



CITY OF
DURHAM



REQUEST FOR PROPOSALS

City of Durham SOLICITATION #23-0013

DURHAM TRANSPORTATION DEPARTMENT TRANSIT OPERATIONS AND MAINTENANCE SERVICES

ADDENDUM #2 - REDLINE REVISION

New material in this Addendum is shown with highlights.

Solicitation Schedule*

Issue date	January 17, 2023
Pre-Proposal Information Day	January 24, 2023
Final date for Questions	February 10, 2023
Final posting of Official Answers/Final Addendum	February 21, 2023
Proposal Due Date	March 01, 2023
Oral Interviews (if necessary)	March 16 or 17, 2023
Anticipated Notice of Intent to Award	March 20, 2023
Anticipated Service start date	July 1, 2023

*Schedule subject to change.

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Acronyms and Abbreviations

ADA	Americans with Disabilities Act
ASE	National Institute for Automotive Service Excellence
AVL	Automated Vehicle Location
BAFO	Best and Final Offer
CAD	Computer Aided Dispatch
CBA	Collective Bargaining Agreement
CFR	Code of Federal Regulations
COOP	Continuity of Operations Plan
CMMS	Computerized Maintenance Management System
DBE	Disadvantaged Business Enterprise
DCTC	Durham City Transit Company
DTD	Durham Transportation Department
EEO	Equal Employment Opportunity
EPA	US Environmental Protection
FEMA	Federal Emergency Management Administration
FTA	Federal Transit Administration
HVAC	Heating Ventilation and Air Conditioning
ICS	Incident Command System
ITAM/CS	IT Asset Management/Cyber Security
KPS	Key Performance Standard
NTD	National Transit Database
NTP	Notice to Proceed
OEM	Original Equipment Manufacturer
OMF	Operations & Maintenance Facility
OSHA	Occupational Safety and Health Administration
PA	Passenger Announcements
PBGC	Pension Benefit Guaranty Corporation
PDF	Portable Document Format
PM	Preventive Maintenance
PMI	Preventive Maintenance Inspection
RFID	Radio Frequency Identification
RFP	Request for Proposal
SMS	Safety Management System
SOP	Standard Operating Procedure
TPMS	Tire Pressure Monitoring System
UCP	Uniform Certification Program
USDOT	United States Department of Transportation
VIN	Vehicle Identification Number

Definitions

Agreement or Contract means the binding Transit System Operations and Maintenance Services Contract entered into between the City and Contractor resulting from this RFP, as applicable.

Approved Equal means an alternative component or process that meets or exceeds OEM standards submitted by the Contractor and approved by DTD.

Authority Having Jurisdiction means an organization, office, or individual responsible for enforcing the requirements of a code, plan, or standard, or for approving equipment, materials, an installation, or a procedure.

Automatic Reopener means an event that shall trigger negotiation of economic or non-economic terms of this Contract at the request of either party.

Budgeted or Anticipated Service Hours means the number of Revenue Service Hours forecasted by the City in a fiscal year.

Bus Operator(s) means Union Personnel who drive a Revenue Service Vehicle.

Business Day means Monday through Friday excluding City-recognized holidays.

Collective Bargaining Agreement means the agreement between the Durham City Transit Corporation and the Amalgamated Transit Union effective July 1, 2022.

Contractor means the company that undertakes the Contract to perform Services for the City.

City or City of Durham means the City of Durham, North Carolina, a political subdivision of the State of North Carolina.

Day(s) means calendar days unless otherwise specified in the Contract as a Business Day.

Disadvantaged Business Enterprise has the meaning described in 49 Code of Federal Regulations (CFR) Part 26.

Discretionary Reopener means an event that may trigger negotiation of economic or non-economic terms of this Contract upon request of the Contractor and the discretion of the City.

DTD Project Manager means the person appointed by the City Manager to administer the Contract.

Durham City Transit Company (DCTC) means a wholly owned subsidiary corporation of the incumbent management company contracted to operate and maintain the GoDurham transit system, organized and existing under the laws of North Carolina and the employer of both Union and Non-Union Personnel

Durham Transportation Department means the City agency responsible for the implementation of this RFP and the Contract.

Evaluation Committee means those individuals appointed by the DTD Director to review and evaluate Proposals.

Equipment means assets used for communications, fare collection, maintenance, and security, as well as office furniture, IT hardware/software, facility equipment, power, and electricity distribution, and all other tangible or intangible assets that have useful lives over one year. Capital Equipment consists of assets that are semi-permanent and integrated into larger assets, can be removed, or replaced as

needed, and usually have a shorter service life than that of the larger asset. Equipment includes fixed equipment such as vehicle lifts, fueling equipment, storage tanks (except fuel storage), elevators, escalators, and vehicle washers.

Experience Modification Rating means the rating by the National Council on Compensation Insurance (NCCI) or an Authority Having Jurisdiction over a state's workers compensation program.

Fare Change means any fare change that would affect at least twenty-five percent (25%) of the system-wide passenger boardings

Fare Collection Mechanism means the fareboxes, smart readers, mobile ticketing, and electronic fare payment systems in place as of the Setting Date.

Fixed Route Service means Go Durham bus services operating predominately within the City of Durham on an established route and schedule established by DTD.

GoDurham means DTD's fixed route bus service.

Good Faith Efforts has the meaning described in Section 1.9.

Initial Contract Term means the five-year period beginning on the date of execution of the Contract by the City.

Include (and all its forms), wherever used in the RFP, the word including, include, or included shall be deemed to be followed by the words "without limitation."

Key Personnel means the personnel that are listed in Section 4.2.2 of the RFP.

Liquidated Damages means the damages as may accrue and be due and payable by Contractor to the City under the Contract for failure to meet the Performance Standards.

Major Service Change means a service change that would affect at least twenty-five percent (25%) of the system-wide passenger boardings or reduce at least twenty-five percent (25%) of the system-wide route miles or reduce at least twenty-five percent (25%) of the system-wide hours of revenue service.

Minor Service Change means any service change recommendation that would affect fewer than 150 passenger boardings, but up to twenty-five percent (25%) of a route's passenger boardings or up to twenty-five percent (25%) of a route's route miles or up to twenty-five percent (25%) of a route's hours of revenue service.

National Transit Database means the reporting system of the Federal Transit Administration that collects public transportation financial and operating information.

Non-Union Personnel means DCTC employees (or then the Contractor), including Key Personnel, that are not members of the Union.

Notice of Intent to Award means a determination by the Evaluation Committee and communicated by the Issuing Officer that an Offeror is most susceptible to award of the Contract and that, subject to further negotiation with the intended awardee, will be recommended to the City Council for award.

Offer or Proposal means a proposal submitted to the City pursuant to this RFP.

Offeror or Proposer means a respondent or potential respondent to this RFP.

Operations & Maintenance Facility means the operations and maintenance facility currently located at

1907 Fay Street, Durham, North Carolina to be used for providing Services.

Operational Service Change means a temporary detour route; establishing or amending operating standards, procedures, and practices; additional, relocation, or elimination of bus stops; or other changes to services not described as Major or Minor Service Changes.

Oral Interview means a presentation by an Offeror for potential award of the Contract.

Passenger Facility means Durham Station and all GoDurham bus stops.

Pension Plan has the meaning used in Section 8.3 of this RFP.

Performance Standards means the performance criteria that the Contractor is required to meet as set forth in Section 18 of this RFP.

Police Officer means sworn personnel of the Durham Police Department.

Proposal Appendix (or Appendices) means a part of the Offer not included in the page-limited main body of the Technical or Price Proposal but required to be submitted by the Proposer.

Reference Document means a document that shall be relied upon by the Offeror in making its proposal and shall be included in the Contract, for example, a Reference Document could indicate the number, type, mileage, and condition of the fleet as of the Setting Date.

Renewal Term means either the first or second year following the Initial Contract Term, if exercised by the City.

Request for Proposal means this Transit System Operations and Maintenance RFP and any addenda thereto.

Revenue Service or Revenue Hour means when a Revenue Vehicle is available to the public and there is an expectation of carrying passengers.

Revenue Vehicle means rolling stock used by the Contractor to provide Revenue Service.

Section 13(c) means the federally protected rights of Union Personnel as codified under 49 U.S.C. § 5333(b), including the negotiated terms of the CBA.

Service and/or Support Vehicle means vehicles other than Revenues Vehicles that are used by Contractor to perform the Services.

Services means all the services, obligations, and duties that the Contractor is required to perform pursuant to the Contract and all the Contractor's duties to the City that arise out of the Contract.

Setting Date means the date on which the Offers are due to the City.

Start of Service Date means July 1, 2023, or as other day agreed to by the parties.

Succeeding Contractor means the party designated by the City to chosen to provide transit operations and maintenance services to the City upon expiration or termination of the Contract.

Union means the Amalgamated Transit Union, Local 1493.

Union Personnel means employees of DCTC (or then of the Contractor) that are members of the Union.

1 General Information

1.1 Purpose of Procurement

- (A) The Durham Transportation Department (DTD) requests competitive sealed proposals from qualified firms to provide transit system operations and maintenance Services. DTD currently provides service on 20 routes with a fleet of 57 vehicles, seven days per week, generally from 5:30 AM until 12:30 AM, Monday through Saturday, and from 6:30 AM until 9:30 PM on Sunday and major holidays. It is DTD's intent to retain one contractor to operate, maintain, and administer all services in this RFP, such that nothing remains to be purchased, provided, or supplied by DTD or the City, other than existing City-owned Revenue and Service and Support Vehicle, the OMF, Passenger Facilities, and Equipment or other items as listed throughout this RFP.
- (B) The scope of Services consists of furnishing all labor, machinery, tools, supplies, equipment, materials, safety equipment, marketing and customer service efforts, and other activities required to deliver the scope of Services.

1.2 Budget

DTD has estimated that its budgeted need for delivery of the scope of Services is between \$130 million and \$160 million during the initial contract term subject to appropriation by the City. The estimated budgeted amounts are provided as a guideline to aid Offerors with developing a complete and innovative proposal but are not a guarantee of future funding levels. Notwithstanding this estimate, Offerors must submit a proposal that conforms to all requirements as outlined in the Scope of Services.

1.3 Term of Contract

- (A) The Contractor shall perform all Services as called for in this RFP and Contract and Initial Contract Term of five (5) years. The City shall retain the option of renewing the Contract for up to two (2) years, through one-year renewal periods.
- (B) The Contractor's Price Proposal submitted in response to this solicitation, and which is accepted by the City and made part of the Contract, will remain in effect if the City exercises any renewal options.
- (C) Any Contract renewals shall be at the sole discretion of the City and shall be made in writing and executed by both parties; however, if the Contractor objects to the potential renewal, it shall give the City explanation of its economic and/or non-economic objections and notice of not less than 180 days one year prior to the beginning of the first Renewal Term. The City will give due consideration to the Contractor's objections and work in good faith to resolve any differences prior to the notice to be given in subparagraph (D) of this Section 1.3.
- (D) The City shall give notice to the Contractor of its intent to renew or not renew the Contract not less than (90) days prior to the expiration of the Contract.

1.4 Federal Participation in Contract

The Contract awarded as a result of this solicitation may be financed in part by funds from the United States Department of Transportation (USDOT) as awarded through programs of its operating administrations, including the Federal Transit Administration (FTA). As such, all FTA requirements governing the use of federal funds are in effect.

1.5 Restrictions on Communications with the City and Related Parties

- (A) In order to maintain the integrity of the RFP process and reliability of the information shared with the Offerors, from the date of issuance of this RFP through the date of Contract award by the City, excepting the pre-proposal information day and Oral Interviews), Offerors are not allowed to communicate for any reason with any member of the Evaluation Committee regarding this RFP. All communications concerning this solicitation should be directed to the Issuing Officer. Prohibited communication includes all contact or interaction regarding this solicitation, including, but not limited to, telephonic communications, emails, faxes, letters, texts, or personal meetings.
- (B) Oral communications regarding this solicitation shall not be considered official communications. The City is not responsible for any oral statements made by its employees or agents regarding this solicitation. All official communications to and from the City regarding this solicitation shall be transmitted in writing to or by the Issuing Officer.

1.6 Issuing Officer Contact Information

All inquiries, offers, submissions, and/or other correspondence regarding this solicitation (including protests submitted in accordance with Section 2.5) must be directed in writing to the Issuing Officer:

Tom Devlin, Business Services Manager
Durham Transportation Department
101 City Hall Plaza,
Durham, NC, 27701
Tom.Devlin@durhamnc.gov

with a copy to
godurham@meadhunt.com

1.7 Pre-Proposal Information Day

- (A) The City will host a multi-part day of activities intended to orient potential Offerors to the RFP and the GoDurham system. Offerors are **strongly encouraged** to participate in **all three** activities of the pre-proposal information day on January 24, 2023:
 - (1) RFP Overview and Question and Answer Session from 9:30 AM – 11:00 AM. This event will be held at Durham City Hall, 101 City Hall Plaza, Durham NC, 27701, in Room GA.

- (2) “Meet the Primes” event for small, disadvantaged, and underutilized businesses from 11:30 AM – 1:00 PM. This event will also be held at the same location as Item 1 above. A light lunch will be served.
- (3) Operations & Maintenance Facility Tour at a designated time between 1:30 PM and 4:30 PM. Tours will last approximately 60 – 75 minutes. Each Offeror firm may bring no more than three attendees to the tour. A fourth attendee is permissible if the attendee represents a Disadvantaged Business Enterprise (DBE) firm. To reserve a time for the tour, contact godurham@meadhunt.com. Tours are tentatively scheduled for 1:30 PM and 3:00 PM. Each tour will include representatives of up to two other potential Offerors. Firms not intending to act as an Offeror may request to attend a tour and will be accommodated to the greatest extent possible.

1.8 Questions

- (A) Questions regarding the RFP and any attachment, document, form, etc. must be submitted in writing using the Questions and Answers Template.
- (B) Such comments/questions may be submitted at any time prior to the applicable date specified in the solicitation schedule or such later date as may be specified in any Addendum. The City anticipates responding to questions on a rolling basis.
- (C) As used in questions and answers template, the following categories are to be used in classifying questions submitted by the Proposer:
 - (1) **Category 1** means a potential “go/no-go” issue that, if not resolved in a manner acceptable to the Offeror, will likely preclude the Offeror from submitting a Proposal.
 - (2) **Category 2** means a major issue that, if not resolved in a manner acceptable to the Offeror, will significantly affect the Price Proposal or, taken together with the entirety of other issues, may preclude the Offeror from submitting a Proposal.
 - (3) **Category 3** means an issue that may affect the price or technical response, and/or any another material issue, but it is not at the level of a Category 1 or Category 2 issue.
 - (4) **Category 4** means an issue that is minor in nature, for example, a clarification, a comment concerning a conflict between documents or within a document, etc.
- (D) Offerors may submit with their questions/comments revised drafting, redline, or similar markup of any document included in the RFP.
- (E) It An Offeror may submit a question, comment, or redline revision marked as Confidential if the Offeror believes that the question, comment, or redline revision may place, indicate, or reveal a proprietary practice, bidding strategy, or element of its Proposal that is potentially unique or distinguishing from competitors. The Issuing Officer shall have sole discretion to determine whether a question, comment, or redline revision shall be treated as confidential. If the Issuing Officer determines the matter is not, the Offeror shall be permitted to rephrase or withdraw the question, comment, or redline revision.
- (F) is the sole responsibility of the Offeror to make itself aware of the City’s responses to written questions. Responses to questions are provided as information only and do not in any way

alter the contents of the solicitation inclusive of the Scope of Services, the remainder of the RFP documents, or the Contract. Revisions to the solicitation or to the Contract shall be made only via formally issued addenda. Only such written addenda posted online shall constitute revisions to the solicitation.

- (G) It is the sole responsibility of the Offeror to make itself aware of Background and Reference Documents published by the City.

1.9 Disadvantaged Business Enterprise (DBE) Participation

- (A) The requirements of Regulations 49 CFR Part 26, of the U.S. Department of Transportation, apply to this solicitation and resulting Contract. In addition, it is the City's policy to practice nondiscrimination based on age, disability, race, gender, color, sex, religion, or national origin in both the award and/or performance of this Contract. All companies qualifying under this solicitation are encouraged to submit proposals. The requirements of this solicitation, specifically this section, apply to all Offerors including those who qualify as a DBE. Offerors with questions regarding DBE certification may contact the Issuing Officer.
- (B) The City has established a DBE participation goal of 7.96% of the total dollar value of the Contract over the course of the initial Contract term and any renewals, changes, or amendments.
- (C) An Offeror is not required to designate any DBE subcontractors in its Proposal and may instead execute a "Commitment to Comply" with the DBE **requirement goal or show good faith efforts to do so in accordance with 49 CFR Part 26**; however, the Evaluation Committee may give favorable consideration in relevant parts of the evaluation based on the extent to which DBE subcontractors are specifically named in the Proposal. DBE vendors or subcontractors known to the Proposer at the time of Offer shall be listed in Worksheet #5.
- (D) The Commitment to Comply shall be included as Appendix to the Offer, be signed by an authorized representative, and state:
 - (1) the Offeror's commitment to use any DBE subconsultant, subcontractor, or supplier whose participation it has submitted with its Proposal to meet a contract goal; and
 - (2) that if the DBE goal is not met through the Offeror's proposal, that the Offeror (then as Contractor) shall make good faith efforts
 - (3) If the contract goal is not met, Proposer will provide evidence of its Good Faith Efforts.
 - (4) The DBE subconsultant/supplier's confirmation that it is participating in the Contract as provided in the Proposer's commitment.
- (E) Information and procedures for counting DBE participation is counted or credited for the purpose of this Contract is described in Exhibit 4.
- (F) A DBE Directory identifying all firms eligible to participate as DBEs is maintained by the North Carolina Department of Transportation (NCDOT) in relation to the Uniform Certification Program (UCP). To access the North Carolina DOT DBE Directory, please visit:

<https://www.ebs.nc.gov/VendorDirectory/search.html?s=cert&a=new>, and you may click on a choice of DBE and/or other Minority business listings.

- (G) The status of a company as a DBE is subject to change. The Offeror shall be solely responsible for reviewing from time to time and using the most current version of the NCDOT DBE Directory to ensure that any company listed in its proposal is a certified DBE at the time of proposal submission.

1.10 Small Business Participation

The City of Durham strongly supports the participation of small business owners in its contracts. It is the policy of the City to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. It is the intention of the City to create a level playing field on which Small Businesses can compete fairly for contracts and subcontracts relating to its construction, procurement, and professional services activities in compliance with the requirements of 49 CFR 26.39, - Fostering Small Business Participation.

1.11 Offeror Conflicts of Interest

- (A) The Offeror must disclose in detail, with the Proposal, anything that may create a conflict or appearance of a conflict of interest. For purposes of this RFP, “conflict of interest” means any situation or circumstance arising out of existing or past activities, business interests, familial relationships, contractual relationships, or organizational structure (i.e., parent entities, subsidiaries, affiliates, subconsultants, etc.) or litigation where:
 - (1) The Offeror or Key Personnel could or could be seen to exercise an improper influence over the objective, unbiased, and impartial exercise of the City’s independent judgment; or
 - (2) Could or could be seen to compromise, impair, or be incompatible with the effective performance of its obligations under the resulting Contracts.

2 Solicitation Terms and Conditions

2.1 Background and Reference Documents

- (A) The City has published a series of Background Documents that may inform an Offeror's proposal. All Background Documents are published to www.meadhunt.com/godurham.
- (B) Background documents are contextual and for informational purposes only. The City does not represent or warrant that the information, opinions, suggestions, or recommendations contained in the Background Documents are complete or accurate or that such information, opinions, suggestions, or recommendations are in conformity with the requirements of the RFP. Offerors shall have no right to compensation, time extension, or other claim in connection with participation in this solicitation based on any incompleteness or inaccuracy in the Background Documents. By way of example, a Background Document may include DTD's fleet plan, which, subject to the availability of funds, indicates the City's intended schedule of acquiring new vehicles, conducting mid-life overhauls, and decommissioning vehicles.
- (C) Reference Documents may be relied upon by the Offeror in making its proposal and shall be included in the Contract. By way of example, a Reference Document could indicate the number, type, mileage, and condition of the fleet as of the Setting Date.

2.2 Amendments to the Solicitation (Addenda)

- (A) The City reserves the right to revise or amend the RFP up to the time set for the submission of proposals. Such revisions and amendments, if any, shall be published by written addenda to the RFP. Upon issuance, addenda will be considered part of the RFP and will prevail over inconsistent or conflicting provisions contained in the original RFP.
- (B) It is the sole responsibility of each Offeror to check the City's website for addenda, Questions and Answers, Background or Reference Documents, etc. The City is not responsible for a potential Offeror failing to receive notification of the availability of addenda.
- (C) If an addendum significantly changes the RFP, the date set for the submission of proposals may be postponed by such number of days as in the opinion of the City deems suitable to enable potential Offerors to revise their proposals.
- (D) Offerors shall acknowledge receipt of all addenda by completing and submitting Form #1 - (Acknowledgement of Addenda to RFP).

2.3 Confidential/Proprietary Information

- (A) **Trade Secrets and Confidentiality.** As a general rule, all submissions to the City are available to any member of the public. However, if materials qualify as provided in this section, the City will take reasonable steps to keep trade secrets confidential.
- (B) **Definitions.** In this section:
- (C) The term "trade secret" means business or technical information, including but not limited to, a formula, pattern, program, device, compilation of information, method, technique, or process that:

- (1) Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and
 - (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
 - (3) The existence of a trade secret shall not be negated merely because the information comprising the trade secret has also been developed, used, or owned independently by more than one person, or licensed to other persons.
 - (4) The term “record” means all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, received by the City of Durham in connection with the Offeror’s proposal.
- (D) **Designation of Confidential Records.** To the extent that the Offeror wishes to maintain the confidentiality of trade secrets contained in materials provided to the City, the Offeror shall prominently designate the material with the words “trade secrets” at the time of its initial disclosure to the City. The Offeror shall not designate any material provided to the City as trade secrets unless the Offeror has a reasonable and good-faith belief that the material contains a trade secret. When requested by the City, the Offeror shall promptly disclose to the City the Offeror’s reasoning for designating material as trade secrets; the Offeror may need to label parts of that reasoning as trade secrets. In providing materials to the City, the Offeror shall make reasonable efforts to separate those designated as trade secrets from those not so designated, both to facilitate the City’s use of the materials and to minimize the opportunity for accidental disclosure. For instance, if only a sentence or paragraph on a page is a trade secret, the page must be marked clearly to communicate that distinction. To avoid mistake or confusion, it is generally best to have only trade secret information on a page by itself.
- (E) To the extent authorized by applicable state and federal law, the City shall maintain the confidentiality of records designated “trade secrets” in accordance with this section. Whenever the Offeror ceases to have a good-faith belief that a particular record contains a trade secret, it shall promptly notify the City.
- (F) **Request by Public for Access to Record.** When any person requests the City to provide access to a record designated as a trade secret in accordance with subsection (C) above, the City may
- (1) decline the request for access,
 - (2) notify the Offeror of the request and that the City has provided, or intends to provide, the person access to the record because applicable law requires that the access be granted, or
 - (3) notify the Offeror of the request and that the City intends to decline the request.
- (G) Before declining the request, the City may require the Offeror to give further assurances so that the City can be certain that the Offeror will comply with subsection (G) below.
- (H) **Defense of City.** If the City declines the request for access to a record designated as trade secrets in accordance with subsection (C), then, in consideration of the promises in (D) above

and for considering the Offeror's proposal, the Offeror agrees that it shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of the City's non-disclosure of the records. In providing that defense, the Offeror shall at its sole expense defend Indemnitees with legal counsel. The legal counsel shall be limited to attorneys reasonably acceptable to the City Attorney.

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

2.4 Reserved Rights

- (A) In connection with this solicitation, the City reserves to itself all rights (which rights are exercisable by the City in its sole discretion) available to it under its procurement policies, procedures, and applicable law, including without limitation, with or without cause, and with or without notice, the right to:
- (1) modify the procurement process or documentation described in this RFP.
 - (2) develop the project in any manner that it, in its sole discretion, deems necessary or desirable, including by modifying the scope of the project.
 - (3) cancel this RFP, or a subsequent RFP, in whole or in part at any time prior to the execution by the City of the Contract, without incurring any cost obligations or liabilities except as otherwise expressly stated in this RFP or the subsequent RFP.
 - (4) issue a new request for proposals after cancellation of this RFP or a subsequent RFP.
 - (5) not issue an RFP.
 - (6) reject any and all submittals, responses, and proposals at any time.
 - (7) reject any and all proposals or any portion of a specific proposal for any reason.
 - (8) modify all dates set or projected in this RFP.
 - (9) terminate evaluations of proposals at any time.
 - (10) issue amendments, supplements, and modifications to this RFP.
 - (11) appoint Evaluation Committees to review proposals, and seek the assistance of outside technical experts and consultants in Proposal evaluation.

- (12) make independent calculations with respect to numbers and calculations submitted in a Proposal for purposes of its evaluation.
 - (13) revise the evaluation criteria or methodology by issuing an amendment prior to the proposal submission deadline;
 - (14) require confirmation of information furnished by an Offeror, require additional information from an Offeror concerning its proposal, and require additional evidence of qualifications or ability to perform the work described in this RFP;
 - (15) down-select to one or multiple Offerors or add additional down-selection phases;
 - (16) seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFP;
 - (17) add or delete Offeror responsibilities from the information contained in this RFP;
 - (18) negotiate with one or more Offerors without the City being bound by any provision of an Offeror's proposal or subsequent Proposal;
 - (19) negotiate contract terms contemporaneously and/or subsequently with any number of Offerors as the City deems to be in their best interests.
 - (20) waive administrative or minor deficiencies in a Proposal, accept and review a non-conforming proposal or permit clarifications or supplements to a Proposal;
 - (21) disqualify any Offeror who changes its proposal without City approval;
 - (22) disqualify any Offeror from the procurement process for violating any rules or requirements of the procurement specified in this RFP, applicable law, or any other communication from the City;
 - (23) add to the shortlist of Offerors any Offeror that submitted a Proposal in order to replace a Shortlisted Offeror that withdraws or is disqualified from participation in this procurement;
 - (24) develop some or all of the Project itself or through another state or local government entity or entities;
 - (25) disclose information submitted to the City as permitted by applicable law or this RFP;
 - (26) exercise any other right reserved or afforded to the City under this RFP or a subsequent RFP and applicable law; and
 - (27) exercise its discretion in relation to the matters that are the subject of this RFP as it considers necessary or expedient in light of all circumstances prevailing at the time that the City considers it to be relevant.
- (B) This RFP does not commit the City of Durham to enter into the Contract or proceed with the procurement described in this RFP. The City assumes no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to or responding to this RFP, or any subsequent RFP. All such costs shall be borne solely by each Offeror.

- (C) Except as provided in this RFP, in no event will the City be bound by, or liable for, any obligations with respect to the RFP until such time (if at all) as the Contract has been authorized by the City and executed by the City and then, only to the extent provided in the Contract. No Offeror shall have any cause of action against the City arising out of the methods by which proposals are evaluated.
- (D) The City has the sole right to select the successful proposal for contract award; to cancel the solicitation and to advertise for new proposals; to award a contract(s) to other than the Offeror submitting the lowest Price Proposal; or not to award a contract as a result of this RFP.
- (E) The City reserve the right to accept any proposal deemed to be in the best interest of the City and to waive any irregularity or informality in any proposal that does not prejudice the City or other Offerors.
- (F) The City reserve the right to negotiate with the Offeror whose proposal is considered by the City, and in its sole discretion, to be most advantageous to the City.
- (G) Notwithstanding anything to the contrary in this document or in any addendums to this document, unless the contrary provision refers specifically to this provision, the City reserves the right (i) to negotiate changes of any nature with any Offeror with respect to any term, condition, or provision in this document and/or in any proposals, whether or not something is stated to be mandatory and whether or not it is said that a proposal will be rejected if certain information or documentation is not submitted with it, and (ii) to enter into an agreement for some or all of the work with one or more persons, firms, or corporations that do not submit proposals. For example, all deadlines are for the administrative convenience or needs of the City and may be waived by the City in its discretion. This subparagraph (G) applies to the entire RFP, including the DBE portions.

2.5 Protest Procedures

- (A) Except as provided below, City Policy FP-113 (Administrative Review of Recommendations for Contract Award) shall apply to this RFP.
- (B) Time is of the essence in the award of the Contract. The following additional policies shall apply:
 - (1) Any objection to the terms and conditions of the RFP including the instructions, technical requirements, evaluation criteria, proposal forms, etc., shall be filed with the Issuing Officer no later than the 2:00 PM on the second business day following the date for receipt of Proposals. The objection shall specify the legal basis and grounds that would render the RFP unlawful or unfair.
 - (2) A matter not objected to under subparagraph (1) may not be protested upon Notice of Intent to Award unless the objection includes substantive facts, circumstances or information not known to the Offeror until after the second Business Day following the date for receipt of Proposals.
 - (3) A firm not selected for Oral Interview may request an initial debriefing on its Proposal within two Business Days of notification that it had not been selected; said debriefing shall be held within the next three Business Days at a time during normal business hours

identified by the Issuing Officer and lasting not more than one hour. Such debriefs shall be held in-person only; a virtual debrief option shall not be available.

- (4) A protest by a firm not requesting and/or participating in a debrief under (4) shall not be considered.

2.6 Ethical Standards

- (A) It is a breach of ethical standards for any City employee to participate directly or indirectly in a procurement when the employee knows:
 - (1) The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement.
 - (2) A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
 - (3) Any other person, business, or organization with whom the employee or any member of employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
- (B) It is the responsibility of the Offeror to identify any potential or known conflicts of interest pursuant to Section 1.11 as soon as they become known and in writing to the Issuing Officer.

2.7 Contract

- (A) The City intends to execute the Contract in substantial form as shown in Exhibit 1. The Contract shall comprise relevant portions of the RFP, the Proposer's Offer as made in the Technical and Price Proposal, and as accepted by the City, Proposal Appendices, Forms, and Reference Documents. The Contract shall require approval of the City Council before it can be executed by the City Manager.
- (B) The Contractor's responsibility must solely rest with one firm or legal entity, which shall not be a subsidiary or affiliate with limited resources. The Proposal Letter defined in Section 4.1 must clearly indicate the firm or entity responsible for contract execution.
- (C) An Offeror requesting any exceptions or modifications to the Contract shall so indicate as an Appendix to their Proposal. Offerors should make efforts to raise questions or concerns regarding the Contract during the question and answer period. Requested exceptions or modifications to the Contract shall not be binding upon the City and shall be further considered only if the Offeror is deemed most susceptible to award.
- (D) The City shall have no obligation to approve exceptions or changes to the Contract.
- (E) Prior to execution of the Contract by the City, the successful Offeror shall provide a performance bond or other security acceptable to the City in an amount equal to 50% of the first year's Contract price.

2.8 Responsibility for Compliance with Legal Requirements

The Offeror's products, services, and facilities shall be in full compliance with any and all applicable federal, state, and local laws, regulations, ordinances, and standards regardless of whether or not

they are referred to in this RFP. A change in law, regulation, ordinance, or standards shall be cause for a Discretionary Reopener.

2.9 Anti-Boycott, Divestment, and Sanctions Against Israel Certification

The following applies unless the Offeror otherwise states in its proposal: the Offeror affirms (by submitting a proposal) that (1) its name does not appear on the list of companies that are engaged in a boycott of Israel developed by the N. C. State Treasurer under N.C.G.S. 147-86.81(a)(1) or on a list created by the Treasurer pursuant to N.C.G.S. 147-86.58 as a company engaging in investment activities in Iran, and (2) it has no reason to expect that its name will appear on either of those lists. Take notice that a Contract between a company named on either list and the City may be void.

2.10 Period that Proposals Remain Valid

- (A) Each Offeror agrees that the Technical and Price Proposal will remain firm for a period of one hundred and twenty (120) Days beginning with the date that proposals are received. Following the deadline for proposal submission, no proposal may be withdrawn for a period of 120 Days. Requests for withdrawal of proposals after 120 Days following the Proposal Submission Deadline must be submitted to the Issuing Officer in writing (defined as being sent or received via letter on official firm/agency letterhead or by electronic mail).
- (B) If a Best and Final Offer (BAFO) is requested, the Offeror agrees to hold the BAFO available or acceptance for a minimum of ninety (90) Days after submission of the BAFO.

2.11 Proposal Withdrawal Prior to the Deadline for Submissions

A submitted proposal may be withdrawn and changes to a submitted proposal can be made prior to the Proposal Submission Deadline. In the event an Offeror notes an error or omission in its response that was overlooked prior to submitting the proposal, the Offeror may contact the Issuing Officer to request the proposal be withdrawn. Once the Offeror's response is withdrawn, the City has no response from the Offeror. Unless and until the Offeror resubmits the received response, the City of Durham will have no offer from the Offeror to evaluate for possible Contract award. Any resubmission must be received by the City no later than the Proposal Submission Deadline.

2.12 The City's Right to Request Additional Information-Contractor Responsibility

Prior to award, the City must be assured that the selected Contractor has all of the resources to successfully perform under the Contract. This includes, but is not limited to, adequate number of personnel with required skills, availability of appropriate equipment in sufficient quantity to meet the on-going needs the City, financial resources sufficient to complete performance under the Contract, and relevant experience in similar endeavors. If such information is required, the Contractor will be so notified and will submit the information requested within the time requested by the City.

2.13 Proposal Preparation Costs

Each proposal should be prepared simply and economically, avoiding the use of elaborate promotional materials beyond those sufficient to provide a complete proposal. The City will not provide reimbursement for any costs associated with proposal preparation.

3 Submission Requirements

3.1 Deadline for Submission of Proposals/Late Proposals

Proposals submitted in response to this RFP must be received by the City no later than 4:00 PM (EST) on March 01, 2023. Proposals received after the submission deadline will not be evaluated.

3.2 Method of Delivery

- (A) All Proposals shall be made electronically.
- (B) It is the sole responsibility of the Offeror to ensure that its proposal is successfully delivered to the Issuing Officer by the specified date and time at the address below. The City is not responsible for late or mis-delivered proposals, for whatever reason.
- (C) Proposers shall contact the Issuing Officer at least three (3) Business Days prior to the closing date for submitting Offers to receive log-in and password information for electronic submittal.
- (D) The City is not responsible for proposals files improperly named, locked, or altered. Proposals received after the Proposal Submission Deadline may result in the City disqualifying the proposal from consideration for Contract award.

3.3 Form and Format of Proposals

- (A) The Technical Proposal shall consist of all offer documents and supporting documentation requested in a single PDF document in a searchable PDF format. Offerors are advised to use hyperlinks for ease of reference throughout the document.
- (B) The Price Proposal shall consist of:
 - (1) Excel workbook in an unlocked format; and,
 - (2) a single PDF copy of the Excel workbook and explanatory information required herein.
 - (3) a single pdf copy
- (C) If an Offeror submits an affidavit referred to in Section 2.3 Confidential/Proprietary Information, then one (1) separate electronic copy shall also be submitted in searchable PDF format.
- (D) All documents requiring a signature shall be so signed with a digital electronic signature.

4 Contents of a Complete Proposal

All Proposals should include a table of contents with page numbers and sufficient detail to facilitate easy reference to all requested information. The Offeror shall not use a font size smaller than 11-point font or have margins smaller than 1 inch. Tables, captions, and graphics may use a smaller font size.

4.1 Proposal Letter

The Offeror shall use this document to summarize the acknowledgements and representations made by and agreed to by the Offeror about its proposal. The Offeror shall designate the primary point of contact and their email address and phone number. **The Offeror shall acknowledge the receipt of all addenda, questions and answers, and notices formally issued by the Procurement Officer.**

4.2 Technical Proposal

The Technical Proposal shall consist of narrative, drawings, charts, tables, etc. intended to convey the Offeror's response to each of the technical elements identified below. This narrative description shall include the appropriate use of headings and subheadings numbered as follows, and that address, at minimum the following elements described in the sections below. Offerors are encouraged to use hyperlinks to cross-reference sections of the Proposal or to reference external websites or material for illustrative purposes. Material provided through external links are not considered as commitments of the Offeror and therefore may not be evaluated as such.

4.2.1 Qualifications and Experience of Offeror

- (A) This section shall be limited to eight (8) pages.
- (B) The Offeror shall detail their ability to perform the scope of services set forth in this RFP, which shall include a description of the Offeror's operations and maintenance capability and its methods and resources to perform the Services described in this RFP. At a minimum the Offeror shall provide:
 - (1) Overview of the Offeror's firm/team qualifications and experience in providing local, fixed route services similar to those required in this RFP and the number of years the firm/team has provided these types of public transit services similar in scope, size, and complexity to the work to be performed.
 - (2) Overview of firm's philosophy, policies, and methods to provide superior service delivery and ensure quality, safe, cost efficient, and customer-oriented service.
 - (3) List at least three but not more than five most current or recent contracts of similar size and scope, for which the Offeror has performed/ or is currently performing local fixed route services. Each contract must be with a separate agency. For each contract listed, Offeror shall include the following information:
 - (a) Name, email address, and telephone number of client contact
 - (b) Describe the transportation services provided, including the size of the service
 - (c) Length of contract and base contract price

- (d) Status of the contract, e.g., active, expired, or terminated
- (e) Whether performing service as a prime or subcontractor
- (f) Narrative description of issues or challenges faced in performing the contract and how they were addressed; value added services provided by the Offeror; or other information that distinguishes the Offeror's performance of the contract.

NOTE: Offerors are advised to confirm the contact name that has been identified as a reference for the agencies listed in (3) above in this Proposal and that a prompt response to contact from the City or its consultant is necessary for evaluation of the Offeror's proposal.

4.2.2 Key Personnel & Organizational Structure

- (A) This section shall be limited to fifteen (15) pages.
- (B) Key Personnel include the General Manager, Assistant General Manager(s), Operations Director, Maintenance Director, and Director of Customer Engagement/Marketing.
 - (1) **Qualifications of Key Personnel.** Offeror shall demonstrate that the Key Personnel meet the minimum qualifications described below.
 - (a) **General Manager.** The General Manager shall possess ten (10) years of progressively responsible experience in the transportation or logistics sector, of which four (4) years may be satisfied through attainment of a bachelor's degree or higher in a related field. The ideal Offeror will: have worked in the transit sector with a range of supervisory roles in operations, maintenance, and/or business and administration; demonstrate excellence in customer service and employee relations; and demonstrate a management approach that is growth-oriented and forward-looking.
 - (b) **Assistant General Manager.** The Assistant General Manager shall possess five (5) years of progressively responsible experience in the transportation or logistics sector, of which two (2) years may be satisfied through attainment of a bachelor's degree or higher in a related field. The ideal candidate will have worked in the transit sector with a range of supervisory roles in operations, maintenance, and/or business and administration; demonstrate excellence in financial management; and demonstrate a management approach that is growth-oriented and forward-looking.
 - (c) **Operations Director.** The Operations Director shall possess at least five (5) years of progressively responsible experience for operations in the transportation and logistics sector, of which two (2) years may be satisfied by an associate degree or other higher education or related training and certifications. The ideal candidate will have experience in Automated Vehicle Location (AVL)/ Computer Aided Dispatch (CAD), dispatch, and in-service field supervision; demonstrate analytical capabilities necessary to meet the service and performance requirements of this RFP; and have worked in an environment with employees represented by a collective bargaining agent.

- (d) **Maintenance Director.** The Maintenance Director shall possess at least five (5) years of progressively responsible experience for fleet and facilities management in the transportation and logistics sector, of which two (2) years may be satisfied by an associate degree or other higher education or related training and certification. The ideal candidate will demonstrate excellence in fleet maintenance with emphasis on preventative maintenance; experience in the commissioning of new transit vehicles; and experience in integrating electric buses into the transit fleet.
- (e) **Director of Customer Engagement/Marketing.** The Director of Customer Engagement/Marketing shall possess at least five (5) years of progressively responsible experience for customer service, customer engagement, marketing and communications. The ideal candidate will be an exceptional communicator and be able to establish credibility, lead by influence, and exercise strong customer service and engagement skills.

NOTE: For the purpose of Section 4.2.2, an Offeror may omit at its discretion either the position of Assistant General Manager or Operators Director.

- (2) Other Requirements of Key Personnel. The Offeror shall certify that:
 - (a) All Key Personnel listed in the Proposal shall be assigned on a full-time basis to the executing of the Contract.
 - (b) All Key Personnel have or will have adequate training within the first 90 days of work on the Contract in the requirements of:
 - i. The Americans with Disabilities Act as far as it applies to transit services
 - ii. Title VI and other civil rights requirements of the Federal Transit Administration
 - iii. Drug and Alcohol certification
 - iv. National Incident Management Systems Training at levels 100, 200 and 30; ICS 700/800
 - v. The National Transit Database.
 - (c) Should it be necessary to replace a member of the Key Personnel, the City shall have the right to interview and approve the proposed new Key Personnel as provided for in the contract.

(C) **Organizational Structure and Values.** The Offeror shall specifically and separately address:

- (1) Proposed role of the corporate organization in providing management, oversight, and administrative functions supporting the local management structure.
- (2) Proposed local management structure, including an organizational chart, and identifying Key Personnel. Identify the responsible functional area(s) of each position including, but not limited to, position(s) responsible for overseeing compliance with federal requirements, training, safety, security, customer service, operations, and maintenance.
- (3) Proposed staffing levels to meet current service requirements, required licenses or certifications of the requisite disciplines, and the availability of personnel other than

those listed as Key Personnel, including the extent to which the Offeror intends to retain existing personnel. If the Offeror intends to reduce the workforce, the Offeror shall describe how it will assist employees in finding other roles within the corporate organization or with the City.

- (4) Proposed approach to coordination with, reporting to, and accountability to the City's contract manager.

(D) **Specific Issues of Interest.** The Offeror shall specifically and separately address

- (1) The Offeror's approach to retention and recruitment of Bus Operators and mechanics, including participation in or support for local workforce development programs, internships and apprenticeships, and upskilling of new or existing personnel to promote ladders of opportunity.
- (2) The Offeror's approach to meeting daily service requirements if sufficient personnel is not available, including compliance with the overtime and part-time positions as described in the Collective Bargaining Agreement.
- (3) The Offeror's approach to diversity, equity, and inclusion, at the local level and corporate level.
- (4) The Offeror's approach to meeting the DBE goal both with respect to the numerical target and the range of services that will be provided. The City places emphasis on the scope, span, and value-added nature of DBE participation.

NOTE: In the Price Proposal, the Offeror shall identify the number and type of full-time equivalent personnel that it may employ to perform the Scope of Services in each year of the Contract, and the anticipated salary range of the positions. If the Contractor intends to subcontract for certain services (for example, engineering support, marketing, and customer service, etc.), the Contractor shall estimate the number of full-time equivalent positions and associated salary range of each position.

4.2.3 Approach to Providing Services

- (A) This section shall be limited to 15 pages.
- (B) Overall Understanding and Implementation of Contract Requirements. The Offeror shall:
 - (1) Demonstrate or indicate its understanding of the requirements, and include a summary of how the Offeror intends systematically to fulfill the Contractor's requirements outlined in this RFP
 - (2) Show how it will meet, track, and assure quality in meeting the City's Performance Standards as described in Section 18.
 - (3) Provide a description of how the Contractor will innovative or provide "value-added services" to improve efficiency and/or effectiveness of the requirements.
- (C) **Specific Issues of Interest.** The Offeror shall specifically and separately address:

- (1) How it will internally and externally manage change in public-facing elements of the service such as a decision to reinstate fare collection, increase or decrease service frequency, and add new routes or alter existing routes.
- (2) How it will support DTD in meeting system expansion goals by up to fifty percent (50%) during the term of the Contract, including any anticipated changes in staffing levels, necessary capital investments by the City, and any other relevant matters.
- (3) How it will integrate electric buses into the fleet, including potential changes in blocks and run-cutting to match service requirements, capital investments that may be necessary by the City to support electric vehicles, training of operations and maintenance personnel in their duties such that they may change with the introduction of electric buses, and any other relevant matters.

4.2.4 Safety

- (A) This section shall be limited to 12 pages.
- (B) The Offeror shall demonstrate their understanding of DTD's Public Transportation Agency Safety Plan and:
 - (1) Describe the Offeror's role in implementing the plan, understanding, and meeting the defined goals and objectives; how data will be used to effect procedural changes; and identify Key Personnel and their role.
 - (2) Describe the safety training for all personnel and identify the required safety certifications of all Key Personnel and supervisors.
 - (3) Describe its safety practices including, but not limited to, accident prevention, road supervision, equipment and facility monitoring, maintenance shop safety practices, road calls (failure in service response by maintenance personnel), emergency preparation, accident response, investigation and reporting procedures, accident/incident vehicle clearance, passenger safety including stranded vehicle transfers, service restoration, and training/refresher courses, safety huddles, etc.
 - (4) Indicate how the Offeror will comply with all the requirements related to the federal Drug and Alcohol Testing Program.
 - (5) Describe the Offeror's safety record, including the Offeror's Experience Modification Rating, over the past five years. The Offeror shall indicate any fatal injuries to its employees, customers, or the public while meeting the requirements of the contract. The Offeror shall indicate the cause of the fatality, investigative findings by the Offeror or Authority Having Jurisdiction, claims, or litigation related thereto since January 1, 2019. (This subparagraph (5) does not count towards the page limit and shall be included as an appendix.)
- (C) Specific Issues of Interest. The Offeror shall specifically and separately address:
 - (1) What investments or practices can the City undertake to improve customer safety and how would the Offeror propose to support these efforts?

- (2) What is the role of technology and field supervision in promoting and accounting for the Company's safety culture?
- (3) What training, incentives, or other efforts are provided to employees at all levels and across all roles to promote the Company's safety culture?

4.2.5 Customer Service and Marketing

- (A) This section shall be limited to eight (8) pages, except for subparagraph (B), which shall be included as an Appendix and is not page limited.
- (B) The Offeror shall demonstrate its understanding of the core customer service and marketing efforts and how it will meet those requirements. At a minimum the Offeror shall include:
 - (1) Describe the method for responding to customer inquiries and concerns, tracking and reporting concerns, and developing corrective actions based on feedback.
 - (2) Explain how the customer service program will be monitored to ensure that the delivery of customer service is of the highest quality.
 - (3) Describe customer service training activities and expectations at all levels and across all roles of the of the organization.
- (C) **Specific Areas of Interest.** The Offeror shall specifically and separately provide a response to each of the scenarios below.
 - (1) The [Durham Transit Plan](#) includes a new crosstown service from East Durham/The Village to North Carolina Central University. How would you propose to introduce the service to customers and potential customers and build ridership over the first 12 months of service. Include an anticipated budget, sample collateral material, and other elements that clearly demonstrate your firm's understanding of the marketing needs for this service. You may assume a budget of \$50,000, from the Customer Service and Marketing Allowance.
 - (2) NCDOT intends to reconstruct NC 55 (Alston Street) from NC 147 (Durham Freeway) to US 70 Business/NC 98 (Holloway Street), including widening the roadway to a four-lane divided facility, replacing several railroad bridges and improving the streetscape. This project could last more than four years and will have potentially significant impacts to GoDurham customers. Describe the transit operating challenges that will be faced during construction, and how your firm will maintain quality service and communicate with customers during the roadway construction project.

4.2.6 Asset Management

- (A) This section shall be limited to fifteen (15) pages.
- (B) Describe the Offeror's comprehensive maintenance program that shall meet or exceed the City and OEM requirements. The program must include, at a minimum, the following components: the preventive maintenance program, vehicle repairs, equipment repairs (e.g., seats, fare collection equipment, etc.), air conditioning and heating maintenance repair, specialized equipment program, parts inventory, record keeping accounting system, and warranties. At a minimum, this description should include:

- (1) Describe the proposed automated maintenance management information system. Describe the proposed preventive maintenance program, including levels of inspections, intervals, and the types of inspections and/or components serviced at each interval.
- (2) Describe road call procedures and other unscheduled maintenance repairs and/or services.
- (3) Describe which maintenance activities will be performed in house and which will be contracted out.
- (4) During the term of the Contract, vehicles may undergo a midlife overhaul. Describe the approach to departure, incoming, and acceptance inspections, warranty tracking and recovery. Propose methods to ensure vehicle pullout requirements are met with reduced vehicle availability during the overhaul program, if necessary.
- (5) Describe the approach and provide examples of component warranty tracking and warranty recovery.
- (6) Describe the approach and timeline for monitoring and repairing accident damage, including body damage.

(C) **Specific Issues of Interest.** The Offeror shall specifically and separately address:

- (1) Describe how the Offeror will monitor and inspect conditions at Passenger Facilities to ensure compliance with the standards, and how will the Offeror proactively keep bus stops safe and clean and prioritize and respond to deficiencies.
- (2) Describe the process for pre-delivery inspection and Buy America compliance of Revenue Vehicles, on-site commissioning and decommissioning of Revenue Vehicles, and how the added inspection, compliance, commissioning, and decommissioning tasks would be performed without not interfering with existing fleet maintenance operations.
- (3) Describe how the Offeror will achieve its responsibilities with regard to On-Board Technologies such as but not limited to: AVL/CAD, radio systems, Automatic Passenger Counter (APC), camera, fare collection systems, destination signs, radio, annunciator systems, Wi-Fi, routers, traffic signal pre-emption equipment, and other ITS technologies, including how it will inspect, maintain, and upgrade such systems as may be necessary.
- (4) Describe the approach proposed to perform all preventive and routine maintenance activities associated with the Operations and Maintenance Facility, including Equipment.

NOTE: In the Price Proposal, the Offeror shall describe any potential capital investments greater than \$25,000 by the City such as Service and Support Vehicles or Equipment that the Offeror believes may be beneficial to achieve the Scope of Services in the context of the anticipated Revenue Service Hours, anticipated Major Service Changes, and the anticipated fleet mix. The Offeror's proposal shall not be contingent upon the City making such investments but will be considered in negotiating the Contract and in the DTD's Capital Improvement Program.

4.2.7 Transition Plan

- (A) This section shall be limited to ten (10) pages.

- (B) Transition Approach. Offerors should describe their overall approach to the transition of Services from DCTC, describe major activities to be performed and milestones to be accomplished in accordance using the following milestones:
 - (1) from Notice of Intent to Award through 30 Days prior to the Start of Service Date
 - (2) within 30 Days Start of Service Date.
 - (3) 30, 60, 90, and 120 Days from the Start of Service Date.
 - (4) any activities to be undertaken after 120 Day from the Start of Service Date.
- (C) City Support. Identify critical areas of support needed from the City to achieve a successful transition.
- (D) Risk Management and Mitigation. The Offeror shall identify potential risks and problems during the transition period along with their descriptive plan for mitigating these problems. The plan shall cover the Offeror’s methodology for addressing unforeseen problems.
- (E) **Specific Issues of Interest.**
 - (1) Describe efforts that will be undertaken to achieve a positive working relationship with the Union and non-Union Employees, including the approach to be taken to ensure that Section 13(c) obligations are met.
 - (2) Describe efforts that will be undertaken to achieve positive working relationships and service continuity with existing and/or new subcontractors and vendors.
 - (3) Describe anticipated efforts to assist the City in the orderly administrative transition from DCTC to the provisions of this Contract. Specifically, would the Offeror accept a full assignment of DCTC as a wholly owned subsidiary of the Contractor for a limited period? Would the Offeror continue the wholly owned subsidiary model for the entire Contract term? What obstacles or concerns does the Offeror have with either of the above approaches that could be resolved through negotiation of certain conditions in a BAFO?

EXPLANATORY NOTE REGARDING QUESTION (E)(3)

At present, GoDurham is operated by the regional transit agency (known as “GoTriangle”), pursuant to an interlocal agreement with the City of Durham. In turn, all employees providing GoDurham services are employed by the Durham City Transit Company (DCTC) which was facilitated by the City as a wholly-owned subsidiary of the incumbent management company. The purpose of DCTC is to maintain workforce continuity in a manner that complies with North Carolina law. When DCTC was created, it was intended that the entity be transferred without consideration from one management company to the next.

At the end of the present contract with the incumbent management company, DCTC can be dissolved, transferred to the City, or assigned to the incoming Contractor. With the City’s aggressive schedule to award this Contract, it is likely that certain wind-down activities will extend beyond July 1, 2023, such as asset transfer, unresolved warranty and

insurance claims, assignment of the Collective Bargaining Agreement, and other matters. For this question, the City will not evaluate the preferred corporate structure *per se*; rather the City is interested to know the approach of the Offeror assist with an orderly transfer.

4.3 Price Proposal

- (A) The Price Proposal shall be fully completed using the Excel Workbook provided, signed by an authorized representative.
- (B) The Offeror's Price Proposal shall be expressed on Worksheet #1 as a per Revenue Service Hour rate multiplied by the number of Budgeted Service Hours in each year of the Initial and the Renewal Terms.
- (C) The rate per Revenue Service Hour shall be fixed and firm. In submitting the Price Proposal, Offerors are advised to consider:
 - (1) The full Scope of Services described in the Technical Provisions
 - (2) The number of anticipated Revenue Service Hours in each year of the Initial Contract Term and each Renewal Year
 - (3) The anticipated fleet mix in each year of the Contract
 - (4) The anticipated Major Service Changes in each year of the Contract as described in the Durham Transit Plan.
 - (5) The costs which are eligible to be reimbursed as Allowances
 - (6) Electricity costs as a direct pass through to the City
 - (7) Automatic and Discretionary Re-Openers.
 - (8) The City will **not** consider an adjustment to the per Revenue Service Hour rate based on renegotiation of the Collective Bargaining Agreement that expires on June 30, 2025.
- (D) Offerors are further advised that:
 - (1) The City maintains certain obligations throughout the term of the Contract such as but not limited to diesel fuel, capital improvements, and otherwise as described in the Technical Provisions.
 - (2) An Automatic Re-opener shall occur if the actual Revenue Service Hours in any year of the Contract are less than ninety percent (90%) or more than one hundred ten percent (110%) of the Anticipated Service Hours listed in Section 7.2.
 - (3) The submitted Price Proposal must not include any sales and use taxes, excise taxes, or the like which would not otherwise be applicable to a municipality in North Carolina. The City is exempt from Federal excise taxes; no payment will be made for any taxes levied on Contractor's employee's wages. The City is also exempt from certain State of North Carolina and local sales and use taxes. The City will furnish tax refund request forms to the successful Contractor, upon request, which would be submitted to the City for the reimbursement of certain sales and use taxes on qualified materials, supplies, fixtures, and equipment pursuant to N.C. Gen. Stat. § 105-64.14(c). In the event that the Contractor incurs any taxes for which the City is authorized to seek a refund, the Contractor will be reimbursed by the City after submittal of the appropriate tax refund request form from the Contractor so that the City may be reimbursed by the taxing entity.

Such tax refund does not apply to purchases of electricity, telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan.

(E) Additional Information to Be Submitted with the Price Proposal

- (1) The Offeror shall provide a detailed budget with accompanying narrative as necessary to explain line items as defined by the Offeror; identify any significant assumptions, efficiencies, or price risk mitigation strategies that may be unique to the Offeror; and provide other information that the Offeror believes may be useful to the Evaluation Committee when reviewing the Price Proposal. (Worksheet #2)
- (2) The Offeror shall provide a price for each of the Optional Services on a lump sum basis for each year of the Initial Contract Term and each Renewal Year. The price proposed for Optional Services is not consideration in the evaluation of the Price Proposal. (Included in Worksheet #1)
- (3) The Offeror shall describe any potential capital investment requirements by the City that that the Offeror believes may be necessary to achieve the Scope of Services in the context of the Anticipated Revenue Service Hours, Anticipated Major Service Changes, and the Anticipated Fleet Mix. meet the Offeror's such as Service and Support Vehicles, Equipment, etc. The Offeror's proposal shall not be contingent upon the City making such investments but will be considered in negotiating the Contract. (Worksheet #3)
- (4) The Offeror shall identify the number and type of positions that it may employ to perform the Scope of Services in each year of the Contract, and the anticipated salary range of the positions. If the Contractor intends to subcontract for certain services (for example, engineering support, customer service and marketing, etc.), the Contractor shall estimate the number of full-time equivalent positions and associated salary range of each position. (Worksheet #4)

4.4 Required Forms

[INTENTIONALLY OMITTED].

4.5 Litigation History

- (A) This document shall be provided by the Offeror and shall be a narrative description of the Offeror's litigation history. Offeror shall identify and describe all local, state, and federal proceedings (legal, administrative, regulatory, and otherwise), currently pending against the Offeror or its Principals (to include officers, members, directors, and partners) or concluded adversely to the Offeror, or its Principals, within the past five (5) years.
- (B) If the Offeror has not been involved in any litigation within the past five (5) years, Offeror shall provide a written statement indicating such.
- (C) Offeror's response to this Section shall be made as an Appendix to the Offer.

4.6 Bid Bonds

- (A) This document must be fully completed, signed by an authorized representative, and submitted with the proposal.
- (B) The Offeror shall provide a bid bond made payable to the City. The bid bond shall be equal to **five percent (5%)** of the Offeror's Price Proposal for the first year of the Contract. Failure to submit appropriate bonding will result in automatic rejection of proposal. The bonding company must be authorized to do business in North Carolina by the North Carolina Insurance Commission, listed in the Department of Treasury's publication of companies holding certificates of authority as acceptable surety on Federal bonds and as acceptable reinsuring companies, and have an A.M. Best rating as stated in the insurance requirements of the solicitation. The condition of the bonds shall be that the Contractor shall fully and faithfully comply with the proposal at the agreed prices.
- (C) Bid bonds shall be returned to all Offerors at the time of Notice of Intent Award.

5 General Contract Provisions

- (A) The Uniform Guidance Contract Clauses for Federal Funding shown in Exhibit 2 shall apply to this Contract.
- (B) The Federal Transit Administration Specific Clauses shown in Exhibit 3 shall apply to this Contract.
- (C) The City of Durham General Conditions shown in Exhibit 4 shall apply to this Contract.
- (D) Payment for the Contractor's services shall be invoiced monthly and include:
 - (1) The number of Revenue Service Hours performed by the Contractor multiplied by the accepted rate per Revenue Service Hour, plus
 - (2) Reimbursement of expenses paid by the Contractor pursuant to the Annual and Full-Term Allowances,
 - (3) the annualized Pension Plan costs paid by the Contractor divided by 12,

- (4) and reimbursement for Optional Services, plus
- (5) any Incentives earned or less any Liquidated Damages assessed.
- (E) Invoice instructions and documentation requirements shall be provided by the DTD Project Manager during the transition period.

6 Proposal Evaluation Process

- (A) The following section describes the process by which proposals will be evaluated and a selection made for a potential award by the City. Selection of the Contractor will be based on a combination of both qualitative technical factors and costs to the City. The award selection will be on a “best value” basis to the responsive and responsible Offeror whose proposal is most advantageous and of the greatest value to DTD.
- (B) The Offeror’s approach to the Technical Proposal value will carry significantly more weight than the Price Proposal. Accordingly, the City may not necessarily make an award to the Offeror with the highest technical evaluation criteria ranking nor award to the Offeror with the lowest price proposal, if doing so would not be in the overall best interest of the City.

6.1 Determination of Responsiveness

- (A) Proposals will be analyzed for conformance with the instructions and administrative requirements of the RFP. Any proposal that the City finds to be non- responsive may be removed from further consideration.
- (B) The City may provide an opportunity, as determined in its sole discretion, for an Offeror to cure any minor defect in its Proposal that is administrative in nature. Once notified of a minor defect, the Offeror shall correct said defect within 48 hours (inclusive of weekends or holidays).
- (C) Only those proposals found to be responsive will be evaluated as described below.

6.2 Evaluation of Proposals

- (A) The Evaluation Committee will evaluate all responsive proposals as described below.
- (B) Phase 1 - Technical Evaluation**
 - (1) Members of the Evaluation Committee will individually review, comment, and rate the Proposals using the technical evaluation matrix shown below.
 - (2) Evaluation Committee members will submit their ratings and comments to the Issuing Officer, who will aggregate the responses and distribute same to the committee.
 - (3) The Evaluation Committee will meet and confer on the overall scoring, discuss, and reconcile significant scoring differences among the members, and assign a consensus rating to each attribute as shown in the technical evaluation matrix.
 - (4) At its discretion, the committee may request Oral Interviews from the two highest rated Offerors. Oral Interviews are not rated as an independent element of the evaluation

process but may be used to adjust or clarify ratings previously established by the Evaluation Committee.

- (5) Firms not selected for the short list shall be so notified and released from their Bid Bond.
- (6) Following the Oral Interviews, if any, the evaluation committee will determine a final consensus rating and rank the shortlisted Offerors accordingly.

(C) Phase 2 – Price Proposal Evaluation

- (1) The Issuing Officer will distribute the price proposal of short-listed Offerors to members of the Evaluation Committee.
- (2) Members of the Evaluation Committee will individually review, comment, and evaluate the Price Proposals for clarity and total cost to the City.
- (3) Evaluation committee members will submit their comments to the committee chair, who will aggregate the responses and distribute same to the Evaluation Committee.
- (4) The Evaluation Committee will meet and confer on the price proposals, discuss, and reconcile significant differences among panel members, and assign a consensus score to each attribute as shown in the Price Evaluation Matrix.

(D) Phase 3 – Oral Interviews; Best and Final Offer

- (1) The City, at their sole discretion, may conduct interviews with the shortlisted Offerors.
- (2) Oral Interviews, if any, shall be for not more than 90 minutes per Offeror at a time and place determined by the Issuing Officer.
- (3) The Issuing Officer will advise the Offeror in writing of any specific issues, questions, or concerns regarding the Proposal.
- (4) Oral Interviews will be generally structured as follows:
- (5) Introductory presentation by the Offeror (20 – 25 minutes)
- (6) Questions by the Evaluation Committee (45 – 55 minutes)
- (7) Closing presentation by the Offeror (5 - 10 minutes)
- (8) Each firm is limited to no more than five attendees at the Oral Interview, including the proposed General Manager, Maintenance Director, and Director of Customer Service and Marketing; a sixth attendee is permissible if the attendee represents a DBE firm.
- (9) No communication made as part of the Oral Interview by either party shall be construed as a commitment of the party unless and until such commitment is made in writing as part of a Best and Final Offer, if any.

(E) Phase 4 - Selection of Preferred Offer

- (1) Based on the Evaluation Committee’s overall assessment of the Technical and Price Proposals, the Evaluation Committee shall determine its preferred Offer. The selection of a preferred Offer shall be based on its determination of which proposal provides the best value to the City in consideration of the technical and price elements defined in this RFP, with technical considerations generally taking precedence over price considerations.

- (2) If the Evaluation Committee is unable to achieve consensus or determines it to be in the best interest of the City to do so, the Issuing Officer may request a BAFO. The BAFO process is intended to address trade-offs of the short-listed Offers rather than force a lower price or lower quality technical approach to the project.
- (3) In requesting a BAFO, the Issuing Officer will provide a summary of the evaluation committee's assessment of a proposal's technical strengths and weaknesses and identify in qualitative terms any items in the cost proposal that are unusually high or low relative to other firms from which a BAFO is requested. The Issuing Officer may also suggest a target price at which the City would be prepared to accept the Offer, in which case the Offeror would be requested to identify any changes in its technical approach to the project or identify areas of the technical provisions that the City may wish to adjust to achieve the target price.

6.3 Proposal Evaluation Criteria

- (A) The Technical Proposal categories are listed in the order of importance to the City.
- (B) Weighting of Technical Proposal Categories.
 - (1) The City considers the elements of the Technical Proposal listed in 4.2.1 - 4.2.4 as the core evaluation criteria with categories listed in 4.2.5 – 4.2.7 as being most likely to significantly distinguish among the proposals. That is, a successful offeror would mostly likely have to rate as “Outstanding” or “Exceeds Requirements” in all of 4.2.1 - 4.2.4 in order to be considered for shortlisting to Oral Interview but those Proposals which are also rated as “Outstanding” or “Exceeds Requirements” in 4.2.5 – 4.2.7 being the most susceptible to award.
 - (2) The City further advises that where “specific areas of interest” are listed in each element of the technical proposal (4.2.1 – 4.2.7), the Offeror's response to those items will be given added favorable consideration by the Evaluation Committee.
- (C) The Evaluation Committee shall utilize the following assessment ratings in its evaluation of each element of the Technical Proposal (Sections 4.2.1 through and including 4.2.7):
 - (1) Outstanding – the proposal clearly demonstrates an understanding of the City's goal(s) for the area of evaluation; demonstrates a well-resourced and thorough technical approach to the area of evaluation; identifies resource or process redundancies to mitigate potential operational, technical, or administrative risks; and/or provides several elements of added value to meet the requirements.
 - (2) Exceeds Requirements – the proposal clearly demonstrates an understanding of the City's goal(s) for the area of evaluation and demonstrates a well-resourced and thorough technical approach in this area of evaluation and presents some specific elements to the technical approach that may add value to meeting the requirements.
 - (3) Meets Requirements – the proposal indicates an understanding of all technical requirements and demonstrates sufficient resources and technical approach to meet the City's goals in this area of evaluation.

- (4) Marginally Acceptable – the proposal meets most of the technical requirements but may have a one or two material weaknesses that could be mitigated or improved through clarification of intent, further explanation, or minor adjustment to the technical approach.
- (5) Unacceptable – the Offeror does not provide sufficient information for evaluation or contains several material weaknesses that cannot be reasonably or reliably mitigated or improved without a significant change of approach by the Offeror.

7 Scope of Services

- (A) The City considers the items described below (referenced herein as “Technical Provisions”) to be the minimum effort necessary to provide quality transit services by the Contractor to the City. These Technical Provisions shall be read and applied in conjunction with the Performance Standards and Reference Documents
- (B) The Contractor shall operate, maintain, and administer all services in this RFP, such that nothing remains to be purchased, provided, or supplied by the City, except as specifically provided herein.
- (C) The Contractor shall assist and cooperate with the City in meeting the objectives of providing quality fixed route transportation services. The Contractor shall perform close liaison activities, coordinate, and cooperate with the City on matters related to operations, monitoring, reporting and service performance measurements, and will respond promptly to any inquiries, concerns, and requests of the DTD Project Manager.
- (D) All Services shall be based at the Operations & Maintenance Facility unless otherwise specifically described herein or approved by the DTD Project Manager.

7.1 Routes & Revenue Service Hours

Using Revenue Vehicles provided by the City, the Contractor will operate Fixed Route Services on routes, schedules, and hours of operation established by the City. Route maps and schedules can be viewed at <https://godurhamtransit.org/maps-schedules/godurham>.

7.2 Anticipated Revenue Service Hours

- (A) The Anticipated Revenue Hours for this Contract are listed in Table 7.1.

Table 7.1- Anticipated Revenue Hours

	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Anticipated Revenue Hours	261,022	268,141	288,030	288,029	295,196

- (B) In the Renewal Term, the Anticipated Revenue Service Hours are estimated to be the same in FY 2028.
- (C) The Contractor’s rate per Revenue Service Hours listed in the Price Proposal shall remain firm for between 90 percent (90%) and one hundred ten percent (110%) of the anticipated Revenue Service Hours. Any deviation in Revenue Service Hours that is less 90 percent (90%) or greater than one hundred ten percent (110%) of the anticipated Revenue Service Hours shall be cause for an Automatic Reopener.

7.3 Routes

GoDurham routes are as follows:

Table 7.2 - Go Durham Routes

Route	Service Location
1	Northgate – North Pointe – Horton Road/Guess Road
2	E. Main Street – Angier Avenue – Brier Creek
3	Holloway Street – The Village – Glenview Station
3B	Holloway Street – The Village – Southern High School
3C	Holloway Street – The Village – Alston Avenue
4	N. Roxboro Road – Duke Regional – North Duke Crossing
5	Fayetteville Street – NCCU – Southpoint
6	Chapel Hill St. – Duke/VA – Crest Street
7	Forest Hills – Weaver Street/S. Roxboro Street – MLK Parkway
8	Lawson St – NCCU – Durham Tech
9	Dearborn Dr – Duke Regional – Riverview (Evening/Sunday)
9A	Dearborn Dr – Duke Regional – Riverside HS
9B	Dearborn Dr – Riverview – Northern HS
10	Chapel Hill Rd – South Square – New Hope Commons
10B	Chapel Hill Rd – South Square – Shannon Rd
11	W. Main St – Duke/VA – Hillsborough Rd
11B	W. Main St – Duke/VA – Constitution Dr
12	E. Main St – NCCU – Southpoint
12B	E. Main St – NCCU – Durham Station
NHS	Northern High School

7.4 Days and Hours of Operation, Holidays

- (A) Fixed Route Services operate Monday through Saturday from 5:00 am to 12:30 am and Sunday from 6:30 AM to 9:30 PM. Routes operate on one-hour, 30-minute, and 15-minute frequencies.
- (B) Fixed Route service shall operate on a Sunday schedule on the following holidays:
 - (1) New Year’s Day (January 1)

- (2) Martin Luther King, Jr. Day (third Monday in January)
 - (3) Memorial Day (the last Monday in May)
 - (4) Independence Day (July 4)
 - (5) Juneteenth (June 19)
 - (6) Labor Day (the first Monday in September)
 - (7) Thanksgiving Day
- (C) Fixed Route service shall operate a normal schedule on Christmas Eve (i.e. “weekday”, “Saturday”, “Sunday”), but service will end at 7:30 PM.

7.5 Pulse System

Except as provided in a Major Service Change, all fixed bus routes shall operate on a pulse system originating and terminating at Durham Station (515 West Pettigrew Street).

7.6 Schedule Blocks and Run Cuts

The Contractor shall be responsible for developing all schedule block and run cuts. The Contractor shall be responsible for developing and distributing all schedule Operator shift run cuts.

7.7 Delays & Route Deviations

- (A) The Contractor shall notify the GoTriangle Regional Information Center of any significant disruptions, delays, or deviations to service Confirmation as to corrective action and the projected time in which service will be restored for the reported Vehicle/route shall accompany the notification.
- (B) The Contractor is authorized to deviate from established routes when necessary to avoid construction work, disabled vehicles, or other obstructions within the public right-of-way. Service shall be restored to its normal route as soon as is practicable. If more than one trip on a route is to deviate as in this paragraph, the Contractor shall notify the GoTransit Regional Information Center. Confirmation as to corrective action and the projected time in which service will be restored for the reported Vehicle/route shall accompany the notification.

7.8 Service Changes

The City reserves the right to add, reduce, or reduce routes, frequency, or span of Fixed Route Services during the term of this Contract through the process defined herein.

7.8.1 Operational Service Changes

- (A) With three (3) Days’ notice to the Contractor or as soon as is practicable when DTD is unaware with less than three (3) Days, DTD may initiate an Operational Service Change by written notice to the Contractor.
- (B) As appropriate to the Operational Service Change, the Contractor shall:
 - (1) post notice at all affected bus stops.

- (2) notify the Regional Information Center
- (3) update the Website
- (4) take any other actions necessary to implement the Operational Service Change with minimal disruption and sufficient notice to riders.

7.8.2 Minor Service Changes

- (A) With thirty (30) Days' notice written notice to the Contractor, DTD may initiate a Minor Service Change. Minor Service Changes shall occur in concert with the general markups described in Section 2 of the Collective Bargaining Agreement.
- (B) Within ten (10) of receiving the written notice in (A), the Contractor shall provide an implementation plan to DTD which shall include, at a minimum:
 - (1) an estimate of the cost or savings of the proposed service change.
 - (2) the anticipated impact of the service change on existing maintenance and operations.
 - (3) any other matters the Contractor deems necessary
 - (4) take any other actions necessary to implement the Operational Service Change with minimal disruption and sufficient notice to riders.

7.8.3 Major Service Changes

- (A) On or about February 1, DTD shall give written notice to the Contractor of the anticipated Revenue Service Hours and Major Service Changes for the next Fiscal Year. DTD and the Contractor shall meet and confer on the changes and DTD shall give consideration to the Contractor's ideas, concerns, and operational needs to implement the Major Service Changes.
- (B) Within thirty (30) days of the notice given in 5.1.7.3(A), the Contractor shall provide an implementation plan to DTD which shall include, at a minimum:
 - (1) an estimate of the cost or savings of the proposed service changes.
 - (2) the anticipated impact of the service change on existing maintenance and operations.
 - (3) anticipated changes to staffing levels.
 - (4) the necessity for any additional capital equipment to implement the Major Service Change.
 - (5) changes to bus stops, including the establishment of new bus stops, as indicated by DTD.
 - (6) changes to maps, schedules, wayfinding signs, websites, and other public facing media.
 - (7) an implementation schedule.
 - (8) any other matters the Contractor deems necessary
- (C) No later than May 1 of each year, DTD shall review and approve the implementation plan.
- (D) Major Service Changes shall only become approved for implementation by action of the City Council with the adoption of the City's annual operating budget.

- (E) Minor Service Changes shall occur in concert with the general markups described in Section 2 of the Collective Bargaining Agreement unless otherwise agreed to by the Contractor.

7.9 Declared Emergencies

- (A) Upon the declaration of an emergency by an Authority Having Jurisdiction, the Contractor shall immediately modify or suspend service as directed by the DTD Project Manager.
- (B) Payment for service provided during emergency operations shall be at the rate per Revenue Service Hour listed in the Price Proposal.
- (C) During times of a declared emergency, the Contractor shall separately account for expenses incurred specifically related to the emergency. The Contractor shall cooperate with DTD in submitting records for reimbursement by an emergency management agency.
- (D) The Contractor shall deploy vehicles in a manner described by the City as part of any transportation emergency operations plan. In the case of a declared medical emergency (such as a pandemic), the Contractor will implement the applicable approved SOPs to mitigate and protect their staff, City staff, and the customers. The Contractor will comply with State and Federal health guidelines as issued. The City will adjust service level requirements as needed for the duration of the emergency.

7.10 Special Services

In addition to regular service operations, the Contractor may from time to time, upon receiving specific written authorization from the City, provide special transportation services. Special service will be provided in accordance with FTA Charter Service Regulations (49 CFR Part 604). Special services shall be paid at rate per Revenue Service Hour listed in the Price Proposal.

8 Labor and Personnel-In General

- (A) The Contractor shall:
- (1) have sufficient Bus Operators, dispatchers, mechanics, training and supervisory personnel, and other staff necessary to meet the requirements of the Contract. Unless otherwise described or enumerated in the Technical Provisions, the Contractor shall have the sole right to determine staffing levels, job descriptions, and work duties of all personnel.
 - (2) be solely responsible for the satisfactory work performance of all its employees and subcontractors.
 - (3) shall hold the City harmless from any liability, damages, claims, costs, and expenses of any nature arising from alleged violations of personnel practices.
 - (4) directly employ all Key Personnel and Bus Operators shall be employees of the Contractor. Subcontracting of Bus Operators shall not be permitted.
 - (5) regularly update and provide to the DTD Project Manager its organizational chart and contact information for Key Personnel, including notification of which Key Personnel shall be in the role of “emergency duty officer” and during which time period.

8.1 Collective Bargaining Agreement and 49 U.S.C. §5333(b)

- (A) Effective on the Start of Service Date, the Contractor assume responsibility for the Collective Bargaining Agreement from the DCTC. DTD shall make reasonable efforts to ensure that personnel subject to the CBA are available for onboarding, training, and other matters requested by the Contractor prior to the Start of Service Date.
- (B) Pursuant to North Carolina law, the City shall have no role or responsibility with respect to negotiation, renegotiation, or enforcement of the Collective Bargaining Agreement.
- (C) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice, including all relevant information, to the DTD Project Manager
- (D) The Contractor shall be administratively responsible for the terms of the 13(c) agreement insofar as they may apply. The Contractor shall have financial liability for any claims or obligations related to 49 U.S.C. §5333(b) (formerly Section 13(c) of the Federal Transit Act) that are created by acts or omissions of the Contractor that are not directed by the City. In addition, the Contractor shall cooperate with the City (including the provision of payroll records and other information) in the resolution or defense of any 13(c) claims or disputes, and in the implementation of any Section 13(c) remedies.
- (E) The Contractor shall not assist or encourage any employee to file or otherwise pursue a claim against the City or take any action which is contrary to the interests of the City under Section 49 U.S.C. §5333(b) or the Section 13(c) arrangements or agreements, relating to the termination of Services under this Contract or in any future transition from the Contractor to another service provider, or any other action or event relating to the Contract.

- (F) If the Contractor fails to comply with this obligation, the Contractor shall be financially liable for all costs incurred by the City (including attorneys' fees) associated with any Section 13(c) claims or delays in the receipt of federal grants.

8.2 Wages and Benefits

- (A) Employees of the Contractor shall not be considered employees of the City and the Contractor's employees shall not be entitled to participate in any wage and benefit package provided by the City to its employees.
- (B) Except as provided for herein, the Contractor shall be solely responsible for establishment and payment of wages and benefits for its employees and shall cause the withholdings to be made as required in the performance of the Contract.
- (C) The Contractor shall comply with the requirements of employee liability, worker's compensation, unemployment insurance, social security, and any other current and future legal requirements.

8.3 Pension Obligations

- (A) The Contractor shall assume the sponsorship of and be responsible for maintaining the existing Pension Plan described in Section 9A of the Collective Bargaining Agreement or as otherwise may be agreed to by the Union.
- (B) The City warrants that as of the Setting Date, the Pension Plan has the actuarial values and characteristics described in "Durham Retirement Plan 4-72143 – Actuarial Valuation Report for the plan year beginning January 1, 2022, and ending December 31, 2022."
- (C) The Contractor shall make all Estimated Contributions to the Pension Plan and Estimated Premiums to PBGC, as provided for in the Price Proposal.
- (D) If the actual required pension contributions (the "Actual Contributions") or actual required PBGC premiums (the "Actual PBGC Premiums") vary by more than five percent (5%) in either direction (up or down) from the Estimated Contributions or the Estimated PBGC Premiums (the "Variation Window") in any given year during the Contract Term, then the City and Contractor shall make an equitable lump sum adjustment to the next appropriate invoice provided, however, that no upwards adjustment to the Contractor will be made unless and until the Contractor can establish to the reasonable satisfaction of the City that:
 - (1) all previous Estimated Contributions or Estimated PBGC Premiums, as applicable, were made when due; and
 - (2) such cost increase resulted from event(s) or circumstance(s) outside the control of the Contractor.
- (E) Contractor shall deliver to DTD Project Manager a full accounting of current and projected pension contributions for the Plan made by Contractor every six (6) months during the Contract Term. The accounting periods shall be July 1 -December 31 and January 1-June 30 of each Contract Year. Contractor's final accounting for each 6-month period shall be delivered to DTD Project Manager no later than the last day of the next month immediately following the end of such 6-month period (e.g., the final accounting for the period July-December 2023 is

due no later than January 31, 2024). Contractor shall also provide the final annual actuarial valuation performed for the Plan within ten (10) business days of receipt of such report from the Plan's actuary.

- (F) On annual basis, will review Contractor's accounting and actuarial analysis(es) to determine whether (i) the Actual Contributions varied from Estimated Contributions in excess of the Variation Window for the prior Contract Year and/or (ii) the Actual PBGC Premiums varied from Estimated PBGC Premiums in excess of the Variation Window for the prior Contract Year.
- (G) The City shall have the right, at its own expense, to engage a third-party accounting or actuarial consulting firm to conduct an actuarial analysis and/or financial audit of the Plan and Contractor's calculation of contributions. If a variation in excess of the applicable Variation Window is identified and the requisite showing by Contractor is made to the satisfaction of the City, any equitable lump sum adjustment will be implemented on the next appropriate monthly invoice.
- (H) Upon termination or expiration of the Contract, the Contractor shall transfer the Plan to the Succeeding Contractor (or to the City, if so directed by the DTD Project Manager). The Contractor shall cease to be the Plan sponsor as of the close of business on the later of (a) the date of termination or expiration of this Contract or (b) the date immediately preceding the date that the incoming contractor assumes responsibility for the services covered by this Contract. If Contractor has made timely Actual Contributions and Actual PBGC Premium payments and has exercised its legal obligations, including its fiduciary responsibilities, with respect to funding and asset management in a reasonable manner at all times during the term of this Contract, then:
 - (1) Contractor will have no further obligation with respect to the Plan or for Plan benefits when the Contractor is no longer the Plan sponsor; and,
 - (2) The City shall indemnify the Contractor for any damages, expenses, or fees ("liabilities") incurred by Contractor with respect to the Plan after the termination or expiration of this Contract only to the extent that such liabilities are a direct result of the action or inaction of City officers, officials, employees, or agents.
- (I) Any liabilities arising from or connected to the following are not covered by this indemnity:
 - (1) all obligations and liabilities arising from the operation or administration of the Plan during the term of the Contract, and
 - (2) all obligations and liabilities arising from a breach of this Contract or any fiduciary duty by Contractor or its affiliates at any time.
- (J) The City does not indemnify the Contractor, its affiliates, or any other individual or entity against liabilities arising from any action or inaction of the Contractor, its affiliates, any other individual or entity, or any other third party.
- (K) Contractor shall maintain fiduciary liability insurance that provides for three years of coverage following the termination or expiration of the Contract to cover any third-party claims arising under the Plan resulting from Contractor's sponsorship and management of the Plan during the Contract Term.

8.4 Key Personnel

- (A) Through its Key Personnel and otherwise, the Contractor shall provide management staffing at a level and capability sufficient to oversee performance of the Contract.
- (B) All Key Personnel shall meet the qualifications and experience requirements in the Request for Proposals, be assigned full time to the performance of this Contract and be based at the OMF.
- (C) The Contractor shall provide no less than two weeks' notice of any change in Key Personnel. No Key Personnel position shall be left vacant for more than forty-five Days unless otherwise approved by the DTD Project Manager. The City reserves the right to interview and approve Key Personnel not identified in the Contractor's Proposal.
- (D) A vacancy must be temporarily filled by a qualified individual on an interim basis while a more extensive search for a replacement is conducted. Failure to provide a satisfactory replacement for a Key Personnel position within sixty (45) Days shall result in a deduction of the prorated amount of the salary and benefits of the individual during the full period of the vacancy from ATL's monthly payments to the Contractor.

8.5 Retention of Non-Union Personnel from DCTC

- (A) Notwithstanding the Contractor's Section 13(c) obligations described in Section 8.1, the Contractor shall retain all Non-Union Personnel as of the Setting Date for at least thirty (30 days) from the Start of Service unless Key Personnel elects to resign or retire or must be terminated for cause. The salary and benefits of the Non-Union Personnel shall be equal to or greater than the salary paid by DCTC. If the Contractor determines to terminate any Non-Union Personnel, the Contractor shall be responsible for all post-employment benefits to which he or she would otherwise be entitled as of the Setting Date.
- (B) If the Contractor determines to not retain any non-union employee other than the Key Personnel after the thirty (30) day retention period, then the Contractor shall notify the DTD of the planned termination and cause for termination, if any. The Contractor shall:
 - (1) make commercially reasonable efforts to place the personnel in a similar position for which they are qualified within the GoDurham operation, Contractor's corporate organization, affiliate, or subcontractor.
 - (2) be responsible for other post-employment benefits to which the employee would otherwise be entitled as of the Setting Date.
- (C) An employee may not be terminated and re-assigned to a subcontractor solely for the purpose of meeting the DBE goal.

8.6 Allowance for Accrued Paid Time Off

- (A) The City estimates that as of January 1, 2023, employees of DCTC have approximately 36,354 hours of accrued paid time off that is unused pursuant to Sections 10 and 11 of the Collective Bargaining Agreement (for Union Personnel) and the employee handbook (for Non-Union Personnel). The accrued time off has an estimated value of \$1,328,585.44.

- (B) Unless otherwise agreed to in writing by the Union, the Contractor shall honor the paid time off provisions of the Collective Bargaining Agreement, including any previously scheduled paid time off that has been approved at least 14 Days prior to the Start of Service date. The Contractor shall honor the same practices for Non-Union Personnel.
- (C) The City shall reimburse the Contractor not to exceed \$1,330,000 for the actual amounts paid by the Contractor to fulfill DCTC's obligations with respect to paid time off.
- (D) Unless specifically agreed to in writing by the Union and the DTD Project Manager, for across-the-board lump sum payout of Paid Time Off Accruals shall not be eligible for reimbursement.

8.7 Minimum Requirements for Employee Training

- (A) No less than 14 Days prior to the Start of Service Date, the Contractor shall submit an Employee Training Plan to the DTD Project Manager for review and comment. At a minimum, the Employee Training Plan shall include the following:
 - (1) Safety training necessary to meet local, state, and federal requirements, and the requirements of the Go Durham Maintenance Plan in effect as of the Setting Date.
 - (2) Not less than 8 hours of initial training in customer service shall be provided for all Field Supervisors, Bus Operators, Customer Service Representatives, and other personnel frequently in direct contact with the public. Said training shall include a conflict de-escalation and resolution component. Said personnel shall also receive not less than 8 hours annually of refresher training in customer service.
 - (3) All maintenance personnel must receive a minimum of 40 hours of vehicle specific training annually. This training may include Contractor or vendor-provided refresher/update training on various aspects of Revenue Vehicles.
 - (4) Staff charged with maintenance and servicing of hybrid and/or electric vehicles shall receive maintenance and safety training, including arc-flash training, NFPA 70E or OSHA training per 29 CFR 1910, and related OEM servicing and maintenance training for high voltage systems.
- (B) The Contractor's plan to:
 - (1) encourage upskilling of existing personnel, especially vehicle maintenance personnel regarding ASE certifications.
 - (2) provide training of Bus Operators and Field Supervisors in the operation of new bus models, including electric vehicles to be used in Revenue Service.
 - (3) Meet the OEM training requirements for Fare Collection Mechanisms and on-board technologies, fire suppression systems, oil and fluid sampling analysis, and other special disciplines or functions required to maintain Revenue Vehicles.
 - (4) Train supervisory personnel to assist with identification and appropriate handling of employee/subcontractor drug and alcohol problems.

- (5) Train all Bus Operators and Field Supervisors on the requirements for public transit as set out in the Americans with Disabilities Act of 1990, as amended, and in the regulations of U.S. Department of Transportation at 49 CFR Part 37 implementing ADA requirements.
- (6) Achieve National Incident Management Systems training as described in the Section 15.
- (7) The Contractor shall maintain current documentation of all completed training in the employee's personnel file.

8.8 Progressive Disciplinary Policy for Non-Union Personnel

Prior to the Start of Service Date, the Contractor shall provide the City with a copy of their Progressive Disciplinary Policy for review and comment at Contract Start. The policy should be detailed in the type of violations and penalties for violations.

9 Revenue Vehicles

9.1 In General

- (A) Not less than 14 Days prior to the Start of Service, the Contractor shall submit to the City a Revenue Fleet Maintenance Plan, including a quality management element to meet the following requirements of this Contract which are further described below:
- (1) maintain all Revenue Vehicles in accordance with OEM specifications.
 - (2) Implement a preventative maintenance program
 - (3) perform daily vehicle inspections
 - (4) Maintain all on-board systems and coordinate same with Technology Vendors
 - (5) Maintain all communications systems, including but not limited to radio dispatch and CAD/AVL.
 - (6) provide all labor, repairs, parts, supplies, lubricants, solvents, diagnostic equipment, software and software updates, and all other components, services, tools, and equipment (including diagnostic equipment) which may be required to fulfill its maintenance responsibilities.
 - (7) Manage all Inventory, including establishing accounts with such vendors as it may deem necessary in the performance of its maintenance responsibilities.
 - (8) Adhere to out of service criteria
 - (9) Provide all tires
 - (10) Repair all body damage
 - (11) maintain the branding scheme (paint, logos, decals, etc.) on all Revenue Vehicles in a “like new” condition.
 - (12) Properly keep all records related to vehicle maintenance
 - (13) Manage vehicle and component warranties
 - (14) Manage and coordinate insurance claims in coordination with the City’s insurance administrator
 - (15) Provide for the towing of Revenue Vehicles
 - (16) Perform oil and fluid analysis
 - (17) Perform emissions control programs
 - (18) Clean and maintain the interior of vehicles free of trash, debris, graffiti
 - (19) Manage all warranty claims
 - (20) Implement a pest control management program
 - (21) Wash the exterior of all vehicles and perform minor and major detailing

9.1.1 Use of Vendors and Subcontractors

The Contractor shall only use vendors and subcontractors approved by the City to perform work on a Revenue Vehicle. Vendors and named in the Contractors named in the Contractor's Proposal shall be considered approved unless specifically determined otherwise by the City. Vendors or subcontractors known to the Proposer at the time of Offer shall be listed in Form #3.

9.1.2 Parts and Supplies

Only original equipment manufacturer (OEM) or OEM approved parts and supplies or Approved Equal shall be used.

9.1.3 Modifications

No variation or vehicle system modifications will be allowed without written authorization from the DTD Project Manager.

9.1.4 Maintenance Records

- (A) The Contractor shall prepare, maintain, and make available to DTD, all records, and data relative to the maintenance of Revenue Vehicles.
- (B) The Contractor shall use the City's Computerized Maintenance Management System (CMMS) and electronic reporting system known as Faster or Approved Equal. If the Contractor uses an Approved Equal, then the CCMS shall:
 - (C) be non-proprietary, or Contractor shall be responsible for transitioning all records to a Succeeding Contractor.
 - (D) fully interface with the CAD/AVL system
 - (E) provide for compliance with all state and federal FMVSS and asset management requirements
 - (F) The DTD Project Manager shall be provided appropriate read-only access to the CCMS.
 - (G) Work orders shall be made for all tasks performed on Revenue Vehicles including all warranty and subcontracted tasks performed on City vehicles. Work orders shall include vehicle number, vehicle mileage when work order is opened, dates of complaint and repair, technician name, reported complaint, cause, correction details, labor hours and materials used.
 - (H) The Contractor shall also maintain records related to preventive maintenance inspection and actions, minor and major systems failures, rebuilds and major component replacements, tire installation and usage, oil and fluid usage and analysis, road calls, and other information that would permit a forensic analysis of vehicle maintenance.

9.1.5 Warranty Management

- (A) The Contractor shall manage a complete and comprehensive Warranty Recovery Program for all Revenue Vehicles, components, and on-board technologies. Management and maintenance personnel and/or subcontractors shall have knowledge of all necessary warranty reimbursement procedures to ensure the City recovers all funds for which it is eligible. The Contractor may be liable for failure to comply with warranty requirements.

- (B) On a monthly basis, the Contractor shall provide a Warranty Recovery Program Report to the DTD Project Manager which indicates all warranty claims submitted and their disposition and the cost and cash or in-kind recovery of warranty claims, including labor costs.

9.2 Preventive Maintenance Program

The Contractor shall implement a preventive maintenance program as described herein.

9.2.1 Vehicle Preventive Maintenance Inspection

- (A) Preventive maintenance inspections (PMI) are a Key Performance Indicator subject to incentives and liquidated damages.
- (B) The Contractor shall perform preventive maintenance inspections at fixed-point intervals of 6,000 miles.
- (C) A PMI performed more than ten percent (10%) before, or ten percent (10%) later than the fixed-point interval mileage shall be considered non-compliant. A PMI that is incomplete shall be considered non-compliant.

9.2.2 Vehicle Preventive Maintenance Actions

- (A) Contractor shall perform preventive maintenance activities in accordance with the requirements of the OEM and shall be sufficient so as not to invalidate or lessen warranty coverage of Revenue Vehicle or component. The Contractor shall not use parts or Equipment from inactive Revenue Vehicles to perform any preventive maintenance activity.
- (B) Preventive Maintenance Actions shall be performed on but not limited to: wiring configuration and clamping, power and drive train components, air and brake systems, and body assembly, safety equipment, fire suppression system, , hybrid drive system components (including drive unit, coolers, batteries, etc.), fuel tank(s) and related valve/vent systems, air systems, cooling systems, electrical systems, hydraulic systems, charge air cooler systems, steering, brake, suspension, axles, HVAC systems, kneeling features, destination signs, lighting (interior and exterior), seating, accessories, emergency egress, push out windows, emergency hatches and doors, emergency lighting
- (C) Adherence to preventive maintenance inspection schedules shall not be regarded as reasonable cause for deferred maintenance in specific instances where the selected Contractor's employees observe that maintenance is needed in advance of said PMI schedule.
- (D) The Contractor shall not defer maintenance for reasons of shortage of maintenance staff, parts, or operable vehicles. The PMIs and running repairs shall receive priority in the use of the Contractor's maintenance resources. The Contractor shall adjust the work schedules of its employees as necessary to meet all preventive maintenance activities, including the use of approved vendors or subcontractors to meet maintenance requirements.

9.2.3 Other Preventive Maintenance Inspections

- (A) For the purpose of this section, "fixed point interval" means the number of Revenue Service Hours, Day or Months specified by the OEM.

- (B) The Contractor shall conduct seasonal inspections and inspections for On-Board Technologies, components, and Mechanical Systems at fixed point intervals defined by the OEM. Such inspections shall be considered as part of the Key Performance Standard calculations.

9.3 Routine Maintenance Program

- (A) The Contractor shall specify its routine maintenance program in the Revenue Fleet Maintenance Plan. In The Routine Maintenance Program shall comply with OEM specifications or the standards below, whichever is greater:
 - (1) Body damage (including all vehicle appurtenances) shall be repaired in a professional manner within 21 Days of occurrence.
 - (2) The Contractor shall certify to the DTD Project Manager no later than March 1 of each year that air conditioning systems are fully operational.
 - (3) Seats shall be maintained in proper operating condition at all times. All rips, tears, cuts, cracks, gum, graffiti, and other damage shall be cleaned or repaired in a professional manner prior to the start of Revenue Service on next Day after discovery. Seat covers/seat inserts which are worn, damaged, and cannot be professionally repaired, using materials which are identical in design and color as those materials being replaced. If matching fabric/cushions are unavailable, then the Contractor will work with DTD Project Manager to select an acceptable substitute before the Contractor procures the replacement materials.
 - (4) Windows that are broken, cracked, distorted, or clouded/opaque, or with significant scratches or etching shall be replaced in a professional manner prior to the start of Revenue Service on next Day after discovery.
 - (5) Bicycle racks which are bent, broken, or inoperable shall be prior to the start of Revenue Service on next Day after discovery

9.4 On-Board Technologies

- (A) As of the Setting Date, Revenue Vehicles have the On-Board Technologies listed in Table 9.1.
- (B) The Contractor shall maintain all On-Board Technologies in accordance with OEM specifications. As necessary, the Contractor shall coordinate any systemic repairs or upgrades with the Technology Vendor.

Table 9.1- On-Board Technologies

Equipment / Technology	Manufacturer / System
Cellular Modem	DigiModems (5G)
Passenger Wi-Fi	Hyperlink Technologies
Mobile Ticketing	Umo (formerly Delerrok) TouchPass Reader
Vehicle Control Unit	Avail Technologies
Mobile Data Terminals	Avail Technologies

Equipment / Technology	Manufacturer / System
Farebox	GFI Genfare Odyssey Farebox
Video Surveillance	Apollo RoadRunner 4K
Infotainment	Luminator
Automated Passenger Counters	UTA
Automatic Vehicle Health Monitoring	Avail Technologies
Vehicle Performance Monitoring	Pretek
2-Way Radio	Motorola APX6500
Exterior Destination Sign	Luminator Legacy Series, Smart Series 1, 2, and 3
Interior Passenger Advisory Sign	Clever Devices 1-Line
Automated Announcements	Avail Technologies
Electric Bus Performance Monitoring	Chargepoint
PA System (Internal and External)	Gillig Bus
Tire Pressure Monitoring	Conticonnect

9.5 Tires

- (A) The Contractor shall be responsible for providing tires for all Revenue Vehicles. Tires shall be of the same type and rating as installed by the OEM.
- (B) All vehicles shall be maintained with a full set of tires (including a spare tire if originally equipped) for each vehicle. Tire pressure shall be maintained in accordance with the OEM or tire manufacturer's recommendation.
- (C) Tires shall always be matched (by brand, size, and tread pattern) on each axle. Tires shall meet the Revenue Vehicle manufacturer's load requirements. Tires shall not vary more than 3/32" between inner and outer tires and not more than 4/32" between curbside and roadside. Tires worn below 4/32 shall be replaced or the vehicle placed out of service.
- (D) Tires shall be branded with serial numbers and tracked by vehicle number and installation position.
- (E) Revenue vehicles originally equipped with low rolling resistance tires shall only have tires replaced with the same manufacturer and low rolling resistance model and rating as originally equipped.
- (F) Revenue Vehicles originally equipped with Conticonnect Tire Pressure Monitoring Systems (TPMS) shall only have tires replaced with the Conticonnect or Approved Equal sensor-equipped wheels and tire assemblies. The Contractor shall maintain the TPMS.
- (G) Recap, retread and/or re-grooved tires shall not be permitted on any Revenue Vehicle.
- (H) When tire rims are damaged, the Contractor shall replace with like rims.
- (I) Tires may not be removed for re-use on other vehicles from new vehicles that are stored awaiting service or from vehicles out of service.

- (J) DTD encourages but does not require the Contractor to maintain the technology testing partnership with Tyrata for its Intellitread system for reading tread depth on tires.

9.6 Pre- and Post-Trip Inspections

Operators shall conduct a pre- and post-trip inspection of their assigned Revenue Vehicle using Zonar, Avail, or Approved Equal provided by the Contractor. The Contractor shall maintain records of all pre- and post-trip inspections throughout the term of the Contract.

9.7 Out of Service Requirements

- (A) No vehicle shall be placed in Revenue Service if any deficiency listed in Paragraph B been identified.
- (B) Out of Service Designations shall include:
 - (1) Tires with air pressure below 20% of recommended pressure
 - (2) Tires with less than 4/32" tread depth
 - (3) Inoperative emergency exits/doors/windows
 - (4) Inoperative communications devices (CAD/AVL, Radio, Cameras)
 - (5) Inoperative, expired, or missing safety equipment
 - (6) Revenue vehicle seats and interior components contaminated with bodily fluids
 - (7) ADA Wheelchair kneeling features inoperable
 - (8) ADA Wheelchair tie downs or seat sliders inoperable
 - (9) Leaking and/or cracked hydraulic lines; oil lines, coolant lines, or fittings, seals, or joints with either a Class II or Class III leak, as outlined; unsecured wiring harnesses, and harnesses or hoses and lines that are rubbing or chafing
 - (10) Inoperative Automatic fire suppression system
 - (11) Any condition not in compliance with applicable federal or state Regulations

9.8 Vehicle Servicing

Vehicle servicing shall occur at the intervals listed in Table 9.2 unless otherwise specified by the OEM.

Table 9.2 - Vehicle Servicing Requirements

		Not less than			
		Immediately upon Discovery	Daily	30 Days	90 Days
Fueling			x		
Engine oil, coolant level in all reservoirs, windshield wiper fluid, hydraulic or power steering fluid, brake fluid, and transmission fluid check/add.			X		
Tire Inspection					
Lights, Flashers, and Wipers Check			x		
Interior sweeping			x		
Remove graffiti			x		
Exterior wash			x		
Wipe down of Operator compartment			x		
Free of noxious odors from cleaning, pest control or other products			x		
Repair upholstery damage			x		
Remove bodily fluids		x			
Clean and treat rubber or vinyl exterior components with preservative					x
Hand scrub wheel wells, flaps, engine compartment doors, exterior doors, handles, and latches, and any exterior seams or joints.				x	
Hand-clean all windows, destination signs, mirrors, and window tracks				x	
Cleaning of ceilings, sidewalls (all), escape hatches, mirrors, front and rear doors, luggage/storage compartments where present, all chrome/stainless railings, movable seat tracks, and interior light lenses.				x	
Clean all air conditioning vents				x	
Clean flooring areas with soap and water to include Operator's area, passenger area, wheel housing, steps and ramps/wheelchair lifts. Remove substances that have adhered surfaces				x	
Clean and sanitize all seat cushions and backs, by brushing and vacuuming. Removal of all gum and/or local spots and stains shall be required				x	
Pressure wash engine and undercarriage					
Disassemble/clean/reassemble all overhead light covers					
Steam clean all passenger and Operators seats; rear seating area lifted and cleaned underneath and around it.					x

9.9 Body Damage

The Contractor shall promptly repair all body damage. All repairs made shall be performed by competent repair facilities qualified to restore the damaged vehicle to its original configuration, appearance, and structural integrity.

9.10 Emissions Control Programs

The Contractor shall perform and certify such tests of equipment required to meet City or other local, State, and federal requirements related to exhaust smoke and engine emissions.

9.11 Oil and Fluid Analysis

- (A) The Contractor shall develop and implement an Oil and Fluid Analysis Plan for review and approval by the DTD Project Manager. The Plan shall include:
 - sampling of oils, fluids, and coolants at the following intervals by an independent ISO 17025:2017 certified facility or with the approval of the DTD Project Manager by the Contractor's similarly trained personnel:
- (B) taking proactive measures to repair or remedy anomalies noted on the reports.
- (C) reporting of all oil and fluid sample analysis reports, the number of samples taken, the number of discrepancies noted, and the corrective action taken for each discrepancy identified.

9.12 Vehicle Commissioning and Decommissioning

- (A) Except as provided below, the Contractor shall be responsible for the acceptance, commissioning, decommissioning, and disposal of all Revenue Vehicles in coordination with the City's Fleet Management Division. Within 60 days of the Start of Service date, the Contractor shall provide a Vehicle Commissioning and Decommissioning Plan (VCDP) which shall be reviewed and approved by the DTD Project Manager.
- (B) The VCDP shall include the following minimum Contractor responsibilities:
 - (1) conducting pre-award reviews and post-delivery requirements in accordance with FTA requirements, including but not limited to Buy America certification, purchaser requirement certification, and Federal Motor Vehicle Safety Standards (FMVSS) certification. The Contractor shall provide a resident inspector, if necessary.
 - (2) On-site inspections including but not limited to interior and exterior finish and appearance, drivetrain, suspension and steering, brakes, ADA equipment, and vehicle subsystems.
 - (3) Coordination with Technology Vendors of equipment upfitting or removal
 - (4) Road testing and operator training
 - (5) Receipt and review of vehicle documentation (manuals, warranties, etc.)
 - (6) Coordination and inspection of Revenue Vehicle mid-life overhaul or major systems replacement by a third-party vendor.

- (7) No Revenue Vehicle may be operated on public streets until the City's Fleet Management Division indicates its approval to do so.
- (C) Vehicle Commissioning/Decommissioning Allowance (VCDA)
- (1) There is a Vehicle Commissioning/Decommissioning Allowance. There is an allowance of \$125,000 during the Initial Term of the Contract to reimburse the Contractor for expenses related to the commissioning or decommissioning of Revenue Vehicles.
 - (2) The purpose of the VCDA is to reimburse the Contractor for its assistance in: receiving new or overhauled vehicles from the City's vendor; performing verification and shakedown testing to verify that all systems operate as expected and meet performance requirements; addressing issues identified during the system shakedown and performing additional vehicle tuning as needed which may not be covered by warranty; assisting in the upfitting of or removal of on-board technologies to the extent that such technologies are not installed or removed by their manufacturer; and taking other actions necessary to place a vehicle in service or a removing or a vehicle from service as directed by the DTD Project Manager.
 - (3) The VCDA shall not be used for the regular wages and benefits of salaried personnel or the non-overtime wages of Union personnel or for other activities otherwise required by the Technical Provisions except as provided in (D)(i) of this Section.
 - (4) The VCDA may be used to reimburse the Contractor for
 - (a) overtime wages of hourly personnel where work typically performed during regular work hours is displaced by work related to the commissioning or decommissioning of vehicles.
 - (b) direct, out-of-pocket expenses of corporate personnel participating in the commissioning or decommissioning of vehicles.
 - (c) training employees in the performance of duties related to electric buses.
 - (d) Inspection
 - (e) other expenses approved by the DTD Project Manager.
- (D) The City shall be responsible for tag and title processes for all newly acquired or decommissioned Revenue Vehicles.

9.13 Major Component Failures

Provided that the requirements of Sections 9.2 (Preventive Maintenance) and 9.3 (Routine Maintenance) have been met with respect to the Revenue Vehicle at issue; and the remedies of Sections 9.1.5 (Warranty Management) and 20 (Insurance) have been exhausted, the cost of any Major Component failure shall be reimbursed to the Contractor by the City.

10 Fuel and Fueling

10.1 In General

- (A) Subject to the provisions below, the City shall provide for all diesel and unleaded fuel for Revenue and Service and Support Vehicles. The primary fueling facility for GoDurham services shall be at the OMF. In emergency circumstances, the Contractor may use City fueling locations at 1900 Camden Avenue and 1100 Martin Luther King Jr. Parkway, subject to advance notification of and approval by the DTD Project Manager.
- (B) Through the Transition Plan, the City will provide all operating, administrative and accounting procedures that the Contractor must follow related to vehicle fueling.

10.2 Contractor Responsibilities

- (A) The Contractor shall
 - (1) monitor diesel fuel storage tank reports including diesel fuel levels, interstitial leaks, water intrusion, etc. The Contractor shall notify the DTD Project Manager of any concerns. The Contractor shall take reasonable maintenance-oriented actions as may be necessary to correct the concern. The City shall be responsible for any subsurface repairs or other repairs more than \$5,000.
 - (2) furnish and install and install diesel exhaust fluid (DEF).
 - (3) establish and maintain a contract for emergency wet fueling at the Facility. Any use of the emergency contract shall be reimbursed by the City.
 - (4) Use the Aim 2 Fuel Monitoring equipment and FuelMaster fuel management system, the Contractor shall monitor fuel tank levels and process fuel orders directly through the City's fuel provider.
 - (5) maintain accurate mileage and fuel dispensed records for each vehicle fueled and shall include those items in the permanent vehicle record daily.
- (B) To the extent that Contractor uses its own Service and Support Vehicles, it shall coordinate fueling of same with the City's Fleet Department. The City does not warrant that Contractor-owned vehicles may refuel at a City-owned fueling station.

10.3 Electric Vehicle Charging and Charging Stations

- (A) The City of Durham is committed to transitioning to a fully electric fleet by 2035 and intends to acquire battery electric buses as described in the Fleet Management Plan as of the Setting Date.
- (B) Within 60 days of the Start of Service date, the Contractor shall provide a Charging Management Plan for the City's review and approval. The Contractor shall notify the DTD of significant deviations from the Charging Management Plan.

- (C) The City shall furnish and install electric vehicle charging stations in sufficient quantity, type, and schedule to support the electric vehicle purchases. The Contractor shall maintain all electric vehicle charging stations in accordance with OEM specifications.

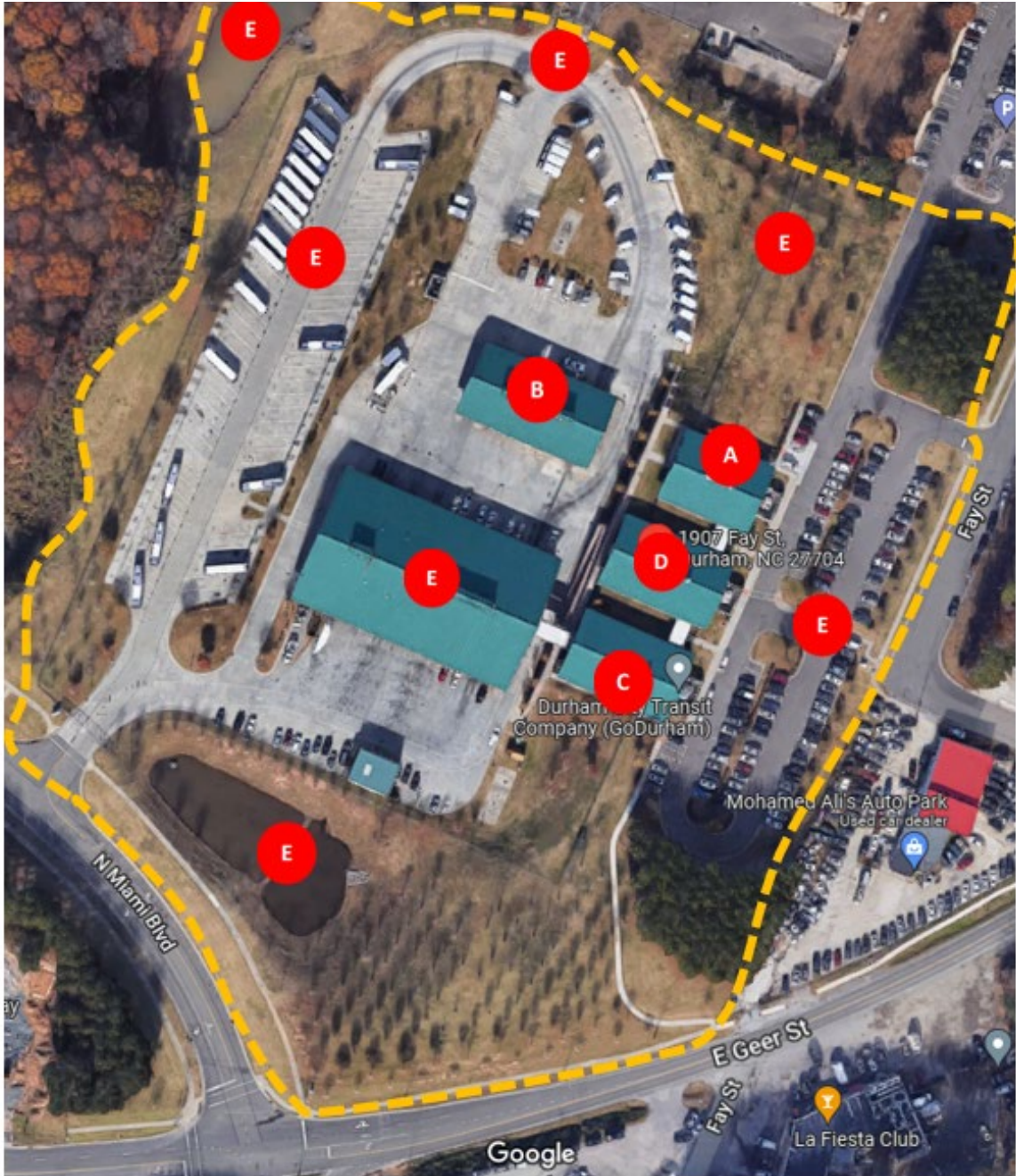
10.4 Service and Support Vehicles

- (A) The City shall provide Service and Support Vehicles as described in the Rolling Stock Status Report as of the Setting Date.
- (B) All Service and Support vehicles shall be maintained by the City. The Contractor shall coordinate all maintenance activities directly with the City's Fleet Management Department, including installation of any specialty equipment needed to perform the services required by this Contract. The Contractor shall supply such materials as may be necessary for the Service and Support Vehicles such as but not limited to spill kits, first aid kits, fire extinguishers, etc.
- (C) Unless otherwise agreed to by the parties, the City shall be responsible for acquisition of any new Service and Support Vehicles. Nothing in this section shall prohibit the Contractor from using its own Service and Support Vehicles; however, any vehicles purchased by the Contractor specifically for use on this Contract shall become property of the City at the end of the Contract subject to the terms of Section 11.6.
- (D) Any Service or Support Vehicle supplied by the Contractor shall be branded in a manner like City-supplied vehicles.
- (E) The Contractor shall be responsible for delivering or towing Service and Support Vehicles to the City's fleet management site or to a City-designated vendor for repair.
- (F) The Contractor may not use Revenue Vehicles in place of a Support or Service Vehicle or vice versa without the consent of the DTD Project Manager.
- (G) To the extent a Service or Support Vehicle is not available due to damage, repair, or maintenance, the City shall provide a spare or contractor may provide such vehicle at City's expense, subject to approval of the DTD Project Manager

11 Operations and Maintenance Facility—In General

- (A) For the purpose of this Section the Operations and Maintenance Facility includes:
 - (1) the areas shown in Figure 1.
 - (2) All Equipment listed in the Asset Management Plan as of the Setting Date
- (B) The OMF shall be under full control of the Contractor for the duration of the Contract except as specifically provided herein.
- (C) Contractor shall not rent, sublet, or assign out any part of the OMF.

Figure 1. OMF Responsibilities



- A Paratransit Office
- B Paratransit Maintenance
- C GoDurham Fixed Route Offices
- D GoDurham Admin Offices
- E OMF & Yard

11.1 OMF Maintenance and General Upkeep

- (A) Within 30 days of the Contract Start Date, the Contractor shall prepare plan for general maintenance and upkeep of the OMF (the OMF Plan) that meets or exceeds standards and requirements established in the GoDurham Facility Maintenance Plan. The City shall review and approve the OMF Plan.
- (B) Until such time as the Contractor's OMF Plan is approved, the GoDurham Facility Maintenance Plan shall apply.
- (C) Notwithstanding the above, the Contractor's OMF Plan shall include at a minimum:
 - (1) all local, state, and federal safety and environmental requirements
 - (2) staffing requirements necessary to implement the plan
 - (3) provisions for:
 - (a) maintenance of the OMF (and other areas shown in Table 11.1) in a clean and orderly condition that is free of litter, debris, weeds, oil and fluid stains, etc.
 - (b) mowing of grass areas, maintenance of landscaping and stormwater retention facilities.
 - (c) maintenance and repair of all plumbing, electrical, and HVAC systems, including exterior lighting
 - (d) maintenance and repair of broken floors, ceilings, glass, walls, doors, and overhead doors.
 - (e) maintenance of all shop equipment, including lifts and vehicle wash,
 - (f) maintenance of diesel fueling systems and electric charging stations
 - (g) removal of snow and ice from the parking area and walkways/stairs, including application of sand and/or salt as appropriate for pedestrian and vehicular safety
 - (h) maintenance of oil & water separators and other environmental compliance equipment
 - (i) pest management
 - (j) building security
 - (k) hazardous waste
 - (l) cleaning and maintenance of administrative areas and employee break rooms and locker rooms.
 - (m) Employee amenities (refrigerators, water fountains, coolers, coffee machine, microwave)
 - (n) backup power generation, including testing not less than semiannually.
 - (o) biohazards

- (4) The pest management element of the OMF Plan shall require at least twice a year or immediately upon discovery of an infestation, the referenced facilities will be treated and/or exterminated to prevent infestation by ants, fleas, roaches, bed bugs, and other insects and vermin, utilizing safe, non-hazardous and EPA approved insecticides/materials by a licensed and Pest Management certified exterminator; minimizing exposure of employees, customers, pets, service animals, and protected wildlife to the applied pesticides; acquiring and maintain Safety Data Sheet information for all pesticides used.
- (5) The hazardous waste element of the OMF Plan shall require the Contractor to store, monitor, and dispose of all hazardous waste in accordance with all EPA, state, county, and local regulations. The Contractor shall be properly registered and file and retain all manifests in accordance with EPA regulations.
- (6) The biohazards element of the OMF Plan shall comply with 29CFR Part 1910.1030, Blood borne Pathogens. Biohazards are as defined in OSHA 29CFR Part 1910.1030. In addition to biohazard cleanup, Concessionaire shall implement plans and procedures to address potential pandemics in accordance with federal guidelines for mass transit systems: Pandemic Influenza–Preparedness, Response, and Recovery–Guide for Critical Infrastructure and Key Resources, Annex: Mass Transit Subsector Pandemic Guideline; and OSHA guidance: Guidance for Preparing Workplaces for an Influenza Pandemic.
- (7) OMF Allowance
 - (a) There is an allowance of up to \$250,000 over the term of the Contract for repairs and improvements to the OMF which exceed the Contractor’s responsibilities.
 - (b) Prior to incurring any expenses for the OMF Allowance, the Contractor and DTD Project Manager shall agree on the necessity of the repairs or improvements.
 - (c) The allowance may be used for:
 - i. Purchase or rehabilitation of Equipment
 - ii. Safety or environmental health improvements
 - iii. Equipment needed for the integration of electric buses into the fleet; or
 - iv. Related items as agreed to by the DTD Project Manager.
 - (d) The allowance may not be used for the regular wages and benefits of salaried personnel or the non-overtime wages of Union personnel or for other activities otherwise required by the Technical Provisions.

11.2 Utilities

- (A) The Contractor shall be responsible for all arranging and payment of all utilities necessary for the OMF including, water, gas, internet, and telephone.
- (B) Electricity for all Passenger Facilities and Revenue Vehicles shall be placed in the name of and paid by the City, except where the Charging Management Plan described in Section 10.3 is not materially adhered to by the Contractor in which case the City may cause an Automatic Reopener to occur.

11.3 Alterations

The Contractor shall make no alterations to the OMF except with the written approval of the DTD Project Manager.

11.4 Notifications, Reports, and Records

- (A) The Contractor shall:
- (1) immediately notify the DTD Project Manager of any hazardous conditions that are outside of the Contractor's responsibility and work with the City to implement short-term and long-term corrective actions.
 - (2) perform inspections of the OMF as described in the OMF Plan and submit a report of the inspection to the DTD Project Manager that includes a corrective action plan, as necessary.
 - (3) maintain all records related to the OMF, including but not limited to operating manuals, repair logs performed in-house or by third-parties, materials safety data sheets, etc.
 - (4) comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act as amended, 33 U.S.C. 1251 at seq., including reporting each violation to the DTD Project Manager City who shall then make notification to FTA and the appropriate EPA Regional Office.

11.5 Offices for City Use

At all times, the Contractor shall maintain one locked office and three workstations for use by City employees, to include: desk, office chair, file cabinet, adequate lighting, and functioning telephone and data line.

11.6 Capital Repairs & Purchases

- (A) In the event that Equipment, Service and Support Vehicles, OMF or Equipment have been damaged with an estimated replacement or repair cost greater than \$5,000, the Contractor shall seek to recover the cost of said repairs or replacement through the appropriate insurance policy or warranty.
- (B) The Contractor shall have no obligation for capital repairs at the OMF or for the purchase of new Equipment or to repair any Equipment, Service and Support Vehicles, Facilities when the cost of such purchase or repair is estimated to be \$5,000 or greater.
- (C) Any Equipment purchased by the Contractor in its own name under this Contract becomes the property of the City upon full depreciation or upon the purchase by the City of the unappreciated balance, if the City so chooses.
- (D) If the Contractor elects to procure repairs to or purchases of Equipment or the OMF under this Section, then all applicable local, state, and federal procurement requirements shall be adhered to.
- (E) The Contractor shall provide a bill of sale, and title where applicable, to the City for all Equipment purchased and paid for by the City.

Table 11.1 - Facility Maintenance and Upkeep Requirements

Responsibility	A Paratransit Office 1911 Fay Street	B Paratransit Maintenance 1824 Miami Blvd	C GoDurham City Office 1907 Fay Street	D GoDurham Admin Office 1903 Fay Street	E GoDurham Maintenance 1820 Miami Blvd	Fixed Route Vehicle Yard Area
Custodial Services						
Empty Trash Receptacles and Remove Litter			X	X	X	X
Mop, Buff and Wax Floors			X	X	X	X
Vacuum and Clean Carpets			X	X	X	(A) X
Sweep and Dust			X	X	X	(B) X
Clean and Disinfect Furniture and Surfaces			X	X	X	X
Grounds and Yard Maintenance						
Perform pre- Season Clean-up	X	X	X	X	X	X
Cut Grass	X	X	X	X	X	X
Trim Trees and Bushes	X	X	X	X	X	X
Rake Leaves and Remove Debris	X	X	X	X	X	X

Responsibility	A Paratransit Office 1911 Fay Street	B Paratransit Maintenance 1824 Miami Blvd	C GoDurham City Office 1907 Fay Street	D GoDurham Admin Office 1903 Fay Street	E GoDurham Maintenance 1820 Miami Blvd	Fixed Route Vehicle Yard Area
Mulch	X	X	X	X	X	X
Remove Oil and Fluid Stains			X	X	X	X
Removal of Snow and Ice from Walkways and Lots	X	X	X	X	X	X
Pest Management						
Monitor for Pests			X	X	X	X
Cause Pesticides to be Applied			X	X	X	X
Safety and Security						
Perform Preventative Maintenance and Repairs to Surveillance Equipment	X	X	X	X	X	X
Perform Preventative Maintenance and Repairs to Security Lighting	X	X	X	X	X	X

12 Passenger Facilities

12.1 General

- (A) The Contractor shall be responsible for the general maintenance and upkeep of Passenger Facilities. Within thirty days of Start of Service Date, the Contractor shall submit a Passenger Facilities Management Plan to implement the requirements of this Section for review and approval of the DTD Project Manager. The PFMP shall be reviewed and updated annually.
- (B) In general, Bus Stops are categorized as follows:

Table 12.1 - Passenger Facilities

Passenger Facility	Description
Type A	Two (2) routes serving the location, a bus shelter with or without real-time schedule displays, and/or at least 25 average daily boardings at stop.
Type B	Do not include the attributes listed in Stop Type B but have a trash can and/or at least 10 average daily boardings.
Type C	Stop Type C is defined as stops that have fewer than 10 average daily boardings.

- (C) The City reserves the right to add, remove, or reclassify Bus Stops at its sole discretion or to change the definition of Type A, B or C; provided that any net increase in the number of Bus Stops greater than in Table 12.2 shall be cause for an Automatic Reopener.

Table 12.2 - Increased Bus Stops

Bus Stop Type	Net Increase
Type A (225)	Not to exceed 15
Type B (142)	Not to exceed 20
Type C (580)	Not to exceed 40

12.2 Standards of Maintenance and Upkeep

- (A) In accordance with the schedule provided Table 12.3 or as otherwise provided for herein, the following standards shall apply to the maintenance and upkeep of Passenger Facilities:
 - (1) During the growing season grass located on public property up to 50 feet from bus stop location or to the nearest intersection, whichever is closer, shall be mowed or trimmed such that height shall be maintained not to exceed 4 inches. Edge trimming shall be performed at lawn perimeters and tree wells. Weeds shall be removed from plant saucers and mulched beds.

- (2) Litter at all Passenger Facilities shall be removed from the public right-of-way within 50 feet from the location of the Passenger Facility or to the nearest intersection, whichever is closer. The Contractor shall make reasonable efforts to clear litter that is clearly associated with the Bus Stop on private property within 50 feet.
- (3) Graffiti shall be removed by methods similar to those used by the City's own forces. Any graffiti on private property adjacent to a Passenger Facility shall be noticed to the City via the Durham One-Call system.
- (4) Bus stop signs that are damaged, faded, or out of date, shall be cleaned, repair, or replace in-kind.
- (5) Power washing shall occur using commercially reasonable methods such that all designated areas are free of dirt, grime, pollen, biohazards, oil, grease, gum, cigarette butts, and otherwise. Contractor shall obtain all necessary permits regarding the treatment and containment of wastewater.
- (6) Prior to the any anticipated snowfall or ice accumulation such that the City of Durham and/or NCDOT deploys its forces, Passenger Facilities shall be pre-treated with salt or brine using commercially reasonable methods. Snow or ice shall be moved to bare pavement allowing for a free and clear path to and from the bus stop.

12.3 Bus Shelters

The Contractor shall ensure that all bus shelters

- (A) are equipped with a current system map and stop-specific schedule of service within 90 days of the Start of Service Date; and within 3 days prior to or after a Minor or Major Schedule Change.
- (B) have their lighting fixtures and fully functional and working where lights are presently installed. Burned-out lamps shall be replaced within 48 hours of reporting or detection by the Contractor.
- (C) have real-time information signs (insofar as they exist as of the Setting Date) fully operational or repaired or replaced within 48 hours of reporting or detection by the Contractor. If the City adds more than ten (10) real-time information signs, the Discretionary Reopener provisions shall apply.
- (D) Are clear of major scratches and discoloration that disrupts sightlines. Damage due to scratches or discoloration shall be corrected within 48 hours of detection or reporting by the Contractor except for damage which requires materials that are not available within the 48-hour period, in which case those items shall be ordered and repaired as soon as practicable.
- (E) are safe to the public within 4 hours of notice to the Contractor or prior to the first trip of the next Day, whichever is sooner. A shelter that is damaged beyond repair shall be removed within 48 hours of notice. The City shall be responsible for installation of new or replacement shelters.
- (F) Passenger Facilities Allowance

- (1) There is a Passenger Facilities Allowance. There is an annual allowance of \$75,000 in the first year of the Contract and \$50,000 each year thereafter to reimburse the Contractor for expenses related maintaining bus stops in a state of good repair.
- (2) The purpose of the Passenger Facilities Allowance is to reimburse the Contractor for additional efforts or extraordinary events such as: removing, transporting, and/or disposing of a bus shelter that is damaged beyond repair; purchasing or maintaining inventory needed for replacement parts of bus shelters, trash cans or benches; appurtenances; hardware necessary to install maps; or, other items or actions necessary to maintain bus stops in a state of good repair.
- (3) The Passenger Facilities Allowance shall not be used for the regular wages and benefits of salaried personnel or the non-overtime wages of Union personnel or for other activities otherwise required by the Technical Provisions except as provided.

Table 12.3 - Bus Stop Maintenance and Upkeep

Activity/Location	Stop Type			
	Durham Station	A	B	C
Power wash all off-street concrete areas and bus shelters	Monthly	Quarterly	If necessary to remove biohazards or oil and grease stains	
Empty trash bin	As necessary to prevent overflow but not less than twice daily	As necessary to prevent overflow but not less than twice weekly	Weekly	-
Remove graffiti	Within 24 hours of notice	Within 48 hours of notice	Within 48 hours of notice	Within 5 Business Days of Notice
Pick up litter	Concurrent with emptying of trash bin	Concurrent with emptying of trash bin	Concurrent with emptying or trash bin or not less than monthly whichever is more frequent	Monthly
Grass and Landscaping	All grass areas and landscaping shall be mowed, trimmed, and maintained continuously to present as neat and orderly.	Trim twice monthly during spring and summer.	Trim monthly during spring and summer	Trim twice during spring and summer

	Stop Type			
Activity/Location	Durham Station	A	B	C
Pre-treat (ice/snow)	Yes	Yes	-	-
Remove snow and ice	Continually as necessary ensure public safety	within 4 hours of last snowfall	-	-
Repair damaged but functional bus shelter or sign	Within 48 hours of notice	Within 48 hours of notice	Within 72 hours of notice	Within 5 Business Days of Notice
Remove Biohazards	Immediately upon notice or prior to the first trip of the next Day, whichever is sooner.	Within 4 hours of Notice or prior to the first trip of the next Day, whichever is sooner.		

12.4 Special Provisions Regarding Durham Station

The City intends to reconstruct exterior portions of Durham Transit Station no sooner than June 1, 2024 and lasting for a period of up to 18 months. The City shall make best efforts to minimize disruption to GoDurham services and the performance of the Contractor’s responsibilities. The Contractor shall reasonably cooperate with DTD and its construction contractor in the performance of the Contract during the reconstruction. Any material change to the Contractor’s responsibilities may be cause for a Discretionary Reopener.

13 Information Technology & Communications

- (A) This section applies only to desktop and laptop computers, tablets, peripherals, radios, and telephone equipment (referred to collectively as “machines”), associated software, and network infrastructure and services used for administrative functions and in support of the CAD/AVL system.
- (B) The machines, network infrastructure, and software in place as of the start of the Contract shall become part of the Inventory; however, said machines shall not be considered as Equipment nor valued as part of the Inventory for the purpose of Section 17.3.
- (C) The Contractor shall:
 - (1) maintain said machines, software, licenses, and network infrastructure and services, insofar as the Contractor deems necessary.
 - (2) furnish and install any new machines, software, licenses, and network infrastructure and services as needed.

14 Customer Service and Marketing

- (A) The Contractor shall have overall responsibility for design and implementation of Customer Service and Marketing (CSM) plan for GoDurham services.
 - (1) Within thirty days of Start of Service Date, the Contractor shall submit its CSM Plan to implement the requirements of this Section for review and approval of the DTD Project Manager. The Customer Service and Marketing Plan shall
 - (2) The Customer Service and Marketing Plan shall
 - (a) describe customer service training activities and expectations at all levels and across all roles of the of the organization.
 - (b) include all the requirements of this Section 14.
 - (c) include an anticipated budget for the Customer Service and Marketing Allowance.
 - (d) be updated by the Contractor and reviewed and approved by the City semi-annually to reflect Major Service Changes, new programs, and other efforts to be agreed upon.

14.1 Customer Service and Relations

- (A) The Contractor shall:
 - (1) ensure that all GoDurham customers with dignity, respect, civility, and professionalism by the Contractor's employees and subcontractors.
 - (2) cooperate and comply with reasonable requests by the City to distribute notices, schedules, or other promotional materials to passengers in connection with the Services.
 - (3) review, investigate, and respond to all customer and public inquiries, complaints, requests, and commendations within five Business Days of receipt.
 - (4) attend a reasonable number of public meetings convened by the City, elected officials, community organizations, or others as requested by the DTD Project Manager to receive feedback and input on GoDurham services.
 - (5) Have one Customer Service Representation on duty at Durham Station, at all times from at least 15 minutes prior to the first departure until 15 minutes following the last departure. Any change to the hours of Durham Station by more than 30 minutes per Day shall be cause for an Automatic Reopener.
 - (6) Perform the functions of the Regional Information Center (for GoDurham services only) via telephone when the Regional Information Center is not open as shown in Table 14.1.

Table 14.1 - Phone Coverage Requirements

Day	Phone Coverage	
	Regional Information Center	GoDurham (Contractor)
Monday - Sunday	6:00 AM - 9:00 PM	5:00 AM - 6:00 AM; 9:00 PM - 12:00 AM
Major Holidays* (except Thanksgiving)	8:00 AM - 4:30 PM	5:00 AM - 8:00 AM; 4:30 PM - 9:00 PM
Thanksgiving	Closed	5:00 AM - 9:00 PM
Christmas Day	Closed	Closed
*New Year's Day, Martin Luther King Jr Day, Memorial Day, Juneteenth, Independence Day, Labor Day		

- (7) Issue service alerts to customers using, but not limited to, the Avail CAD/AVL system.
- (8) ensure that all Customer Service Representatives are knowledgeable of all aspects of the GoDurham service including routes, locations of stops, fares, connecting services, and special programs; ensure that all Customer Service Representatives have general knowledge of aspects of other area mobility options.
- (9) ensure that at least one full-time Spanish speaking Customer Service Representative is always employed and provide language interpretation phone service when the Spanish-speaking Customer Service Representative is not on duty.
- (10) employ no fewer than the number of Customer Service Representatives employed by the DCTC.

14.2 Complaints and Inquiries

- (A) In general, all customer inquiries and complaints are logged and will be referred to the Contractor through the GoTriangle Regional Information Center using the Zendesk system; however, the Contractor shall also log any customer inquiries and complaints directly received by mail, phone, email, social media, or in person.
- (B) Contractor shall thoroughly review, investigate, and respond to all complaints and inquiries within five (5) Business Days. Contractor shall provide a monthly log of complaints and inquiries to the DTD Project Manager along with a description of the action(s) taken to resolve the complaint or inquiry, as appropriate.
- (C) Complaints regarding service planning or other matters outside the purview of this Contract shall be referred to the DTD Project Manager for review, investigation, and response.

14.3 Marketing

- (A) In general, the Contractor shall develop and implement creative marketing activities ideas to increase awareness and benefit of GoDurham services, and for specific subgroups, geographic areas, new services, and programs as may be agreed upon in a semi-annual update to the CSM Plan.
- (B) In addition, the Contractor shall:
 - (1) Design and print the annual Go Durham Ride Guide in such quantities as may be directed by the DTD Project Manager
 - (2) Distribute the GoDurham Ride Guide locations to all public facilities (libraries, schools, government offices, etc.) and other locations as directed by the DTD Project Manager.
 - (3) Maintain and regularly update the Go Durham website in accordance with Table 14.2.
 - (4) prepare and produce collateral or promotional materials
 - (5) Provide Revenue Vehicle(s) (not in service) for public special events as requested by the DTD Project Manager.
 - (6) Cooperate with DTD's advertising vendor to ensure orderly placement and removal of on-board and exterior advertising.

14.4 Media Relations

- (A) Unless otherwise directed by the DTD Project Manager, the Contractor shall notify the DTD project manager of and promptly respond to all media inquiries regarding GoDurham services except when such inquiries relate to City policy or budget issues matters outside of the Contractor's responsibilities. Such inquiries shall be directed to the DTD Project Manager.
- (B) The Contractor shall cooperate with the City in responding to all Public Information Act requests in accordance with Chapter 132 of the North Carolina General Statutes.

14.5 Customer Service & Marketing Allowance

- (A) There shall be a Customer Service & Marketing Allowance paid to the Contractor on an reimbursable basis for implementation of the discretionary expenses of the Customer Service & Marketing Plan that shall be funded through a Customer Service & Marketing Allowance. The CSMA will be \$200,000 in the first year of the Contract and is anticipated to increase by 10% annually, at the City's sole discretion and without necessity of amendment.
- (B) The CSMA may only be used for the discretionary expenses of the Customer Service & Marketing Plan, such as but not limited to printing and distribution of maps, schedules, and customer information brochures; print or electronic advertising of new or existing services; participation in community events; on-board customer surveys, "secret shopper," or other data collection efforts.
- (C) The Customer Service & Marketing Allowance may not be used for the regular wages and benefits of the Director of Customer Engagement and Marketing, Customer Service Representatives, or other personnel fulfilling duties the regular duties required by this Section.

Table 14.2 - Website Maintenance

	On Demand or As Necessary	Weekly	Monthly	Quarterly	Annually
Post rider notices, delays in service or route deviations, Minor or Major Service Changes, and other content as directed by the DTD Project Manager	x				
Coordinate with Technology Vendors, DTD, and the City's Communications Department to ensure consistent content, messaging, and functionality of website and electronic notification systems.	x				
Confirm that all pages on the website are loading without errors, core website software and plugins are working properly, and the system is validated for desktop and mobile use.		x			
Backups all material and stored off site or as directed by the City Communications Department		x			
Check all forms to ensure they are working properly		x			
Check and remove spam comments, form submissions and user accounts		x			
Check for and resolve any broken links or 404 errors		x			
Check website loading speed.			x		
Review security scans and resolve any issues			x		
Review your local search visibility			x		
Review and ensure compliance with the Web Content Accessibility Guidelines (WCAG) international standard h Section 508 of the federal Rehabilitation Act			x		
Review and remove and/or update content that is outdated or inaccurate			x		
Review and tweak meta title and meta description tags				x	
Test and tweak forms and automated messages to improve conversion rates.				x	
Check backup health by restoring the most recent backup to a separate web server				x	
Review uptime logs and take corrective actions				x	

	On Demand or As Necessary	Weekly	Monthly	Quarterly	Annually
to achieve 99% uptime.					
Update the copyright date in your website footer and in any other references					x
Renew your website domains name(s)					x

15 Safety, Security and Emergency Management

15.1 In General

The Contractor shall be responsible for achieving the highest practical level of security throughout the GoDurham system, including for all passengers and employees, Revenue Vehicles, Service and Support Vehicles, Equipment, Durham Transit Station, and the OMF.

15.2 Chief Safety Officer

The Contractor shall designate a full-time Chief Safety Officer no later than 14 Days prior to the Start of Service. The Safety Manager shall have completed the Public Transportation Safety Certification Training Program (PTSCTP) or be in process of attaining certification within ninety (90) Days of the Start of Service.

15.3 Plans Required

The Contractor shall develop and implement security and emergency management plans required by TSA, FEMA, and FTA, subject to review and approval by the DTD Project Manager. Such plans include but are not limited to:

15.3.1 Public Transportation Agency Safety Plan (PTASP)

The Contractor shall adhere to the PTASP adopted by the City on January 3, 2023, which complies with 49 CFR Part 673. The Contractor shall review and proposes changes thereto, if any, within 60 Days from the Start of Service. Such changes shall be reviewed and approved by the Safety Committee and the DTD Project Manager.

15.3.2 Continuity of Operations Plan (COOP)

The Contractor shall prepare and implement a Continuity of Operations Plan pursuant to APTA-SS-SEM-S-001-08, Rev. 2, for review and approval of the DTD Project Manager within 60 Days from the Start of Service.

15.3.3 IT Asset Management and Cyber Security Plan (ITAM/CSP)

The Contractor shall prepare and implement an IT Asset Management and Cyber Security Plan that complies with TSA Security Directive 1582-21-01, "Enhancing Public Transportation and Passenger Railroad Cybersecurity" insofar as it may apply. The ITAM/CSP shall be submitted to DTD Project Manager within 60 Days from the Start of Service for review and approval.

15.3.4 National Incident Management System

Key Personnel and all Field Supervisors shall be certified in the National Incident Management System including ICS levels 100 and 200, and NIMS levels 700 and 800.

15.4 Emergency Planning and Response

At the request of the DTD Project Manager or an Authority Having Jurisdiction, the Contractor shall:

- (1) participate in local and regional safety and security planning, development, and exercises at the
- (2) mobilize such resources as may be reasonably available in support of emergency operations in Durham County or adjacent jurisdictions.

15.5 Durham Station

- (3) The Contractor shall at all times beginning 15 minutes prior to the first departure and 15 minutes after the last departure ensure that an off-duty police officer is present at Durham Station.
- (4) All expenses related to off-duty police officer shall be paid by the Contractor to the Police Department or directly to the Police Officer based on the Police Department's practice. As of the Setting Date, the operative hourly rate paid by DCTC is \$50, which exceeds the Police Department's standard hourly rate of \$35. Any change made by the Police Department to increase the standard hourly rate may be cause for a Discretionary Reopener.

15.5.1 Security and Access Control

- (A) The City shall provide Security and Access Control Systems for the OMF and Durham Station installed as of the Setting Date.
- (B) The Contractor shall:
 - (1) Maintain the Security and Access Control System
 - (2) issue employee badges/ID cards.
 - (3) furnish and install RFID equipment on any new Revenue Vehicle or Support or Service Vehicle

16 Fare Collection (Optional Service)

- (A) As of the Setting Date, fare collection on all GoDurham routes is suspended and the Contractor shall have no responsibility other than to ensure that fareboxes remain in good working order.
- (B) If the City determines that fares shall be collected or if the City determines to change its fare structure or collection practices thereafter, then the following provisions shall apply:
 - (1) Unless otherwise noticed by DTD, the City's fare structure is listed on the DTD website.
 - (2) DTD shall provide at least sixty (60) Days' notice that it intends to resume fare collection. Within thirty (30) Days thereafter, the Contractor shall provide the DTD Project Manager with a Fare Collection Implementation Plan which includes at a minimum the following elements:
 - (a) Notification to customers that fares will be collected beginning not less than thirty days from the posting of notices.
 - (b) Training for Bus Operators in the proper manner of collecting fares from customers.
 - (c) Testing of Fare Collection Mechanisms prior to restart of fare collection
 - (d) Probing, vaulting, accounting for and reconciling fares, including fares collected at Durham Station.
 - (3) The Contractor shall furnish proof of cybersecurity insurance as described in Section 16.
- (C) The Contractor shall ensure that each passenger pays the appropriate fare upon boarding, including honoring any special fares, passes or reciprocal transfers from other transit services.
- (D) Bus Operators shall not handle cash fares unless a passenger is unable to deposit a fare in the farebox due to a disability.
- (E) If a Fare Collection Mechanism is not operational or if a Bus Operator is observed not collecting fares and through investigation it is determined the fare collection equipment was functioning properly or that it was not in the City's best interest to collect the fare, then Contractor will be required to reimburse the City for the lost fare revenue calculated as follows:
 - (1) Average daily fare collection for the prior 30 days on the run less total fares collected on the run where the failure occurred.
 - (2) For example, Route 22, Block 7 typically sees \$125 in fare revenue collected. On the day of the violation, the fares collected equal \$79 on Route 22, Block 7. The Contractor shall reimburse the City in the amount of \$46.

16.1 Fare Equipment & Technology

- (A) As of the Setting Date, the GFI Genfare Odyssey Farebox, Cubic Smartcard Readers, and Umo Mobile Ticketing System are the Fare Collection Mechanisms used in the GoDurham system. The City reserves the right to upgrade Fare Collection Mechanisms at any time and with adequate notice to and coordination with the Contractor.

(B) The City shall:

- (1) provide all equipment necessary for operation of Fare Collection Mechanisms including but not limited to probing equipment, Wi-Fi (except for service fees), garage PC/Server with firewall, UPS power supply, and network infrastructure.
- (2) furnish spare Fare Collection Mechanisms as in the Inventory as of the Setting Date.
- (3) Assign contracts or licensing agreements with the Technology Vendor of the Fare Collection Mechanisms to the Contractor for its use exclusively on this Contract.
- (4) Provide initial training from the Technology Vendor on the operation and maintenance of the Fare Collection Mechanisms
- (5) Coordinate all fare collection data systems with and through GoTriangle.

(C) The Contractor shall:

- (1) inspect, operate, and maintain the Fare Collection Mechanisms according to manufacturer specifications.
- (2) Maintain control of fare box locks and keys.
- (3) Maintain the necessary the garage computer systems used for Fare Collection Mechanisms including probes, computers, networks, tablets, and other associated equipment.
- (4) repair or replace components of the Fare Collection Mechanism that have been subject to abuse, improper maintenance, accident, or vandalism.
- (5) coordinate software or hardware upgrades or systems integration with Technology Vendors
- (6) store spare Fare Collection Mechanisms at the OMF and maintain said mechanisms as part of the Inventory System.
- (7) maintain the necessary inventory of spare parts for the Fare Collection Mechanisms
- (8) generate reports requested by the DTD Project Manager
- (9) maintain a record of all requests to each manufacturer including dates and times of request and response.

16.2 Revenue Management & Security

(A) The Contractor shall:

- (1) designate a room for the counting of cash fares at the OMF
- (2) provide for security of fareboxes of vaults, vault pulling area, and revenue on-hand;
- (3) probe the fareboxes at the probing station and will place the cash boxes in the vault
- (4) not leave any cash at Durham Station or on any Revenue Vehicle overnight or when the vehicle is transported to an off-property garage or site.

- (5) Always require a minimum of two staff members in the count room during the count.
- (6) provide a video surveillance system to always record activity in the count room.
- (7) Provide a daily reconciliation of fares paid at the GFI farebox system.
- (8) Ensure armored transportation for collection and deposit of revenue in a bank account designated by the City.

(B) The City shall:

- (1) conduct periodic audits of the Contractor's revenue collection procedures and reports and may require changes as necessary to ensure the proper handling and accounting of revenues.
- (2) Pay all bank fees and charges associated with the account designated for deposit of fare revenues.

17 Transition and Start of Service

17.1 Transition Plan

- (A) Within 14 Days of Notice of Intent to Award, the Contractor shall update the Transition Plan initially provided in the Offer and submit to the DTD Project Manager for review and comment. The Transition Plan shall contain sufficient detail for DTD to understand processes, resources, personnel, and timelines necessary to achieve an effective and smooth transition and start-up process for the Contractor to assume responsibility for all required operations and maintenance by the Start of Service Date.
- (B) The transition plan must include:
 - (1) Contact information for the Contractor's Key Personnel, primary corporate representative, and all other corporate discipline leads (human resources, IT, etc.) involved in the transition.
 - (2) A schedule of all transition activities using a Gantt chart or critical path methodology.
 - (3) a risk management matrix that identifies potential problems during the transition period along with a descriptive plan for mitigating these problems.
 - (4) a matrix of all plans required in the Technical Provisions and the status of development and comment or approval by DTD, as applicable.
 - (5) the Contractor's staffing plan, status of hiring and onboarding personnel including drug and alcohol testing, background checks, and training activities.
 - (6) coordination with the Union on any matters related to transfer of the Collective Bargaining Agreement.
 - (7) a matrix of all required permits, licenses, insurances, and the status thereof.
 - (8) designation of third-party auditors for Vehicles, Equipment, and Inventory and the status of audits, if any.
 - (9) a budget for use of the Allowance for Transition and Start Up.
- (C) The Contractor shall submit a status report on the Transition Plan to the DTD Project Manager by 2:00 PM on each Friday until the Start of Service and on a schedule mutually agreed upon thereafter. The update shall identify any actions necessary by the City to ensure the smooth transition of responsibilities.

17.2 Status, Audit and Repair of Revenue Vehicles, Equipment, Passenger Facilities, OMF

- (A) The City warrants the number and status and condition of all Revenue Vehicles, Equipment, and the OMF, and Passenger Facilities as provided in the Reference Documents as of the Setting Date.
- (B) The Contractor may elect to have an independent third-party perform an initial and final inspection of Vehicles, Equipment, Facilities, and Inventory to be assigned to the Contractor as of the Start of Service. The Contractor may designate the independent third-party auditor(s)

subject to the City's approval which shall not be unreasonably withheld. The cost of the inspections shall be shared equally by the City and the Contractor (with the Contractor's share being charged against the Transition and Start-Up Allowance.)

- (C) The Independent Third-Party Auditor shall provide an Initial Inspection Report to the City and the Contractor. The Initial Inspection Report shall contain price estimates to return all vehicles, facilities, and equipment to state of good repair standards established in the National Transit Database as of the Setting Date, except as may be jointly agreed up by the City and the Contractor.
- (D) The Contractor and DCTC shall jointly develop a plan for completing the repair work either by their respective forces and/or by reimbursement of the Contractor by DCTC. Said plan shall be reviewed and approved by the City. Any disputes in developing the repair plan shall be resolved by the DTD Project Manager. Unless otherwise agreed to, all repairs shall be completed by the Start of Service date.
- (E) A final turnover inspection shall occur at a time mutually agreed upon by DTD and the Contractor and:
 - (1) include a physical re-examination of the vehicles, facilities, and equipment inspected during the Initial Turnover Inspections with a focus on defects identified on the Initial Turnover Inspection.
 - (2) identify any additional repairs that may be needed due to conditions that arose following the initial turnover inspection.
 - (3) be documented by the Independent Third-Party Auditor which shall indicate:
 - (a) A determination as to whether the repair work required to be performed pursuant to the Initial Inspection Report is in fact complete.
 - (b) Revised condition assessment of all Vehicle, Equipment, Facilities, and Inventory including corrective action cost estimates to return vehicles to a state of good repair
 - (c) repair cost estimates for additional items needing repair not identified in Initial Inspection Report
 - (d) Any repairs required following Final Turnover Inspection shall be handled in accordance with above referenced procedures; however, the cost of all repairs from the final turnover inspection shall be paid as a debit by the City to the Contractor on the monthly invoice.
- (F) Notwithstanding the above, the Contractor:
 - (1) shall make reasonable efforts to perform the remaining repairs using its own personnel during regular working hours such that additional costs are not incurred by the City.
 - (2) Shall only be paid for remaining work repairs completed during the first sixty (60) days of the Contract. Any outstanding or deferred maintenance work that remains uncompleted at the end of the agreed upon repair schedule shall be considered the responsibility of the Contractor and shall be completed at the Contractor's expense, unless otherwise agreed to in writing by the DTD Project Manager.

17.3 Inventory

- (A) For the purpose of this section, “Fair Market Value” means the price that would be paid by the Contractor to acquire said part(s) in a wholesale market.
- (B) The City estimates that as of the Start of Service date spare parts worth Fair Market Value of approximately \$800,000] as described in the Background Documents will be made available to the Contractor.
- (C) It is the City’s intent that the Contractor shall take possession of all Inventory on the first day of the Contract and:
 - (1) Provide a credit to the City equal to the Fair Market Value of each part used by the Contractor during the first six months of the Contract. Thereafter, the Contractor shall:
 - (a) notify the City of any remaining inventory it wishes to retain for its use, and credit the Fair Market Value of said inventory on the next monthly invoice; and/or,
 - (b) notify the City of any remaining inventory it **does not** wish to retain for its use. The parties shall jointly agree on the method of disposal of the inventory.
- (D) If the parties determine to sell or dispose of said inventory, the Contractor shall be responsible for its sale or disposal. The Contractor shall provide the City with a credit on the next appropriate monthly invoice, less 10% of the proceeds that it may retain from the sale of inventory to defray the cost of its efforts to dispose of the inventory.

17.4 Allowance for Transition & Start Up

- (A) The Contractor shall be permitted up to \$300,000 for expenses related to the transition from the Preceding. All expenses will be paid to the Contractor on a reimbursable basis as a separate line item in each monthly invoice.
- (B) Transition and start-up expenses may be incurred from the date of issuance of the Notice of Intent to Award through 120 days from the effective date of the Contract
- (C) Allowable transition and start-up expenses may include: wages of DCTC Union Personnel for onboarding and training; the direct expenses of the Contractor’s corporate personnel involved in onboarding and training; office space and related expenses for the transition if such space cannot be reasonably provided by the City; auditing of Vehicles, Major Equipment, Inventory, and the OMF; recruiting expenses related to achieving full staffing levels necessary to achieve 100% of Budgeted Revenue Service Hours; extraordinary legal expenses related to employee pension or other DCTC-related matters; and, other items agreed upon by the DTD Project Manager as being specifically necessary and related to the transition. Any and all requests for reimbursement of allowable transition and start-up expenses must be accompanied by complete and appropriate documentation as determined in the discretion of the City.
- (D) Unallowable transition and start-up expenses include corporate overhead and profit; salaries and benefits of corporate personnel involved in the transition; ordinary legal expenses of negotiating the Contract or with the Union; retention bonuses for DCTC staff; relocation expenses of Key Personnel; or other costs determined by the Project Manager as not being specifically necessary and related to the transition.

17.5 Start of Service

- (A) Not less than 48 hours prior to the Start of Service, the Contractor shall certify in writing to the DTD Project Manager that the Contractor is able to provide all services required by and in accordance with the Contract.
- (B) If the Contractor is unable to fully certify that Contractor as above, the Contractor shall specifically identify any anticipated deficiencies and provide a corrective action plan to meet all Contract requirements.
- (C) If the DTD Project Manager determines that any deficiencies are caused by the Contractor's actions, inactions, or negligence the Contractor, then a Discretionary Reopener may be initiated to determine the costs not incurred by the Contractor and an appropriate credit to the City for such costs as they would apply on a per Vehicle Revenue Hour basis.

18 Performance Standards – Incentives and Liquidated Damages

- (A) Services provided by the Contractor shall be operated at a high quality to the customer. The performance standards listed in Table 18.1 shall be eligible for incentive payments or liquidated damages monthly and shall be self-assessing as described below by the Contractor with each monthly invoice, subject to DTD verification.
- (B) A Performance Standards Reporting Plan shall be submitted to the City no later than the Start of Service. The PRSP shall indicate how the Contractor will measure, calculate, and monitor the Performance Standards, include a reporting template, and provide for a narrative description of the circumstances of not meeting the Performance Standards and corrective actions to be taken by the Contractor. The PRSP may include other reporting requirements listed in Section 19.
- (C) Contractor acknowledges the difficulty in precisely defining the damages to the City and acknowledges and agrees that the defined amount of liquidated damages is a reasonable approximation thereof for the City's potential losses related to useful life of vehicles, additional performance oversight, responding to customer concerns elevated above the protocols established herein and otherwise.
- (D) Performance Standards shall be jointly evaluated at the beginning of each Contract year and may be adjusted by written agreement with the DTD Project Manager adjusted to conform to the annual goals of the City. Any update to the Performance Standards shall be agreed upon no later than 30 days prior to the start of each contract year.
- (E) Liquidated damages shall not be assessed for failure to meet Performance Standards if they are judged to be the result of events that are outside the control of the Contractor.
- (F) The assessment of Liquidated Damages as provided under this Contract shall in no way whatsoever relieve the Contractor of its obligations to provide the Services required by the terms of this Contract. Assessment of Liquidated Damages for any violation(s) on one or more occasion does not constitute a waiver of the City to terminate the Contract for any violations

on any other occasions. Remedies described in this paragraph and in the Termination of Agreement for Default clause shall be cumulative and not alternative.

- (G) Performance incentives shall be capped at 1.5% of total Revenue Service Hour payments annually.

Table 18.1 - Performance Standards

Indicator	Basis of Measurement	Begins	Incentive	Liquidated Damages
Preventative Maintenance Inspections	Total PMs Due	Day 1	\$1,500 per month that all preventative maintenance due during the month was performed at the required interval.	\$500 per instance where a preventative maintenance was not performed in the required interval
ADA Compliance	Observation	Day 1	None	\$100 per instance if a wheelchair ramp or kneel feature does not function when needed while the bus is in Revenue Service when requested by a customer; \$100 per trip where the voice annunciator system is not working correctly; \$250 per instance where Bus Operator behavior causes a violation of ADA requirements.
Vehicle Cleanliness	Observation	Day 1	None	\$50 for each Revenue Vehicle placed in Revenue Service in violation of vehicle servicing requirements in Section 9.8.
Bus Stop Cleanliness	Observation	Day 60	None	\$100 for each instance of a Type A Bus Stop not in compliance with the Passenger Facilities maintenance and upkeep standards defined in defined in Section 12.2; \$50 for each instance of a Type B or C Bus Stop.
Preventable Vehicle Crashes per 100,000 miles	(# of preventable vehicle crashes / Total fleet miles) x 100,000	Day 90	\$1,000 per month when preventable crashes are less than or equal to .9 per 100k miles	\$1,000 per preventable crash more than 1.1 per 100k miles
On-Time Performance	Systemwide: # of on-time arrivals at Durham Station / Total # of arrivals at Durham Station	Day 60	\$1,000 per percentage point or fraction thereof when on-time performance at Durham Station is greater 97%	\$1,000 per percentage point or fraction thereof when on-time performance at Durham Station is less than 94%

Indicator	Basis of Measurement	Begins	Incentive	Liquidated Damages
	On time is considered no more than 4 min, 59 sec late. Early arrivals are not penalized.			
	Route Level On-Time Performance	Day 90	\$500 per route exceeding 90% on-time performance on weekdays only.	\$1000 per route with less than 75% on-time performance
Revenue Service Hours Delivered	# of actual bus revenue hours operated / # of Budgeted Revenue Service Hours.	as described	\$2,000 per percentage point or fraction thereof when Revenue Service Hours delivered is greater than 90% in months 1 - 3 of the contract	\$1,000 per percentage point or fraction thereof when Revenue Service Hours delivered is less than 87% in months 1 - 3 of the contract
			\$1,500 per percentage point or fraction thereof when Revenue Service Hours delivered is greater than 93% in months 4-6 of the contract	\$1,500 per percentage point or fraction thereof when Revenue Service Hours delivered is less than 90% in months 4-6 of the contract
			\$1,000 per percentage point or fraction thereof when Revenue Service Hours delivered is greater than 96% in months 7 - 9 of the contract	\$2,000 per percentage point or fraction thereof when Revenue Service Hours delivered is less than 93% in months 7 - 9 of the contract
	All trips provided as scheduled		None	\$50 per missed trip beginning on the first day of the 10 th month of the Contract.

Indicator	Basis of Measurement	Begins	Incentive	Liquidated Damages
Customer Service	# of customer complaints that are "closed" within 5 business days / Total # of customer complaints received	Day 1	\$1,000 per percentage point or fraction thereof when rate is greater than 95%	\$1,000 per percentage point or fraction thereof when rate is less than 85%
Management Plans	Days from required Submittal	Notice to Proceed	None	\$50 per Day for each Management Plan not submitted on or before the due date.

19 Management Plan & Reporting Requirements

19.1 In General

- (A) The Contractor shall maintain detailed plans for and records of its activities throughout the term of the Contract, sufficient for the City to comply with all local, state, and federal requirements; enable thorough performance monitoring; and provide transparency to City officials and the public.
- (B) The Contractor shall have the following general responsibilities, each of which is further described below. In the case of discrepancy of the content, frequency, or other details of required reports with other Technical Provisions, the specific Technical Provision shall prevail.
 - (1) Management Plans
 - (2) Operations & Maintenance
 - (3) National Transit Database
- (C) All necessary records shall be kept in accordance with the FTA Uniform System of Accounts guidance dated October 11, 2016.
- (D) The Contractor shall provide reports in a format agreed upon with the DTD Project Manager at the level of detail, frequency, and distribution provided in Table 19.2.

19.2 Electronic Document Management System

- (A) The Contractor shall provide for an Electronic Document Management System (EDMS) which:
 - (1) shall be an organized and searchable repository for all records required by this Contract, except for those documents which are required to be maintained through the CCMS or CAD/AVL system, or other independent systems approved by the DTD Project Manager.
 - (2) provide for automated workflows where reviews, comments, and approvals for DTD or other City staff are required.
 - (3) shall be used for the submittal of invoices.
 - (4) may provide credentialed, limited, or read-only access to City staff and subcontractors as may be necessary to protect the privacy of individuals or confidentiality of information insofar as may be required by law.
- (B) The Contractor shall identify its EDMS for the DTD Project Manager's Review and Comment within 14 days of Notice of Intent to Award. Notwithstanding the above, all documents generated during the transition and start-up period shall be maintained in the EDMS.

19.3 Management Plans

The Contractor shall provide Management Plans as provided throughout the Technical Provisions and summarized in Table 19.1.

Table 19.1 - Management Plans

Plan	Reference	Due Date	Document Review Type		Update Frequency
			Approve	Comment	
Transition Plan		21 days from Notice of Intent to Award		X	Weekly updates until Start of Service, then on mutually acceptable schedule
Major Service Change Implementation Plan		30 days from notice by City	X		-
Operations & Maintenance Facility Plan		30 after Start of Service	X		Annually
Electric Vehicle Charging Management Plan		30 days prior to Start of Service	X		Quarterly
Fare Collection Implementation Plan		21 days from notice by City	X		-
Customer Service and Marketing Plan		30 days after Start of Service	x		Semi-annually
Employee Training Plan		14 days prior to Start of Service		x	At Contractors discretion
Continuity of Operations Plan		14 days prior to Start of Service	x		Annually
IT Asset Management and Cyber Security Plan		14 days prior to Start of Service	x		Annually
Public Transportation Agency Safety Plan		Review and update existing plan 60 Days following Start of Service	x		Annually
Quality Management Plan		14 days prior to Start of Service			Annually
Minor Service Change Implementation Plan		10 days from Notice by City	x		-
Computerized Maintenance Management System		include in the Transition Plan		X	-
Electronic Document Management System		include in the Transition Plan		x	-
Revenue Fleet Maintenance Plan		14 days prior to the Start of Service	x		Prior to implementation of any material change
Vehicle Commissioning and Decommissioning Plan		60 days after Start of Service	x		as necessary
Passenger Facilities Management Plan		30 days after Start of Service	x		Prior to implementation of any material change

<i>Table 19.2 - Reports</i>													
Operations and Maintenance	Detail Level			Reporting Frequency							Provide to		
	By Route	System-wide	Detailed by Occurrence	Immediate	Daily	Weekly	Monthly	Quarterly	Semi-Annually	Annually	DTD Project Manager	Maintain on file	Regional Information Center
Scheduled Trips	x	x			x	x	x	x	x	x	x		
Missed Trips	x	x			x	x	x	x	x	x	x		
Revenue Hours	x	x			x	x	x	x	x	x	x		
On-Time Performance	x	x					x	x	x	x	x		
Ridership	x	x				x	x	x	x	x	x		
Detours and Deviations	x			x	x						x		x
Vehicles Out of Service		x			x	x	x	x	x	x	x		
Road Calls			x				x	x	x	x	x	x	
Incidents, Injuries, Accidents			x	x	x	x	x	x	x	x	x		
Accident Investigation Reports		x		x							x		
Farebox Reconciliation		x			x	x					x		
OMF Inspection Report		x					x	x		x	x		
DBE Usage			x					x	x	x	x		
Warranty & Insurance Claims			x				x				x		
Preventive Maintenance Report		x					x	x	x	x	x		
Drug and Alcohol Certification		x					x				x		
Customer Inquiries/Complaints Log		x				x					x		x
Media Inquiries			x	x							x		
NTD Reports		x								x	x		
Vehicle Servicing Checklist Reports		x									x	x	
EEO/Affirmative Action Reports		x								x	x		x
Personnel Headcount by Position		x				x					x		
Invoices and Supporting Documentation		x					x				x		
Allowance Usage		x					x				x		

19.4 National Transit Database Reporting

- (A) The Contractor shall be responsible for collecting NTD data and preparing all NTD reporting elements for the City to submit to the Federal Transit Administration (FTA).
- (B) The Contractor shall be responsible for ensuring that all reported NTD data is accurate and meets FTA definitions and requirements (including sampling requirements).
- (C) Notwithstanding the detail and frequency defined in Table 19.2, the Contractor shall prepare NTD reports such as but not limited to:

Table 19.2 - NTD Report

Report	Elements	Deadline to DTD Project Manager
Monthly Reports	<ul style="list-style-type: none"> • Ridership Activity (MR-20) by mode • Safety and Security Summary Report 	5 Business Days following the last day of each month
Quarterly Reports	<ul style="list-style-type: none"> • Form S-10, Transit Agency Service • Form A-30, Revenue Vehicle Inventory • Form A-35, Service vehicles 	10 Business Days following the last day of each quarter
Annual Reports	<ul style="list-style-type: none"> • All required information 	30 Days prior to the FTA filing deadline

19.5 Access and Retention to Records

The Contractor shall retain all books, records, accounts, and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract. In the event of litigation claim, negotiation, audit, or other action involving the records has been started before expiration of the three-year period are subject to the provisions of 49 CFR 18.42

20 Insurance

- (A) The Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following applicable coverages and limits. The requirements contained herein, as well as the City's review or acceptance of insurance maintained by Contractor, is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract.
- (1) Commercial General Liability – General liability, occurrence-based policy, covering the Facility premises used in performance of this Contract with limits of liability not less than \$5,000,000 each occurrence combined single limit, with an aggregate limit of not less than \$10,000,000. Such liability insurance shall also include coverage for all operations of the contractor in performance with this Contract, Personal Injury Liability, Contractual Liability, Property Damage, and Liability for Independent Contractors. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability, Cross Liability, or Personal and Advertising Injury Liability. The Contractor shall obtain liability insurance at higher limits at the discretion of the City. Provide all fire and extended coverage for the full replacement cost of all owned, leased, used equipment, tools, supplies, and contents that are used in connection with the work performed under this contract.
 - (2) Automobile Liability – Automobile liability, occurrence-based policy, with limits of no less than \$10,000,000 Combined Single Limit for bodily injury and property damage. Coverage shall include liability for Owned, Non-Owned, Rented and Hired automobiles, buses, vans, and support vehicles used in connection with the work performed under this contract.
 - (3) Automobile Physical Damage Insurance – Auto physical damage insurance coverage for all vehicles used by Contractor in providing Services under this contract which covers collision, fire, and theft with combined limits of liability not less than the actual cash value of the vehicle at the time of loss or the cost to repair or replace with like kind and quality with depreciation deduction. Deductibles shall not exceed \$10,000 for each loss and City of Durham shall be named as the Loss Payee under the policy.
 - (4) Employment Practices Liability Insurance – The Contractor shall also maintain Employer's Practices Liability Insurance with limits of at least \$1,000,000 for each occurrence for claims arising from employment related wrongful acts.
 - (5) Cyber Liability – Limits of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate, if fare collection is activated by Section 16.
 - (6) Umbrella or Excess Liability – Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest 'Each Occurrence' limit for required policies. Contractor agrees to endorse the City of Durham as an 'Additional Insured' on the

Umbrella or Excess Liability unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a 'Follow-Form' basis.

- (7) Worker's Compensation & Employers Liability – Workers' Compensation insurance covering all of Contractor's employees engaged in work under this contract and in accordance with North Carolina General Statute Chapter 97 and with Employer Liability limits of no less than \$1,000,000 for each accident, each employee, and policy limit. This policy must include a Waiver of Subrogation.
- (B) Additional Insured. Contractor agrees to endorse the City as an Additional Insured on the Commercial General Liability, Automobile Liability, Umbrella or Excess Liability policies and other liability and commercial coverages for all assets utilized by Contractor in connection with this Contract. The Additional Insured shall read City of Durham as its interest may appear.
- (C) Certificate of Insurance. Contractor agrees to provide City of Durham a Certificate of Insurance evidencing that all coverage, limits, and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Contractor's insurer. If Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

City of Durham
Attn: Transportation Department
101 City Hall Plaza
Durham, NC 27701
- (D) All primary insurance carriers must be authorized to do business in North Carolina.
- (E) The Contractor shall require all subcontractors performing work under this contract to carry insurance to the types and with limits of liability appropriate and adequate for the scope of work. The Contractor will obtain and make available for inspection by the City the certificates of insurance evidencing insurance coverages carried by such subcontractors.
- (F) The City shall be exempt and in no way liable for any sums of money that may represent a deductible or self-insured retention for any insurance policy. The payment of such is the sole responsibility of the Contractor. Should any of the coverage provided within the terms of this Contract be self-funded or self-insured, the Contractor will provide the City a copy of the Certificate of Insurance and other applicable documentation from the North Carolina Department of Insurance.
- (G) If at any time during the Contract term the Contractor fails to secure or provide proof of insurance required above, the City reserves the right, but not the obligation, to find the Contractor in default of this contract.

21 Exhibits

21.1 Exhibit 1 – Anticipated Contract for this RFP

21.2 INTENTIONALLY OMITTED. The Contract to be executed will incorporate all the scope of services and general contract provisions included in the RFP. No additional document is necessary at this time. Exhibit 2 – Uniform Guidance Contract Clauses for Federal Funding (UGCCFF)

(A) Cumulative Nature of These Clauses; Conflicts with Other Clauses. It is intended that the clauses in this document, Uniform Guidance Contract Clauses for Federal Funding (“UGCCFF”), are to be in addition to other clauses in this contract. The clauses in this UGCCFF will control in case of conflict with other clauses in this contract except for those additional clauses, if any, provided in this contract at the direction of the federal awarding agency or pass-through agency; clauses provided by such direction will control over this UGCCFF. A termination for cause clause elsewhere in this contract (not in this UGCCFF) will control over the termination for cause clause in this UGCCFF.

(B) Termination.

- (1) Termination for Cause; Default.** Each of the following is included as an example of a default by the contractor under this contract:
 - (i) The contractor made a false statement or omitted information in the proposal or bid, such that if the City had known of its falsity or of the facts before contract award, there would have been a reasonable possibility that the City would not have made the award to the contractor;
 - (ii) The contractor fails to observe or perform one or more of its contractual duties, and the failure continues 15 days after the City gives written notice describing the failure in reasonable detail; however, if failure requires performance that cannot by its nature be completed within such 15-day period, the failure does not constitute a default for purposes of this subsection “ii” as long as the contractor begins curing the failure to perform one or more of its contractual duties before or during the 15-day period and diligently and continuously carries out the cure to completion;
 - (iii) The contractor files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent, or files a petition or answer seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the federal bankruptcy act or any other applicable laws, or seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the contractor, the contractor’s interest in this contract, or of any substantial part of its property;
 - (iv) A proceeding against the contractor seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the federal bankruptcy act or any other applicable law is not dismissed within 60 days after its commencement;
 - (v) A trustee, receiver, or liquidator of the contractor, the contractor’s interest in this contract, or of any substantial part of its property, is appointed, and the appointment is not vacated or stayed within 30 days; or
 - (vi) A levy under execution or attachment is made against the contractor or any of its property and the execution or attachment is not vacated or removed by court order, bonding, or otherwise within 60 days.
- (2) Termination for Cause; City’s Remedies on Default.** Upon the contractor’s default, the City is entitled to all remedies lawfully available, including all of the following to the extent they are applicable:
 - (i) The City may proceed with remedies available under any performance bond, letter of credit, or other security.
 - (ii) The City may proceed with legal action, including obtaining damages and specific performance.
 - (iii) The City may give written notice stating that the contract or the services of the contractor shall terminate on the date described in such notice. Such termination shall not be deemed to impliedly renounce, discharge, or waive any remedy, including claims in damages for breach.

(C)

Note on subsections (C) – (Q). In subsections (C) – (Q) below, where an obligation must be imposed on any subcontractors, changes in language may be made in the subcontract as shall be appropriate to properly identify the parties and their obligations.

(C) Equal Employment Opportunity. Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FEDERAL AWARDING AGENCY may issue.

2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FEDERAL AWARDING AGENCY may issue.

3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FEDERAL AWARDING AGENCY may issue.

4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FEDERAL AWARDING AGENCY may issue.

(D) Davis Bacon Act and Copeland Anti-Kickback Act. (1) If this contract is a prime construction contract in excess of \$2,000, and if federal program legislation requires a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction,") this Davis Bacon Act and Copeland Anti-Kickback Act clause applies to this contract. (2) In accordance with the statute, the contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in the wage determination made by the Secretary of Labor. In addition, the contractor is required to pay wages not less than once a week. By signing this contract, the contractor accepts the wage determination. (3) The contractor must comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall not induce, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). If this contract is in excess of \$100,000 and involves the employment of mechanics or laborers, the contractor must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). If the Act, as supplemented by said regulations applies to this contract, then under 40 U.S.C. 3702 of the Act, the contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted

to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

(F) Contract Work Hours and Safety Standards for Awards Not Involving Construction

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the Federal Awarding Agency and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

(G) Rights to Inventions Made Under a Contract or Agreement. If the Federal award applicable to this contract meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient enters into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(H) Clean Air Act and the Federal Water Pollution Control Act, as amended. If this contract or the subgrant is in excess of \$150,000, the contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). The Contractor agrees: 1) It will not use any violating facilities; 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;" 3) It will report violations of use of prohibited facilities to the Federal Awarding Agency; and 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

(I) Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The contractor and subcontractors of all tiers shall include the substance of this section in every subcontract so that it will be binding upon subcontractors of all tiers, with a clause requiring subcontractors of all tiers to include the substance of this section in every lower tier subcontracts. The contractor shall be responsible for compliance by subcontractors of all tiers with the substance of this section.

(J) Byrd Anti-Lobbying Amendment, CONTAINING CERTIFICATION BY CONTRACTOR AND

SUBCONTRACTORS OF ALL TIERS. Unless this is a contract for which such certifications are not required by 31 U.S.C. 1352 (the Byrd Anti-Lobbying Amendment) or 2 CFR 200 Appendix II, every contractor and subcontractor of every tier certifies, by signing a contract containing this section, to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also immediately disclose to the City of Durham any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. If requested by the City, each tier shall promptly complete, sign under oath, and return to the City the forms the City will provide regarding the tier's lobbying or the tier's use or non-use of Federal funds relevant to this paragraph. Such disclosures are forwarded from tier to tier up to the non-Federal award. The contractor and subcontractors of all tiers shall include the substance of this section in every

subcontract so that it will be binding upon subcontractors of all tiers, with a clause requiring subcontractors of all tiers to include the substance of this section in every lower tier subcontract. The contractor shall be responsible for compliance by subcontractors of all tiers with the substance of this section.

(K) Procurement of Recovered Materials. The contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(L) Access to Records and Reports; Retention of Records

- (1) The contractor agrees to permit, and require its subcontractors to permit, the granting federal agency, and the Comptroller General of the United States, and, to the extent appropriate, the State of North Carolina, the City or their authorized representatives, upon their request to inspect all project work records, documents, papers, materials, payrolls, and other data, and to audit the books, records, and accounts of the contractor and its subcontractors pertaining to the project.
- (2) The contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after that the City makes final payment and all other pending matters are closed, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the Comptroller General, granting federal agency, state agency, City or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto.

(M) Bond Requirements. Contracts or subcontracts for construction or facility improvement exceeding the Simplified Acquisition Threshold set by the Federal Acquisition Regulation (FAR) at 48 CFR part 2, subpart 2.1, shall be subject to the bidding and bid, performance and payment bonding requirements of N.C. Gen. Statute § 143-129 *et seq.* and Article 3 of Chapter 44A (N.C.G.S. 44A-25 *et seq.*) of

(N) Domestic Preference. The Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts including all contracts and purchase orders for work or products under this agreement. (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(O) Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. Contractor and subcontractor must comply with 2 C.F.R. 200.216 which prohibits the obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract to procure or obtain equipment, services, or systems that uses equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Video surveillance and telecommunications equipment produced by Hytera Communications corporation, Hangzhou Hikvision Digital Technology Company, Dahua Technology Company, or any entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by, or connected to, the government of a covered foreign country are also prohibited.

(P) Disadvantaged Business Enterprise (DBE). Disadvantaged Business Enterprise. Contracts over \$3,500 awarded on the basis of a bid or proposal offering to use DBEs.

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.

- b. The contractor shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.
- d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.
- f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

(Q) Conflict of Interest. Contractor shall maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts in conformance with 2 CFR 200.318(c). Contractor shall immediately disclose in writing to City any potential conflict of interest affecting the awarded funds in accordance with 2 CFR 200.112. The contractor shall comply with all applicable conflicts of interest laws including N.C.G.S. § 133-32 and 23 C.F.R. § 1.33.

The contractor does hereby certify that it has not entered into and, during the lifetime of the contract, will not enter into any agreement with a third-party affording the contractor, or any subcontractors that they may hire, with any direct or indirect financial interest in the outcome of the project, except with regard to the project development, human and natural environmental and/or engineering services associated with this contract.

- (i) Pursuant to N.C.G.S. § 133-1, the contractor will not knowingly specify building materials, equipment, or other items that are manufactured, sold or distributed by any firm or corporation in which the designer has a financial interest.
- (ii) Pursuant to N.C.G.S. § 133-2, the contractor will not employ or allow manufacturers or their representatives or agents to write, plan, draw, or make specifications for such public works.
- (iii) The contractor does hereby certify that it does not have any potential conflict of interest with any entity involved with the project. Any potential conflict of interest shall be disclosed immediately to the City.

(P) Determination of allowable costs in accordance with the Federal cost principles. The contractor agrees to comply with established principles and standards for determining costs incurred under the contract pursuant to the cost principles established for state and local governments pursuant to OMB Circular A-87 Revised.

(End of Uniform Guidance Contract Clauses for Federal Funding)

21.3 Exhibit 3 – Standard Clauses of FTA Contracts

It is intended that the clauses in this document, Federal Transit Administration Specific Clauses (“FTASC”) are to be included with the UGCCFF clauses when the contract includes Federal Transit Administration (FTA) funding. As with the UGCCFF clauses, these FTASC clauses are to be in addition to other clauses of this contract and will control in case of conflict with other clauses, including conflicts with the UGCCFF clauses.

(A) Contract Work Hours and Safety Standards. The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

(B) Intellectual Property Rights

This clause applies to projects funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party. (a) Any subject data developed under the Contract, whether or not a copyright has been obtained; and (b) Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.

2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

(C) Buy American Requirement. The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11. The Contractor must submit to the City the appropriate Buy America certification with its bid or offer. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

(D) Energy Conservation. The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

(E) No Government Obligation to Third Parties. The Recipient and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

(F) Program Fraud and False of Fraudulent Statements and Related Acts. The Contractor acknowledges that the provisions of 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 actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

(G) Safe Operation of Motor Vehicles.

Seat Belt Use: The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or the City.
Distracted Driving: The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

(H) Seismic Safety. The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

(I) Substance Abuse Requirements.

If this contract is subject to the requirement of 49 C.F.R. part 655, Contractor must agree to comply with one of the following substance abuse testing options, in consultation with the City.

SUBSTANCE ABUSE TESTING Option 1

The Contractor agrees to participate in AGENCY's drug and alcohol program established in compliance with 49 C.F.R. part 655.

SUBSTANCE ABUSE TESTING Option 2

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. parts 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of [name of State], or AGENCY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with parts 655 before [insert date] and to submit the Management Information System (MIS) reports before [insert date before March 15] to [insert title and address of person responsible for receiving information]. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the *Federal Register*.

SUBSTANCE ABUSE TESTING Option 3

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of [name of State], or AGENCY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with parts 655 before [insert date] and to submit the Management Information System (MIS) reports before [insert date before March 15] to [insert title and address of person responsible for receiving information]. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before [insert date or upon request] a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt [insert title of the Policy Statement the recipient wishes the contractor to use] as its policy statement as required under 49 C.F.R. part 655; OR (c) submit for review and approval before [insert date or upon request] a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the Contractor agrees to: [to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium].

(J) Geographic Preference. All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposes to be amended in 2 CFR Part 1201).

(K) Veterans Preference. As provided in 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

- (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53; and
- (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

(L) Architectural Engineering and Related Services. When procuring architectural engineering or related services supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53 or provided in any other law requiring the Award to be administered under 49 U.S.C. chapter 53, the Recipient agrees to comply and assures that each of its Subrecipients will comply with 49 U.S.C. § 5325(b).

(M) School Bus Operations. For contracts involving the operation of public transportation, the Contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(f);
2. FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

1. Bar the Contractor from receiving Federal assistance for public transportation; or
2. Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

(N) Public Transportation Employee Protective Arrangements. For contracts involving transit operations by a FTA transit operator, the Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

1. U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
2. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including

its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.

3. **Special Arrangements.** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

(O) Pre-Award and Post-Delivery Audits of Rolling Stock Purchases. For contracts involving the purchase of revenue service rolling stock, the Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

(P) Bus Testing. For contracts relating to the purchasing or leasing of busses, Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

(Q) Cargo Preference Requirements. For contracts involving equipment, materials, or commodities that may be transported by ocean vessels, the Contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

(R) Charter Services. For contracts involving the operation of public transportation services, the Contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(d);
2. FTA regulations, "Charter Service," 49 C.F.R. part 604;
3. Any other federal Charter Service regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
3. Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

(S) Fly American. This clause applies to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation.

- a) *Definitions.* As used in this clause--

"International air transportation" means transportation by air between a place in the United States and a place outside

the United States or between two places both of which are outside the United States.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

- b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. *[State reasons]:*

(End of statement)

- e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

21.4 Exhibit 4 – Standard Clauses of City of Durham Service Contracts

CITY OF DURHAM GENERAL CONDITIONS

Complete Work without Extra Cost.

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

Performance of Work by City. If this contract requires the Work be completed according to a schedule, and the Contractor fails to perform the Work in accordance with the required schedule, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City’s rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Prompt Payment to Subcontractors.

(A) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all subcontractors (which term includes subconsultants and suppliers) based on

work completed or service provided under the subcontract. Should any payment to the subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, each subcontractor shall have the right to enforce this subsection (A) directly against the Contractor but not against the City of Durham.

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

- (i) the amount of interest due to the subcontractor under subsection (A), and/or
- (ii) the amounts past-due under subsection (A) to the subcontractor but not exceeding 5% of the payment(s) due from the City to the Contractor.

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

(C) Nothing in this section (titled "Prompt Payment to Subcontractors") shall prevent the Contractor at the time of invoicing, application, and certification to the Owner for payment to the subcontractor for unsatisfactory job progress; defective construction not remedied; disputed work; third party claims filed or reasonable evidence that claim will be filed; failure of subcontractor to make timely payments for labor, equipment, and materials; damage to Contractor or another subcontractor; reasonable evidence that subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by the Owner.

(D) The Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

Notice

(A) In General. This subsection (A) pertains to all notices related to or asserting default, breach of contract, claim for damages, suspension or termination of performance, suspension or termination of contract, and extension or renewal of the term.

(B) Means of Delivery of Notice.

- (i) Common Carrier. All such notices shall be in writing and sent by common carrier or personal delivery. Those sent by common carrier shall include instructions to obtain the recipient's signature and/or a signature at the recipient's address. Common carrier means UPS, FedEx, a designated delivery service authorized pursuant to 26 United States Code 7502(f)(2), or United

States Postal Service.

(ii) Notice given by Personal Delivery. If the sender causes the notice to be hand delivered to a natural person 18 years or older at the address of the Contractor indicated under subsection (F) below, notice is deemed given.

(iii) Common Carrier Leaves Notice. If the sender obtains a signature through a common carrier pursuant to subsection (i), notice is deemed given. If, however, the common carrier does not obtain such a signature between 8:30 AM – 4:30 PM Monday-Friday on a day that is not a Holiday but leaves the notice in a place that it deems safe without obtaining a signature, this process constitutes delivery of the notice provided that the sender also sends the notice by email or fax. Notice is deemed given on the later of (x) the leaving of the notice by the common carrier and (y) the email or fax. A notice is deemed emailed on the date that the sender attempts to send it. A notice is deemed faxed at the earlier of when successfully received or when faxing is unsuccessfully attempted three times at least ten minutes apart. (iv) Requested Additional Method. Regardless of the method of giving notice, the sender is requested but not required to also send it by fax or email.

(C) When Undeliverable Notice Is Deemed Sent by Common Carrier. If a notice sent by common carrier is undeliverable because the address or other information provided to the sender by the other party (the intended recipient) is incorrect, incomplete, or out of date, or for any other reason; and the sender also sends the notice by fax or email, notice is deemed given on the later of (x) the sender's placing the notice in the custody of the common carrier and (y) the fax or email. A notice is deemed emailed on the date that the sender attempts to send it. A notice is deemed faxed at the earlier of when successfully received or when faxing is unsuccessfully attempted three times at least ten minutes apart.

(D) Change of Address. A change of address, fax number, email address, telephone number, or person to receive notice shall be made by notice given to the other party.

Indemnification.

(A) In general. The terms of subsection (C) (Standard Indemnification Provision) below shall apply to the Contractor, subject to subsections (D) through (k), where applicable.

(B) Definitions. These definitions apply to this section unless otherwise stated.

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

Defend –In this section except in subsection (C), defend means to pay for or furnish counsel at the expense of the Contractor to defend any of the Indemnitees against claims alleged or

brought against any of the Indemnitees by a third party alleged or brought in any court or other tribunal, including forms of alternative dispute resolution required by law or contract, before the court or tribunal has reached a final determination of fault.

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

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

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

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

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

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

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

(C) Standard Indemnification Provision.

(i) The Contractor shall defend, indemnify, and hold harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or its derivative parties. In performing its duties under this subsection "c," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

(ii) "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses. Included without limitation within "Charges" are

(1) interest and reasonable attorney's fees assessed as part of any such item, and

(2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation,

deposit, or delivery of the items that are the subject of this contract. By appropriate litigation, each Indemnitee, severally, shall have the right to enforce this section (titled "Indemnification") directly against the Contractor, but not against the City.

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

(E) Restriction regarding Fault in Construction Agreements and Design Professional Agreements. If this contract is a construction agreement or design professional agreement, nothing in this contract requires the Contractor to indemnify or hold harmless Indemnitees or any other person or entity against losses, damages, or expenses unless the fault of the Contractor or its derivative parties is a proximate cause of the loss, damage, or expense indemnified.

(F) Restriction regarding Negligence of Design Professionals. Nothing in this contract requires the Contractor, provided that it is a design professional, to defend Indemnitees or any other person or entity against liability or claims for damages, or expenses, including attorney's fees, proximately caused or allegedly caused by the professional negligence, in whole or in part, of the Contractor, the City, or their derivative parties, whether the claim is alleged or brought in tort or contract.

(G) Liability When at Fault. The parties intend that nothing in this contract shall be construed to exclude from any indemnity or hold harmless provisions enforceable under subsection (D) (Restriction regarding Indemnitees' Negligence) and subsection (E) (Restriction regarding Fault in Construction Agreements and Design Professional Agreements) any attorneys' fees, litigation or arbitration expenses, or court costs actually incurred by the City to defend against third party claims alleged in any court, tribunal, or alternative dispute resolution procedure required of the City by law or by contract, if the fault of the Contractor or its derivative parties is a proximate cause of the attorney's fees, litigation or arbitration expenses, or court costs to be indemnified. Every provision in this contract that violates the parties' intent expressed in the preceding sentence shall be construed and revised to the extent that it is lawful in order to make the provision conform with such intent.

(H) Insurance Contracts and Bonds. This section does not affect an insurance contract, workers' compensation, or any other agreement issued by an insurer; and this section does not apply to lien or bond claims asserted under NCGS Chapter 44A.

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

(J) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

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

Termination for Convenience ("TFC").

(A) *Procedure*. Without limiting any party's right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice.

(B) *Obligations*. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate.

(C) *Payment*. The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but that amount will exclude profit for the Contractor. Within 20 days after terminating for convenience, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed up to the date indicated in the TFC notice, except to the extent Work has been paid for previously. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed, except to the extent it would be inequitable to either party. If Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

E-Verify Requirements

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

Choice of Law; Service of Process

(A) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina and not the United Nations Convention on Contracts for the International Sale of Goods. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice in Durham County. Such actions shall neither be commenced in nor removed to federal court. The preceding two sentences do not apply to actions to enforce a judgment entered in actions heard pursuant to this subsection (A).

(B) If the Contractor is a business entity (for instance, the Contractor is a corporation or limited liability company), this subsection (B) applies. "Agent Authorized to Accept Service of Process" ("Agent") means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. The Contractor hereby appoints as one of those Agents the person it designates to receive notice pursuant to section 7 (Notice Addresses). If the Contractor fails to appoint an Agent or the Agent cannot be served using reasonable diligence, the Contractor appoints the Durham City Clerk as its Agent. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent is designated as its non-exclusive Agent. The Contractor shall instruct each Agent that when the Agent receives the process, summons, or complaint, the Agent shall promptly send it to the Contractor using a means for giving notice under this contract, provided that when the City Clerk is the Agent, the City shall issue such instructions. This subsection (B) does not apply while the Contractor maintains a registered agent in North Carolina by filing with the office of the North Carolina Secretary of State and that registered agent can be found with due diligence at the registered office.

Waiver.

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

Performance of Government Functions

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

Severability

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

Modifications. Entire Agreement.

A modification of this contract is not valid unless signed by both parties and otherwise in accordance

with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

Public Health Emergency Declarations.

This section shall take effect upon the declaration of a state of emergency made pursuant to applicable law, code, or ordinance by any federal, state, county, or city official, due to a public health emergency, such as an epidemic, pandemic, or endemic. The Contractor shall comply with the written procedures and policies adopted by the City department or office primarily responsible for administering this contract. The Contractor shall ensure that all assigned temporary employees and subcontractors comply with the written procedures and policies while performing the Work on City property.

City's Manager's Authority.

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

21.5 Exhibit 5 – Information and Procedures for Counting and Crediting DBE Participation

HOW DBE PARTICIPATION IS COUNTED, OR CREDITED

DBE participation shall be credited toward achieving the DBE Goal as follows:

1. When a DBE participates in a contract, only the value of the work actually performed by the DBE will be counted toward DBE goals.
2. DTD will count the entire amount of that portion of a construction contract (or other contract covered by paragraph D.3. below) that is performed by the DBE's own forces, including the cost of supplies and materials obtained by the DBE for the work of the contract, and supplies purchased, or equipment leased by the DBE (except supplies and equipment the DBE subconsultant purchases or leases from the prime contractor or its affiliates).
3. DTD will count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the contract, toward DBE goals, provided DTD determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
4. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subconsultant is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
5. When a DBE performs as a participant in a joint venture, DTD will count a portion of the total value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
6. DTD will count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract, as determined by DTD's DBE Program Office.
 - (a) A DBE is considered to perform a commercially useful function when it is responsible for execution of a specific scope of work in a contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity when ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, DTD will evaluate the amount of work subcontracted; industry practices; whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing; and the DBE credit claimed for its performance of the work and other relevant factors.
 - (b) A DBE does *not* perform a commercially useful function if its role is limited to that of an

extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, DTD will examine similar transactions, particularly those in which DBEs do not participate.

(c) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, DTD will presume that the DBE is not performing a commercially useful function.

(d) When a DBE is presumed not to be performing a commercially useful function, DTD will accept evidence from the DBE or prime contractor to rebut this presumption. Evidence from independent sources, such as trade journals or independent studies by consultants, is particularly desirable in such circumstances.

7. DTD will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

(a) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

(b) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract.

(c) The DBE receives credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.

(d) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.

(e) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

(f) For purposes of this paragraph D.7., a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from

working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

8. DTD will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(a) If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials and supplies toward DBE goals. For purposes of this section, a "manufacturer" is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the Specifications.

(b) If the materials or supplies are purchased from a DBE Regular Dealer count 60% of the cost of the materials and supplies toward DBE goals. For purposes of this section, a "regular dealer" is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the Specifications and required under the Contract are brought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as previously provided if the person both owns and operates distribution equipment. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.

(c) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, DTD will only count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided DTD determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. No portion of the cost of the materials and supplies themselves will be counted towards DBE goals.

9. DTD will not count the participation of a DBE subconsultant toward the prime contractor's DBE achievements until the amount being counted toward the goal has been paid to the DBE.

E. **MEETING GOALS: PROPOSER'S DBE RESPONSIBILITY**

1. DTD will only award a contract which carries a DBE goal to a Proposer the either fully

meets the participation goal or documents sufficient good faith efforts to meet it. A Proposer must do either of the following things:

- (a) Documents that it has obtained sufficient DBE participation to meet the goal; or
- (b) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining sufficient DBE participation to do so.

2. In determining whether a Proposer has made good faith efforts to meet the DBE Goal, DTD will examine the supporting documentation on the different types and degree of efforts that the Proposer has made, including the quantity and intensity of those efforts. As requested by DTD's DBE Program Officer, a Proposer shall be required to submit in writing the efforts undertaken to demonstrate the Proposer's good faith efforts to obtain DBE participation for this Contract. At a minimum, the Proposer's written statement shall include the following information, as well as address the steps specified in 49 CFR, part 26, Appendix A, IV - Guidance Concerning Good Faith Efforts:

- (a) Whether the Proposer attended any pre-bid meetings that were scheduled by DTD to inform DBEs of contracting and subcontracting opportunities.
- (b) Whether the Proposer advertised in general circulation, trade association, and minority focus-media concerning the subcontracting opportunities.
- (c) Whether the Proposer provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively.
- (d) Whether the Proposer followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested.
- (e) Whether the Proposer selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE Goal (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
- (f) Whether the Proposer provided interested DBEs with adequate information about the plans, specifications and requirements of the contract.
- (g) Whether the Proposer negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.
- (h) Whether the Proposer made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by DTD or the proposer; and
- (i) Whether the Proposer effectively used the services of available DBE community organizations, DBE contractors' groups, local, State and Federal DBE business assistance offices, and other organizations that provide assistance in recruitment and placement of DBEs.

3. If DTD determines that the apparent successful Proposer has failed to meet the requirements specified in paragraph E.1.above, DTD will provide upon receipt of written request from the Proposer an opportunity for administrative reconsideration:
- (a) As part of this reconsideration, the Proposer will have the opportunity to provide additional written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.
 - (b) DTD's decision on reconsideration will be made by an official who did not take part in the original determination that the Proposer failed to meet the goal or make adequate good faith efforts to do so.
 - (c) The Proposer will have the opportunity to meet in person with DTD's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
 - (d) DTD will send the Proposer a written decision on reconsideration, explaining the basis for finding that the proposer did or did not meet the goal or make adequate good faith efforts to do so.
 - (e) The result of the reconsideration process is not administratively appealable to the Department of Transportation.

F. **DBE MODIFICATION(S) OR SUBSTITUTION(S)**

1. In the event that a Proposer required a modification to its DBE Participation Schedule after contract award, then the Proposer must notify, in writing, DTD's DBE Program Office, and request approval for the modification. This will include any modifications or substitutions to items or work, material, services and/or DBE firms identified on the initial DBE Participation Schedule. The Proposer must provide DTD with any and all documents and information as may be requested with respect to the requested modification. If the modification involves a substitution and if DTD agrees that a substitution may be made, then the Proposer shall make good faith efforts as set forth in paragraph E.2. above to substitute that DBE firm with another DBE firm. Such efforts must be documented to the satisfaction of DTD's DBE Program Office in the event that the Proposer is unable to contract with another DBE firm. The level of DBE Participation achieved will be reviewed in accordance with the requirements of paragraph E.2. above. The substitute DBE firm must be certified by DTD's DBE Program Office in order for the Proposer to receive credit towards achieving the DBE Goal for this DTD contract.

2. If after award of the Contract, a DBE subconsultant is terminated, or fails to complete its work on the Contract for any reason, DTD will require the prime contractor to make good faith efforts to find another DBE subconsultant to substitute for the original DBE. These good faith

efforts shall be directed at finding another DBE to perform at least the same dollar value of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established by DTD.

G. REPORTING AND RECORDKEEPING REQUIREMENTS

To ensure that all obligations under the contracts awarded to DBEs are met, DTD's DBE Program Office shall monitor the Contractor's performance during the life of the Contract.

1. Upon execution of its DTD contract, the Contractor shall enter into written subcontract agreement(s) with the DBE(s) listed in its DBE Participation Schedule(s). Copies of the Contractor's executed subcontract agreement(s) with DBEs shall be provided to DTD's DBE Program Office by the Contractor immediately upon execution.
2. The Contractor shall submit a work schedule outlining when the DBE subcontractor(s) will commence and complete work on the project, at such times as prescribed by DTD's DBE Program Office.
3. The Contractor shall keep a regular accounting of actual expenditures of funds made under all contract and subcontract agreements with DBEs; specifically, an accounting of the actual amount of DBE expenditures for each contract.
4. The Contractor shall submit monthly reports of actual contract expenditures to DBE's by the Contractor.
5. The Contractor and subcontractor(s) shall permit access to their books, records, and accounts by DTD (or its designated representative) or the Federal Transit Administration (FTA) for the purpose of investigation to ascertain compliance with these specified requirements. Such records shall be maintained by the Contractor in a fashion which is readily assessable to DTD and/or the FTA for a minimum of five (5) years following completion of this Contract.
6. With regard to any claim or dispute with respect to payment of a subcontractor at any tier, Contractor expressly agrees to defend, indemnify and hold DTD harmless in the event any suit is brought on account of a dispute between any of the parties including but not limited to subcontractor(s), supplier(s) and material men and in particular, Contractor shall assume the defense affirmatively at its sole cost whenever such suit is brought in any jurisdiction.

H. SANCTIONS FOR VIOLATIONS

If at any time DTD has reason to believe that the Contractor is in violation of its obligations under this section, DTD may, in addition to pursuing any other available legal remedy, commence proceedings to impose sanctions on the Contractor. Such sanctions may include, but are not limited to, one (1) or more of the following:

1. The suspension of any payment, or part thereof, due to the Contractor until such time as the issues concerning the Contractor's compliance are resolved.

2. The termination or cancellation of the Contract, in whole or in part, unless the Contractor can demonstrate to DTD's satisfaction, within a reasonable time period as designated by DTD, its compliance with the terms of this Section; and

3. The denial of the Contractor of the right to participate in any further contracts awarded by DTD for a period not longer than three (3) years.