System in accordance with manufacturer's specifications and/or in accordance with state and federal guidelines for vehicle maintenance.

**10.2 Purchase of Vehicles for FY19-20:** The County agrees to procure and purchase a minimum of six (6) additional paratransit Vehicles by November 1, 2019. The City acknowledges and agrees that the funding source for the purchase of the Vehicles will be the "BRIP/Transit Tax" as shown in Appendix A under the "New Budget" column for "Oct 14-June 30-2020". The County will transfer the Vehicles, titles, records, and warranties to the City after the Vehicles are delivered.

## **ARTICLE 11**

### **ADDITIONAL RESPONSIBILITIES OF COUNTY & AND CITY**

**11.1 Annual Funding:** City shall prepare an annual budget for the Demand Response Transportation Service and submit to the County for approval by a date to be agreed upon by both Parties. The proposed budget for FY 19-20 is attached hereto as Appendix A. The execution of this Agreement by County and City shall constitute approval of the budget specified in Appendix A.

**11.2 Transportation Advisory Board (TAB):** Both Parties shall support the continuance and or expansion of the Transportation Advisory Board. The Parties agree that the Board shall consist of seven (7) members, three (3) appointed by the County and four (4) appointed by the City. The City shall manage and provide the administrative functions of the TAB. The City and

County agree that the TAB shall meet a minimum of five (5) times annually. The County shall transfer to the City relevant documents and files related to the TAB.

**11.3 Demand Response Transportation Partners:** The City shall engage Human and Social Service Agencies and nonprofit organizations that assist and refer eligible applicants for Demand Response Transportation Service.

**11.4 Co-Branding:** The City in coordination with the County's General Manager of Strategic Planning and Innovation and shall engage in marketing and branding efforts

All Vehicles shall display the City/County GoDurham ACCESS logo.

**11.5 Advertisement:** The City shall inform the County of new advertisers and any changes in the advertising policy.

**11.6 Representation on MPO and other Boards:** The Parties agree that the City shall participate in meetings with organizations and agencies and serve on Boards and committees that engage in services and policies that impact the customers of the Demand Response Transportation System.

## **ARTICLE 12 PERSONNEL**

**12.1 Personnel City:** The City shall solely be responsible for the designation of personnel, including hiring, salaries, benefits, training and all cost, benefits and expenses associated with providing the necessary personnel to carry out the obligations and responsibilities of the Demand Response Transportation Service program as presented in this agreement.

**12.2 New Personnel:** The City shall be responsible at its sole cost for providing personnel and or contractors under this Agreement.

## **ARTICLE 13 TRANSFER OF ASSETS, AND VEHICLES, EQUIPMENT AND APPARATUS**

**13.1 Transfer and Convey:** The County hereby agrees to transfer and convey ownership of all operationally necessary and pre-identified equipment and apparatus to the City to provide Demand Response Transportation Services as identified in Appendix G- Vehicle inventory list.

**13.2 Effective Date of Transfer and Conveyance:** The County hereby agrees to transfer and convey ownership of all operationally necessary and pre-identified equipment and apparatus to the City following the Effective Date of this Agreement. In the event of Vehicles that are on order and have not been delivered, the County agrees to transfer the Vehicles upon delivery.



## **ARTICLE 14 NOTICES**

**14.1 Notice Requirements:** All notices required hereunder shall be deemed properly delivered when personally delivered to the Parties at the addresses listed below, or when sent via U.S. Mail, certified with return receipt requested, (notices being deemed given when so deposited in the U.S. Mail):

City of Durham  
Attn: City Manager  
101 City Hall Plaza  
Durham, North Carolina 27701

Durham County  
Attn: County Manager  
200 East Main Street  
Durham, North Carolina 27701

**14.2 Date Notice Deemed Given:** A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this agreement shall be deemed given and sent at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

## **ARTICLE 15 CONTACT**

**15.1 City of Durham Contact:** The City hereby designates the following City staff to implement the task as outlined throughout this Agreement.

Bill Judge  
Interim Director  
101 City Hall Plaza STE. 4200  
Durham, NC 27701  
Office: 919-560-4366 ext. 36420  
Email: Bill.Judge@durhamnc.gov

Pierre Osei-Owusu  
Sr. Transit Planner Administrator  
1907 Fay Street  
Durham, NC 27704  
Office: 919-560-4366 ext. 36214  
Email: Pierre.Osei-Owusu@durhamnc.gov

Neeton Nichols  
Contract Administrator  
101 City Hall Plaza STE. 4200  
Durham, NC 27701  
Office: 919-560-1535 ext. 36218  
Email: Neeton.Nichols@durhamnc.gov

**15.2 County of Durham Contact:** The County hereby designates the following County staff to implement the task as outlined throughout this Agreement.

**BUDGET**

Kim Connally  
Senior Budget & Management Analyst  
200 E. Main Street  
Durham, NC 27701  
Office: 919-560-0064  
Email: kconnally@dcconc.gov

**FINANCE**

Crystally Wright  
Compliance Manager  
200 E. Main Street  
Durham, NC 27701  
Office: 919-560-0049  
Email: cwright@dcconc.gov

**OFFICE OF THE COUNTY MANAGER**

Drew Cummings  
Chief of Staff  
200 E. Main Street  
Durham, NC 27701  
Office: 919-560-0065  
Email: dcummings@dcconc.gov

**ARTICLE 16**

**AUDIT RIGHTS**

For all services being provided under this Agreement, the County shall have the right to inspect, examine, and make copies of all books, accounts, invoices, records and other writings relating to

the performance of said services. Audits shall take place at times and locations mutually agreed upon by both Parties, although the City must make the materials to be audited available within one (1) week in which the request was made.

## ARTICLE 17

### GOVERNANCE

**17.1 Governance:** The County and City agree to follow the basic grant/funds management requirements in N.C.G.S. 159, *Local Government Finance*, and in the *Policies Manual for Local Governments* as they apply to ROAP funds. The cost principles of OMB Circular 2 CFR Part 200 *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* also apply to Rural Operating Assistance Program (ROAP) funds.

**17.2 Funding:** This Agreement relies on the County providing to the City, specific County/State funding Resources to fund and provide trips for the Demand Response Transportation Servicing rural Durham County residents at a minimum to the same service levels achieved in FY18-19. This agreement is contingent upon the allocation and/or award of Transit Tax Funds, NCDOT-PTD ROAP funds, as well as County funds, as set forth in Appendix A. This Agreement does not call for the City to provide funding for Demand Response Transportation for rural Durham County residents.

**17.3 Non-Governmental Entity and Limit of Financial Responsibility:** This Agreement is not intended to establish, and does not establish, a separate governmental entity for the performance of any function. By entering this Agreement, the City does not assume, and shall not be responsible for, any financial or other liabilities that may currently exist as of the Effective Date of this Agreement, whether known or unknown, with respect to the County's Demand Response Transportation Service. Durham County shall not be liable for any claims, judgements, costs, damages, demands, liabilities, obligations, fines, penalties, settlements or expenses resulting from acts of negligence or intentional torts committed by the City while the City is performing Demand Response Transportation Services under this Agreement. The City and County agree that this Agreement provides the framework for merging the two systems under the authority and governance of the City.

## ARTICLE 18

### MISCELLANEOUS

**18.1 Force Majeure:** In the event that either party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of the following: labor dispute, including strike and lockout; unavailability of essential materials, riot; epidemic; war, extreme weather events, fire; explosion; condemnation; accident; delays or default of the other party, then performance of such act shall be excused for the period of the delay, and thereafter the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Both Parties must use commercially reasonable efforts to perform despite said events and commercially reasonable efforts to prevent or cure the effects of said event insofar as it prevents performance.

**18.2 Cure Period:** No default by either party shall result in a termination or limitation of any rights of such party unless and until the other party notifies the defaulting party in writing of said default, and the defaulting party fails to cure said default within sixty (60) days after the receipt of said written notice, provided, however, in the event of a non-monetary default which cannot, by its nature, be cured within such sixty (60) day period, if the defaulting party commences and diligently pursues a cure of such default promptly within the initial sixty (60) day cure period, then the other party shall not exercise its remedies or limit the rights of the defaulting party unless such non-monetary default remains uncured for more than ninety (90) days after the initial delivery of the other party's original default notice.

**18.3 Governing Law; Jurisdiction:** This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to any construction arising from the application of conflicts or choice of law principles, and without regard to any construction arising by the negotiation or the persons who drafted this Agreement. The Parties consent to the exclusive jurisdiction of the Superior Court of Durham County, North Carolina or the United States District Court for the Middle District of North Carolina, or of both as applicable in the circumstance. The Parties irrevocably submit to such exclusive jurisdiction.

**18.4 Representations and Warranties of the Parties:** Each of the Parties, and each person executing this Agreement on behalf thereof, represent and warrant, as applicable, that (1) such party or person has the full power and authority to enter into this Agreement and the agreements or instruments referred to herein, to execute them on behalf of the party indicated on the signature page thereof, and to perform the obligations hereunder and thereunder, (2) such party is acting on its own behalf and on behalf of its successors and assigns, (3) this Agreement and the other agreements referenced herein are the valid and binding obligations of such party, enforceable against it in accordance with their terms, (4) entering into this Agreement and the other agreements referenced herein does not conflict with any other agreements entered into by either party, and (5) the execution, delivery and performance of this Agreement and other agreements referenced herein has been duly and validly authorized by all necessary governmental action on its part. The County represents and warrants to the City that this Agreement and the cost sharing payments contemplated hereunder have been pre-audited to ensure compliance with the budgetary accounting requirements (if any) that apply thereto, and that the County and City shall use its best efforts to ensure that all necessary sums shall be fully appropriated and allocated, and made available to perform the terms and conditions of this Agreement.

**18.5 Responsibilities of Parties:** Neither party agrees to indemnify or hold harmless the other party in the performance of this Agreement. However, to the extent permitted by law, each party agrees to be responsible for its own acts or omissions and any and all claims, liabilities, injuries, suits, and demands and expenditures of all kinds which may result from or arise out of any alleged malfeasance or neglect caused or alleged to have been caused by that party, its employees, subcontractors, or representatives, in the performance or omission of any act of responsibility of that party under this Agreement. If a claim is made against both Parties, it is the intent of both Parties to cooperate in the defense of said claim. However, either party shall have the right to take all actions they believe necessary to protect its interest, including, without limitation, the right to enforce the obligations of this Agreement against



the other party and the right to recover damages caused by the other party arising out of the performance or nonperformance of this Agreement. This provision shall survive the termination of this Agreement. Notwithstanding the above, neither Party waives its governmental immunity, nor any other immunity granted by law, nor do both Parties reserve the same unto themselves.

**18.6 Insurance:** The County acknowledges that the City is self-insured with an excess liability insurance policy.

**18.7 E-Verify:** Both Parties under this Agreement shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if either party utilizes a subcontractor to provide services under this Agreement, they shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes as well. Either party shall verify, by affidavit, compliance of the terms of this section upon request by the other party.

**18.8 Cooperation and Compliance:** The Parties agree to cooperate with each other and provide all necessary documentation, certificates and consents and to take all necessary action to satisfy the terms and conditions hereof and applicable laws, regulations and agreements.

**18.9 Counterparts:** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed original, but all such counterparts together shall constitute but one agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission shall be as effective as delivery of a manually executed original counterpart of this Agreement

**18.10 Entire Agreement, Amendment; Construction:** This Agreement, together with the Appendixes attached hereto, contains the entire Agreement between the Parties as to the subject matter referenced herein, and supersedes all prior agreements, understandings or undertakings (whether oral, written, electronic or otherwise) between the Parties with respect to the subject matter hereof. No amendment may be made to this Agreement except with the prior written consent of all Parties hereto. The section titles and headings herein are for convenience of reference only and do not define, modify or limit any of the terms and provisions hereof.

**18.11 Authority:** Both Parties hereby respectively confirm that the individuals executing this Agreement are authorized to execute this Agreement and to bind the respective entities to the terms contained herein. Both Parties confirm they have read this Agreement and, conferred with counsel, and fully understand its contents.

**18.12 Dispute Resolution:** To possibly prevent litigation, it is agreed by the Parties that any claim or dispute between them shall be submitted to the City or County Manager. Both Parties agree that any unresolved dispute shall be mediated pursuant to the Rules of Mediation as use in the Superior Court of North Carolina. The Parties must agree on a Mediator. Mediation shall be held 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, Parties to the dispute shall act in good faith to maintain the services required under this Agreement. The costs of mediation shall be divided equally between Parties. 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.

**18.13 Third Party Agreement Clauses and Provision:** The City agrees that all provisions identified in the Agreement between the City and County for the provision of services by any Contractor shall be included in any additional contracts between the City and the Contractor and any additional Parties. The City agrees that it is ultimately responsible for compliance and with all applicable Federal and State laws, regulations, and directives of the FTA Master Agreement. The City understands that new State and Federal laws, regulations, policies and administrative practices may be established after this Agreement is executed and that such changes may apply to this Agreement.

**18.14 Federal/State Requirements/Clause/Special Conditions:** The Parties must comply with such as laws, guidance, regulations, clauses, policies and administrative practices, inclusive of the FTA Master Agreement that establish the requirements and conditions that must be included by reference as a part of this Agreement.

**IN WITNESS WHEREOF,** the Parties, by their duly authorized signatories, hereby enter into this Agreement, effective as of the date first set forth above.

**DURHAM COUNTY:**

*Wendy Jacobs*  
**DURHAM COUNTY BOARD OF COUNTY COMMISSIONERS**

**ATTEST:**

*[Signature]*  
**CLERK TO THE BOARD**



**THIS INSTRUMENT HAS BEEN PRE-AUDITED IN THE MANNER REQUIRED BY THE LOCAL GOVERNMENT BUDGET AND FISCAL BUDGET CONTROL ACT.**

*Susan Tezai* 10/16/19  
**SUSAN TEZAI, DURHAM COUNTY CHIEF FINANCIAL OFFICER**

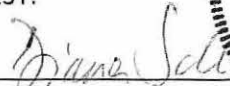
CITY OF DURHAM

By:   
City Manager

This, the 15<sup>th</sup> day of November, 2019.

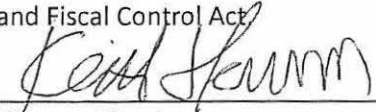
[Seal]

ATTEST:

By:   
City Clerk



This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.

  
Finance Director

City of Durham, North Carolina

This, the 31<sup>st</sup> day of October, 2019.

Appendix A- FY 19-20 City-County Budget

Appendix B – FY 19 Q1 ROAP Report

Appendix C- Transmittal Memo

Appendix D – Demand Response Transportation Trip Report

Appendix E- Budget Report

Appendix F - OpStats Report Form

Appendix G- Vehicle Inventory list

Appendix H - Vehicle Lease Agreement, January 9

Appendix I - Interlocal Agreement Between the County of Durham and the City of Durham for Demand Response Transportation Services, August 30, 2016