

NORTH CAROLINA

DURHAM COUNTY

THIS CONTRACT is made, and entered into this the 1st day of August, 2011, by and between The Durham Center, with a business address at 414 East Main Street, Durham, NC 27701, and The City of Durham, Office of Economic and Workforce Development with a business address at 101 City Hall Plaza, Durham, NC 27701, a corporation duly authorized to do business in the state of North Carolina (hereinafter referred to as "CONSULTANT").

For and in consideration of mutual promises to each as herein after set forth, the parties hereto do mutually agree as follows:

- 1. SCOPE OF SERVICES.** CONSULTANT hereby agrees to provide the services and/or materials under this contract pursuant to the provisions and specifications identified in "Attachment 1" (hereinafter collectively referred to as "Services"). Attachment 1 is hereby incorporated herein and made a part of this contract. Time is of the essence with respect to all provisions of this contract that specify a time for performance.
- 2. TERM OF CONTRACT.** The Term of this contract for services is from July 1, 2011 to June 30, 2012 unless sooner terminated as provided herein.
- 3. PAYMENT TO CONSULTANT.** CONSULTANT shall receive from The Durham Center an amount not to exceed \$60,000.00 as full compensation for the provision of Services. The Durham Center agrees to pay CONSULTANT at the rates specified for Services performed to the satisfaction of The Durham Center, in accordance with this contract, and Attachment 1. Unless otherwise specified, CONSULTANT shall submit an itemized invoice to The Durham Center by the end of the month during which Services are performed. A Funds Reservation number may be assigned to encumber the funds associated with this contract and must appear on all invoices and correspondence mailed to Purchaser. Payment will be processed promptly upon receipt and approval of the invoice by The Durham Center.
- 4. INDEPENDENT CONTRACTOR.** The Durham Center and CONSULTANT agree that CONSULTANT is an independent contractor and shall not represent itself as an agent or employee of The Durham Center for any purpose in the performance of CONSULTANT's duties under this Contract. Accordingly, CONSULTANT shall be responsible for payment of all federal, state and local taxes as well as business license fees arising out of CONSULTANT's activities in accordance with this Contract. For purposes of this contract taxes shall include, but not be limited to, Federal and State Income, Social Security and Unemployment Insurance taxes.

CONSULTANT, as an independent contractor, shall perform the Services required hereunder in a professional manner and in accordance with the standards of applicable professional organizations and licensing agencies.

- 5. OWNERSHIP OF WORK.** All Work and any documents prepared by the CONSULTANT for or on account of this contract shall be the owned by The Durham Center, and The Durham Center shall have all common law, statutory and other reserved rights, including copyright.

Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the project is not to be construed as publication in derogation of The Durham Center's reserved rights.

- 6. INSURANCE AND INDEMNITY.** To the fullest extent permitted by laws and regulations, CONSULTANT shall indemnify and hold harmless The Durham Center and its officials, agents, and employees from and against all claims, damages, losses, and expenses, direct, indirect, or consequential (including but not limited to fees and charges of engineers or architects, attorneys, and other professionals and costs related to court action or mediation) arising out of or resulting from CONSULTANT's performance of this Contract or the actions of the CONSULTANT or its officials, employees, or contractors under this Contract or under contracts entered into by the CONSULTANT in connection with this Contract. This indemnification shall survive the termination of this Contract.

In addition, CONSULTANT shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. Additionally, CONSULTANT shall maintain, at its expense, the following minimum insurance coverage:

\$250,000/\$500,000 – Professional Liability - Error and Omissions.

CONSULTANT, upon execution of this Contract, shall furnish to The Durham Center a Certificate of Insurance reflecting the minimum limits stated above. The Certificate shall provide for thirty-(30) days advance written notice in the event of a decrease, termination or cancellation of coverage. Providing and maintaining adequate insurance coverage is a material obligation of the CONSULTANT. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The limits of coverage under each insurance policy maintained by the CONSULTANT shall not be interpreted as limiting the CONSULTANT's liability and obligations under the Contract. Notwithstanding the foregoing, nothing contained in this section 5 shall be deemed to constitute a waiver of the sovereign immunity of the County, which immunity is hereby reserved to the County.

- 7. HEALTH AND SAFETY.** CONSULTANT shall be responsible for initiating, maintaining and supervising all safety precautions and programs required by OSHA and all other regulatory agencies while providing Services under this Contract.
- 8. NON-DISCRIMINATION IN EMPLOYMENT.** CONSULTANT shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, national origin, or disability. CONSULTANT shall take affirmative action to ensure that qualified applicants are employed and that employees are treated fairly and legally during employment with regard to their age, sex, race, creed, national origin, or disability. In the event CONSULTANT is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Contract may be canceled, terminated or suspended in whole or in part by The Durham Center, and CONSULTANT may be declared ineligible for further COUNTY contracts.
- 9. LIVING WAGE.** Unless otherwise exempt, CONSULTANT shall comply with the COUNTY's Living Wage Policy (the "Policy"). Pursuant to the Policy, CONSULTANT agrees to pay all employees, providing Services in connection with this Contract, at least a Living Wage, as herein defined. Living Wage is defined to be a wage paid at an hourly rate of not less than 7.5% above the Federal Poverty Guidelines, as defined by the Bureau of Census, for a family of four. The hourly rate for the COUNTY's fiscal year 2012 (July 2011 through June 2012) is \$11.55.

CONSULTANT shall furnish to the COUNTY a copy of the CONSULTANT's payroll (with personal identification redacted) on at least a quarterly basis showing the wages paid to the CONSULTANT's employees who perform work pursuant to this Contract. Failure to comply with the

Policy may, in addition to all other remedies available for breach of contract, result in CONSULTANT being barred from receiving any other contracts with the COUNTY for a period of up to three years.

10. GOVERNING LAW. This Contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Contract shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina.

11. TERMINATION.

11.1 EVENT OF DEFAULT. Any one or more of the following acts or omissions of the CONSULTANT shall constitute an Event of Default hereunder:

- a. Failure to perform the Services satisfactorily or on schedule,
- b. Failure to submit any report required hereunder; and/or
- c. Failure to perform any other covenant, term, or condition of this Agreement.

Upon the occurrence of an Event of Default, The Durham Center may take one or more or all of the following actions:

1. Give CONSULTANT written Notice of the Event of Default, specifying the Event of Default and requiring it to be remedied within, in the absence of greater or lesser specification of time, seven (7) calendar days from the date of the notice; and if the Event of Default is not timely remedied, terminate the agreement, effective two (2) days after giving the CONSULTANT written Notice of Termination; and/or
2. Deduct any and all expenses incurred by The Durham Center for damages caused by the CONSULTANT's Event of Default; and/or
3. Treat the agreement as breached and pursue any of its remedies at law or in equity, or both, including damages and specific performance.

11.2 TERMINATION FOR CONVENIENCE. This Contract may be terminated, without cause, by either party upon thirty (30) days written notice to the other party. This termination notice period shall begin upon receipt of the Notice of Termination.

Termination of this Contract, under either section 11.1 or 11.2, shall not form the basis of any claim for loss of anticipated profits by either party.

12. SUCCESSORS AND ASSIGNS. CONSULTANT shall not assign its interest in this Contract without the written consent of The Durham Center. CONSULTANT has no authority to enter into contracts on behalf of The Durham Center.

13. COMPLIANCE WITH LAWS. CONSULTANT represents that it is in compliance with all Federal, State, and local laws, regulations or orders, as amended or supplemented. The implementation of this Contract shall be carried out in strict compliance with all Federal, State, or local laws.

14. NOTICES. All notices which may be required by this contract or any rule of law shall be effective when received by certified mail sent to the following addresses:

**THE DURHAM CENTER
ATTN: CONTRACTS
414 EAST MAIN STREET**

**CONSULTANT
ATTN: Thomas J. Bonfield, City Manager
101 City Hall Plaza**

DURHAM, NORTH CAROLINA 27701

Durham, NC 27701

- 15. **AUDIT RIGHTS.** For all Services being provided hereunder, The Durham Center shall have the right to inspect, examine, and make copies of any and all books, accounts, invoices, records and other writings relating to the performance of the Services. Audits shall take place at times and locations mutually agreed upon by both parties. Notwithstanding the foregoing, CONSULTANT must make the materials to be audited available within one (1) week of the request for them.
- 16. **COUNTY NOT RESPONSIBLE FOR EXPENSES.** The Durham Center shall not be liable to CONSULTANT for any expenses paid or incurred by CONSULTANT, unless otherwise agreed in writing.
- 17. **EQUIPMENT.** CONSULTANT shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide Services hereunder, unless otherwise agreed in writing.
- 18. **ENTIRE CONTRACT.** This contract, including Attachment 1, shall constitute the entire understanding between The Durham Center and CONSULTANT and shall supersede all prior understandings and agreements relating to the subject matter hereof and may be amended only by written mutual agreement of the parties.
- 19. **HEADINGS.** The subject headings of the sections are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This contract shall be deemed to have been drafted by both parties and no interpretation shall be made to the contrary.
- 20. **EXISTENCE.** CONSULTANT warrants that it is a corporation duly organized, validly existing, and in good standing under the laws of the State of North Carolina and is duly qualified to do business in the State of North Carolina and has full power and authority to enter into and fulfill all the terms and conditions of this contract.
- 21. **CORPORATE AUTHORITY.** By execution hereof, the person signing for CONSULTANT below certifies that he/she has read this contract and that he/she is duly authorized to execute this contract on behalf of the CONSULTANT.

IN TESTIMONY WHEREOF, the parties have expressed their agreement to these terms by causing this Service Contract to be executed by their duly authorized office or agent.

City of Durham, Office of Economic and Workforce Development

The Durham Center

By: _____

By: _____

Print Name: _____

Print Name: Ellen S. Holliman

Title: _____

Title: LME Director

Date: _____

Date: _____

Witness: _____

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

Government
Control Act.

George K. Quick, Durham County Finance

Officer

ATTACHMENT 1” to follow

ATTACHMENT 1

SCOPE OF SERVICES

This Scope of Services is an integral part of the contract between **The Durham Center** and **The City of Durham, Office of Economic and Workforce Development**, (hereinafter referred to as “Consultant”), which contract is dated **August 1, 2011**.

CONSULTANT hereby agrees to provide services and/or materials to The Durham Center pursuant to the provisions set forth below.

SERVICES to be provided: The pilot training and employment program will use BECOMING grant funding to help target transition age youth (ages 16-21) who have been identified as (1) having significant functional impairments, and/or (2) disconnected or at risk of becoming disconnected from services and supports. Specifically, the program will support at minimum 120 transitioning youth a year in becoming gainfully employed through the collaborative efforts of the BECOMING project.

Office of Economic and Workforce Development (OEWD) shall:

1. OEWD will advertise for, screen, and hire a full-time *Employment Coordinator* for the BECOMING project. The *Employment Coordinator* will provide the following: program implementation; monthly reporting on all employment related activities; provide support in the coordination of outreach, recruitment, and screening activities stipulated under the BECOMING grant; provide support in the development and implementation of youth employment skills assessments in an effort to ascertain employment readiness of program participants; provide support and work in conjunction with the Durham Center staff and/or case managers affiliated with this program to develop and implement *Individual Service Strategies* that will increase the employability and marketability of program participants; conduct youth employment related focus groups; and provide support on any other duties as specified by and/or related to the implementation of the BECOMING project. This position will report directly to Nicholas McCoy, Senior Workforce Development Manager.
2. OEWD will administer and coordinate all necessary *Human Resources, Performance Management, and Employee Training* activities that are necessary of the *Employment Coordinator* in support of this program.
3. OEWD will work in collaboration with JobLink partners to maximize outcomes for participants of this program. OEWD will make available employment services to participants under the JobLink System, such as coordinating job development activities; providing outreach to public/private worksites in an effort to place participants; career counseling; and providing employment referral services.
4. Review, sign and forward all *Employment Coordinator* time sheets and reports to the Durham Center.

The Durham Center shall:

1. Serve as the primary coordinator for this project, including (but not limited to): monitoring of all reporting measures; program oversight and evaluation; oversight of partnership agreements; and support partnership/collaboration to ensure desired outcomes of the program.
2. Provide outreach, recruitment, and oversight of participants affiliated with this program.
3. Work in conjunction with *Employment Coordinator* and OEWD staff in order to develop, monitor, and evaluate *Individual Service Strategies* of program participants and provide mental health, substance abuse, and/or any related referral services that will help participants of the program achieve and attain success within the program.

Reporting Process: The *Employment Coordinator* hired for this project will be responsible for submitting monthly reports to the BECOMING Project Director and the Senior Workforce Development Manager that include, but are not limited to: description of project activities, program expenditures, number of participants served, types of services provided, etc. during the reporting period. Prior to program implementation, the Durham Center will provide OEWD with all requisite reporting requirements.

Compensation:

- I. **Budget:** Funding for this contract shall be provided from the Durham Center’s BECOMING grant awarded by the Substance Abuse and Mental Health Services Administration (SAMSHA) in amount not to exceed \$60,000.00 for reimbursements of expenditures in accordance with the below approved budget:

Employment Coordinator	=	\$42,000
Benefits (26%)	=	\$10,920
Office Supplies	=	\$ 1,080
<u>Admin</u>	=	<u>\$ 6,000</u>
Program Total	=	\$60,000

OEWD will be reimbursed in an amount not to exceed \$60,000.00 by the Durham Center for all related program expenditures outlined in the above budget. The Durham Center shall not be obligated to pay OEWD any payments, fees, expenses, or compensation other than those authorized by this section. Money may be shifted between line items up to 10% from one line item by OEWD with/without prior approval, so long as the total budget is not exceeded and the services to be provided are not reduced. If more than 10% is needed to be moved between line items OEWD would seek and receive approval from the Durham Center prior to spending those funds.

- II. **Billing:** OEWD shall send invoices to the Durham Center on a monthly basis for the amounts to be paid pursuant to the contract. Each invoice shall reflect the above budget, be accompanied with copies of ledger pages reflecting charges and any supporting documentation, and include any additional information as maybe reasonably requested by the Durham Center. **Total payments will not exceed \$60,000.00** over the contract period.