

**CONTRACT BETWEEN WILLOWTREE, INC. AND THE CITY OF DURHAM
REGARDING INCENTIVES FOR JOB CREATION WITHIN THE COMMUNITY
DEVELOPMENT AREA WITHIN THE CITY LIMITS**

THIS CONTRACT (“Contract” or “Agreement”) is dated, made, and entered into as of the 16th day of November, 2015, by the City of Durham (“City”) and WillowTree, Inc. (“Company” or “contractor”), a corporation organized and existing under the laws of the State of Virginia and authorized to transact business in the State of North Carolina under the name WillowTree Apps Inc., and the City of Durham (the “City”), a North Carolina municipal corporation.

Background and Purpose. WillowTree, Inc. is a mobile application development company which provides mobile strategy, design, development and analytics services for companies and large government / non-profit agencies. This project includes the creation of 98 jobs at a facility located within the Community Development Area (CDA) inside the city limits of Durham, North Carolina. The jobs to be created by the Company are within the Community Development Area within the city limits of Durham within downtown and are within the category of investment emphasized in the “Resolution Establishing an Economic Development Financial Assistance and Incentive Policy for Job Creation, Job Retention and Capital Investment” adopted by City Council on April 21, 2014 (“Resolution”). Through adoption of the Resolution, the City finds that the use of City funds to promote job creation will increase taxable property and the business prospects of the City of Durham. The Company represents the incentives proposed by this Agreement constitute a bonafide inducement for the Company to relocate and/or remain in the City of Durham, without which inducements the Company would be less likely to relocate and/or remain in the City.

By authorizing the execution of this Contract, the City Council of the City of Durham finds (i) that in order to aid and encourage the creation of jobs in the city, it is necessary and desirable to provide an incentive to the Company for creating jobs inside the corporate limits of the City of Durham (as defined by the Durham City/County Planning Department on the date of the Contract), (ii) that the proposed expansion by the Company is a qualified business for job creation as defined by the Resolution and increases the business prospects and supports the taxable property of the City, contributes significantly to economic conditions in Durham, provides workers with continuing employment opportunities, diversifies the local economy, and (iii) that this Contract otherwise complies with the Resolution.

THEREFORE, IT IS AGREED AS FOLLOWS:

Sec. 1. Definitions.

(a) “Community Development Area” or “CDA” –the geographic area identified on the City map entitled “The Durham Community Development Area, Targeted Community Development Areas and the Parrish Street Project Area”, dated December 21, 2006;

(b) “Contract End Date” –the last possible effective day of the life of the Contract, except for termination for other cause.

(c) “Qualified Job” –full-time permanent positions filled by employees that Company has in its employ as of the date of its physical relocation to the City (if employees are relocated or transferred from outside the City of Durham), plus additional full-time, permanent employment positions that are created after the effective date of this Contract and retained for at least 1-year after creation, which pay a salary equal to or greater than the City’s livable wage rate (pursuant to Section 18-23 of the City Code), and which are evidenced by the Company’s quarterly wage reports of employee wages filings with the North Carolina Department of Commerce and documentation as necessary to establish such positions and employment for the applicable duration. Retention of all Qualified Jobs is cumulative until the final City Incentive Payment is made. In other words, the first Qualified job(s) created must be retained for the full period (more than the 1-year minimum, if necessary) until final payment to be counted as a Qualified Job. If the Company is already located in the City of Durham, any Company positions filled by employees already existing in the City of Durham prior to the execution of this Agreement shall not be counted as

*Contract Between WillowTree, Inc. and The City of Durham Regarding
Incentives for Job Creation*

“Qualified Jobs”. So long as the Company creates and retains a position to the extent required hereunder, the Company may replace the employee filling such position from time to time in Company’s discretion. For all such positions and employment created after the date of Company’s relocation, such jobs shall be posted with the NCWorks Career Center in Durham. Except for the business travel requirements of Company, a Qualified Job under this Contract shall require that the employee holding such job shall spend a majority of his or her working time in the ordinary course of employment within the Community Development Area (CDA) within the city limits of Durham, North Carolina.

(d) “Effective Date” –the date this Contract is approved by City Council.

Sec. 2. Required Job Creation. The City agrees to pay Company up to an overall total of \$73,500.00 in incentive payments for creation of 98 Qualified Jobs (“City Incentive Payments”) in accordance with the schedule provided under Section 3 below. Payments are conditioned upon the Company meeting the following requirements:

(a) Job Creation Requirements – the Company shall create and fill the permanent positions necessary to establish all eligible Qualified Jobs within three (3) years of the Effective Date. Company shall create an annual minimum number of Qualified Jobs as specified in Section 3 below to maintain eligibility for each City Incentive Payment. Creation of each Qualified Job is conditioned upon the following:

- (i) (Workforce Development Plan agreement) -- Upon execution of this Agreement, the Company shall complete, execute and return the document entitled “Workforce Development Plan” (attached hereto as Attachment A) and comply with its provisions.
- (ii) (Employment Records) -- The number of Qualified Jobs created will be verified by using a listing of Qualified Job positions created and employees which held those positions which comprise the Qualified Jobs. Listing(s) will contain wages of employees which comprised the Qualified Jobs, will be created by the Company, must be attested to by the Company and notarized. Verification of wages will be based upon Company’s quarterly wage reports of employee wages as filed with the NC Department of Commerce and any other documentation or evidence as the City reasonably requires to verify the creation of a Qualified Job as defined by this Agreement.
- (iii) (Healthcare Coverage) --For each Qualified Job, Company shall maintain, at a minimum, the same level of health care benefits or better (on balance) throughout the term of this Contract that it provides at the time of first creating the Qualified Job.

Sec. 3. City Incentive Payment Schedule. (a) The Company’s entitlement to payment from the City under this Agreement is conditioned upon the Company sending an invoice to the City for payment requested that documents created Qualified Jobs pursuant to this Agreement. By complying with the requirements of Section 2 above and all other applicable provisions of this Agreement, the Company shall be eligible to receive the City Incentive Payments according to the following payment schedule:

<u>INCENTIVE PAYMENT YEAR</u>	<u>CITY INCENTIVE PAYMENT AMOUNT**</u>	<u>PAYMENT CONDITIONS</u>	<u>EARLIEST TIMING OF PAYMENT</u>
<u>YEAR 1*</u>	<u>\$19,500.00</u>	<u>Creation of at least 26 Qualified Jobs.***</u>	<u>January 1st of the first calendar year that begins after Company has complied with the payment conditions for Year 1.****</u>

*Contract Between WillowTree, Inc. and The City of Durham Regarding
Incentives for Job Creation*

<u>YEAR 2</u>	<u>\$27,000.00</u>	<u>Creation of at least 36 (for a cumulative total of 62) Qualified Jobs from the Effective Date.</u>	<u>Within 60 days after completion of payment condition for Year 2 but not earlier than the 1-year anniversary for City Incentive Payment for Year 1.</u>
<u>YEAR 3</u>	<u>\$27,000.00</u>	<u>Creation of at least 36 (and retention of a cumulative total of 98) Qualified Jobs from the Effective Date.</u>	<u>Within 60 days after completion of payment condition for Year 3 but not earlier than the 1-year anniversary for City Incentive Payment for Year 2.</u>

* To be eligible for Year 1 payment all eligible permanent employment positions for the Qualified Jobs must have been initially filled by December 31, 2016 to be counted as Qualified Jobs for Year 1.

** The City Incentive Amount indicated is paid only for meeting the requirements of the indicated Payment Conditions for the year indicated and for no other years. For example, if Company creates 26 Qualified Jobs for Year 1, 0 Qualified Jobs for Year 2, and 98 (cumulative) Qualified Jobs for Year 3, Company is eligible for City Incentive Payments for Year 1 (\$19,500) and Year 3 (\$27,000,00), but no payment for Year 2.

*** The term “creation” includes the minimum required 1 year retention of an employment position as defined in the term “Qualified Job”. In other words, the payment condition for year 1 is not met until all Qualified Job requirements are satisfied, (including minimum 1 year retention).

**** By way of example, if the Year 1 Payment Conditions are met on March 1, 2016, the Year 1 City Incentive Payment would be made after January 1, 2017 (which is the first January after the date of the completion of the Year 1 Payment Conditions).

(b) Prorated Job Creation (85% minimum)– To be eligible for the full City Incentive Payment amount for each Incentive Payment Year as shown in table under Section 3(a), Company must create the specified number of Qualified Jobs listed under the Payment Condition for each Incentive Payment Year. If Company creates less than 100% of the specified Qualified Jobs, but at least 85% for a given Incentive Payment Year, the City Incentive Payment Amount will be proportionally reduced or prorated by taking the fraction of actual Qualified Jobs created over required Qualified Jobs (rounded-up to the nearest 100th). By way of example, if the Qualified Jobs created for Year 1 equal 23, the City Incentive Payment would be \$17,160.00 or (0.88) x (\$19,500). If however, only 50 total, cumulative Qualified Jobs were created for Year 2 (i.e., only 81% of the 62 required), Company would not be eligible for any City Incentive Payment for Year 2. If then, however, the Company created 98 total, cumulative Qualified Jobs for year 3, it would be eligible for the full City Incentive Payment for Year 3, or \$27,000.00.

Sec 4. Job Posting and Reporting Requirements. Company shall comply with the job posting and reporting requirements of the Workforce Development Plan agreement attached hereto as Attachment A.

Sec. 5. Contract End Date. Time of the Essence. Notwithstanding any other termination provision contained in this Contract, the City shall have no obligation to, and shall not, make any payment to the Company pursuant to this Agreement after December 31, 2022, upon which time the Contract shall terminate, if not terminated earlier. Time is of the essence with respect to all provisions of this Contract.

Addresses. The payments by the City pursuant to this Agreement shall be mailed to:

Att: Account Receivable
WillowTree, Inc.
PO Box 2188
Charlottesville, VA 22902

Or to such other address as the Company may specify by written notice to the City. When a notice is required or permitted by this Contract, it shall be given by written notice to the City by delivery to:

*Contract Between WillowTree, Inc. and The City of Durham Regarding
Incentives for Job Creation*

Mr. Kevin Dick
Director - Office of Economic and Workforce Development
City of Durham
807 E. Main St., Suite 5-100
Durham, North Carolina 27701

and to the Company by delivery to:

Att: Notice
WillowTree, Inc.
PO Box 2188
Charlottesville, VA 22902

Either party may change the address by giving notice of the change to the other party.

Sec. 6. Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this Contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 7. EEO Provisions. During the performance of this Agreement the Company agrees as follows: (1) The Company shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Company shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Company shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Company shall in all solicitations or advertisement for employees placed by or on behalf of the Company, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Company shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Company's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this Contract, in whole or in part, and the City may declare the Company ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Company shall include these EEO provisions in every purchase order for goods to be used in performing this Contract and in every subcontract related to this Contract so that these EEO provisions will be binding upon such subcontractors and vendors.

Sec. 8. City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

Sec. 9. Default. Termination. Clawback Provision.

(a) If the Company fails to fulfill any of its material obligations under the Contract, the City may hold the Company in default and terminate this Agreement and make no further payments to Company.

(b) If, however, any required certification or representation made by the Company is materially false when made and known to be false by the Company, the City may hold the Company in default and (i) terminate this Agreement and make no further payments to Company and (ii) recover all prior payments, and reasonable direct expenses incurred by the City including reasonable attorney's fees for the alleged,

*Contract Between WillowTree, Inc. and The City of Durham Regarding
Incentives for Job Creation*

falsified Qualified Jobs. If, after removing said falsely represented Qualified Jobs from the level of Qualified Jobs required by the Contract, the Company fails to meet the thresholds required under this Agreement, the Company shall reimburse the City all prior payments made during that relevant period. If the Company does not deliver to the City the certification(s) and information required under Section 2 above, and does not seek payment under Sections 2, the Company shall not be considered in default for failing to deliver the certification. The aforementioned clawback requirement is intended to apply only in the case where the Company has knowingly provided such materially false certification.

(c) In the event the Company shall fail to meet certain target numbers for the creation, relocation or retention of Qualified Jobs and (i) such failure is due to general economic conditions and (ii) the Company has otherwise previously qualified for certain payments hereunder, the City and the Company agree to enter into good faith negotiations to amend this Contract (with City Council approval, if necessary) in order to preserve the economic benefits and incentives created by this Agreement.

Sec. 10. Agreement Subject to Resolution. This Agreement is made pursuant to the Resolution, and is subject to the procedures, limitations, and restrictions set forth therein.

Sec. 11. Attachments. The following attachments are made a part of this Contract:
Attachment A, "Workforce Development Plan," containing 4 pages.

In case of conflict between an attachment and the text of this Contract excluding the attachment, the text of this Contract shall control.

Sec. 12 Indemnification. (a) To the maximum extent allowed by law, the Company shall defend, indemnify, and save 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 Company that may arise out of this Agreement. In performing its duties under this subsection "a," the Company shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are interest and reasonable attorneys' fees assessed as part of any such item. "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Company. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this Contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Contract. (d) 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 Company under this Contract for three (3) years following such expiration or termination. (e) Limitations of the Company's Obligation. If this section is in, or is in connection with, a contract 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, then subsection "a" above shall not require the Company 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. Notwithstanding the foregoing, in no event shall Company be liable to Indemnitees hereunder to the extent of any negligence on the part of any Indemintees or for any consequential, special or indirect damages.

Sec. 13. Choice of Law and Forum. 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. 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. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

Sec. 14. 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

*Contract Between WillowTree, Inc. and The City of Durham Regarding
Incentives for Job Creation*

of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

Sec. 15 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.

Sec.16. Severability. If any provision of this Contract shall be unenforceable, the remainder of this Contract shall be enforceable to the extent permitted by law.

Sec. 17. Assignment. Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this Contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Company and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Company's duties that arise out of this Contract and all of the City's claims that arise out of this Contract. Without granting the Company the right to assign, it is agreed that the duties of the Company that arise out of this Contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

Sec. 18. Compliance with Law. In performing all of its obligations under the Contract, the Company shall comply with all applicable laws.

Sec.19. No Third Party Rights Created. This Contract is strictly intended for the benefit of the City and the Company and not any other third party, person or entity. Nor shall any contractual or other rights of any kind arise under law as to any such third parties, persons or entities as to this Contract.

Sec. 20. Principles of Interpretation and Definitions. In this Contract, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this Contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this Contract. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day.

Sec. 21. Modifications. Entire Contract. 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 the City Manager or a deputy or assistant City Manager signs it for the City. 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, Contracts, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Contract.

Sec. 22. City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this Contract or the Company's services under this Contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

Sec. 23. No Joint Venture. Nothing in this Contract shall create a joint venture or partnership between the City and the Company.

Sec. 24. E-Verify compliance under 143-133.3. The contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). This E-Verify compliance under 143-133.3 section is intended to apply to only the contracts to which

*Contract Between WillowTree, Inc. and The City of Durham Regarding
Incentives for Job Creation*

NCGS 143-133.3(a) applies and shall be construed in accordance with that statute. Any clause in this contract included under the authority of NCGS 160A-20.1(b) shall be of no effect; provided, however, to the extent (if any) required to comply with NCGS 143-129(j), a clause in this contract requiring the contractor and its subcontractors to comply with the requirements of Article 2 of Chapter 64 shall remain in effect if this contract is subject to NCGS 143-129. This E-Verify compliance under 143-133.3 section is valid only if House Bill 318, which was ratified on 29 September 2015, is signed into law by the Governor of North Carolina.

IN WITNESS WHEREOF, the City and the Company have caused this Contract to be executed under seal themselves or by their respective duly authorized agents or officers.

CITY OF DURHAM

ATTEST:

By: _____

Preaudit certificate

Contract Between WillowTree, Inc. and The City of Durham Regarding
Incentives for Job Creation

WILLOWTREE, INC.
(dba WillowTree Apps Inc. in North Carolina)

By: _____ (SEAL)

Title of officer: _____

(Affix corporate seal.)

State of _____
County of _____

ACKNOWLEDGEMENT BY
WILLOWTREE, INC.

I, a notary public in and for the aforesaid county and state, certify that _____ personally appeared before me this day and stated that he or she is (~~strike through the inapplicable:~~) chairperson/ president/ chief executive officer/ vice-president/ assistant vice-president/ treasurer/ chief financial officer of WILLOWTREE, INC., a corporation (dba and registered in the State of North Carolina as WillowTree Apps Inc.), and that by authority duly given and as the act of the corporation, he or she signed the foregoing Contract with the City of Durham and the corporate seal was affixed thereto. This the _____ day of _____, 20_____.

My commission expires:

Notary Public