

Workforce Innovation and Opportunity Act Contract between the City of Durham and Educational Data Systems Incorporated,(EDSI) of Dearborn, MI

WORKFORCE INNOVATION AND OPPORTUNITY ACT CONTRACT BETWEEN THE CITY OF DURHAM AND EDUCATIONAL DATA SYSTEMS INCORPORATED (EDSI) OF DEARBORN, MI

This contract is made, dated and entered into as of the 1st day of July, 2016, between the City of Durham, a municipal corporation (“City”) and Educational Data Systems Incorporated (“Contractor”), a for-profit corporation organized and existing under the laws of the state of Michigan.

Sec.1. Background and Purpose. The purpose of this contract is to provide Adult and Dislocated Worker services to Workforce Innovation and Opportunity Act eligible participants. Attachment A describes the services proposed. The City, through the Durham Workforce Development Board, is a recipient of Workforce Innovation and Opportunity Act formula funds provided through the Division of Workforce Solution (DWS), North Carolina Department of Commerce (DWS), for formula Workforce Innovation and Opportunity Act purposes. Pursuant to said grant, in keeping with its broad objectives, the City desires to engage the Contractor to render certain services in the furtherance of those objectives. The Contractor shall abide by each paragraph of this agreement and its attachments and all procedures, rules and regulations imposed upon the City by DWS, in connection with the City’s receiving the grant referred to above. The specific service to be provided by Contractor is Adult and Dislocated Worker services to provide employment and training services to adults and dislocated (“laid-off”) individuals that are enrolled in the program administered by the Office of Economic and Workforce Development (OEWD).

Sec. 2. Services and Scope to be Performed. Contractor shall perform the services and activities outlined in Attachment A, “The Statement of Work.” Those services and activities are also referred to in this contract as the “program” or the “Work.” The Contractor shall begin performance of those services and activities on or about July 1, 2016. It shall complete those services and activities by June 30, 2017. This contract may be recommended to City Council for renewal based upon performance and funding availability up to an additional two years contingent on approval by the Durham Workforce Development Board. In year one, an evaluation will be made by the Office of Economic and Workforce Development (OEWD) to determine whether to recommend contract renewal and to refer the recommendation to the Durham Workforce Development Board (DWDB) and the City Council prior to June 30, 2017. If renewed, subsequent evaluation will also be made by OEWD at the end of year two prior to June 30, 2018 in order to determine if the contract will be recommended to the DWDB and the City Council for renewal in its final year.

Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

Sec. 3. Reserved

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Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract and in Attachment B, 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.

Sec. 5 Contractor's Billings to City. Compensation. The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City; such information as may be reasonably requested by the City. Monthly invoice documentation shall include the following:

1. Time sheets or payroll registers.
2. Documentation related to the fringe benefit percentages for each employee whose salary is charged to the contract.
3. Documentation related to the cost or rental of space.
4. Documentation to substantiate travel costs that are invoiced and should be congruent with the policies of the City of Durham travel reimbursement.
5. Documentation of supply costs.
6. Documentation of other program costs such as advertising, technology, food and meeting costs, professional services, employee morale, insurance, criminal background checks, maintenance and repair and other costs allowable under the Office of Management and Budget and the policies of the Durham Workforce Development Board.
7. Documentation of client support service costs such as childcare, books, supplies, and other costs allowable under the Office of Management and Budget and policies of the Durham Workforce Development Board.

Within thirty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

The City shall make payments on a cost reimbursement basis to the Contractor for services and activities described in Attachment A pursuant to, and consistent with the budgeted line-items provided for in Attachment B of this contract. Those payments shall be made by the City within 30 days of receipt of invoices for services received from the Contractor. No less often than monthly, the Contractor shall send invoices to the OEWD's Workforce Development Administrator, whose name and address shall be provided by the City. The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section. The total dollar amount to be paid under this contract by the City to the Contractor shall not exceed \$655,000.

Sec. 6. 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

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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, Subcontractors 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 City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

(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.

Sec. 7. Insurance. Contractor shall maintain not less that shown in Attachment H.

Sec. 8. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule required by this contract, 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.

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Sec. 9. Attachments. The following Attachments are made a part of this contract:

Attachment A	Statement of Work
Attachment B	Program Budget
Attachment C	Certification Regarding Lobbying
Attachment D	Financial Assurances and Certification
Attachment E	Drug-Free Workplace Disclaimer
Attachment F	Certifications Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transactions
Attachment G	Assurances and Certifications
Attachment H	Insurance requirements for Workforce Innovation and Opportunity Act Contractors

In case of conflict between an Attachments and the text of this contract excluding the Attachments, the text of this contract shall control.

Sec. 10. Notice (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:

Esther Coleman
Senior Workforce Development Administrator
City of Durham
Office of Economic and Workforce Development
101 City Hall Plaza
Durham, North Carolina 27701
The fax number is (919) 560-4986

To the Contractor:

Kevin Schnieders, CEO
Educational Data Systems Incorporated
15300 Commerce Drive North,
Suite 200
Dearborn, MI 48120

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(b) 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. 11. Indemnification. (a) To the maximum extent allowed by law, the Contractor 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 Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor 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 (1) interest and reasonable attorneys' 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). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor. (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 Contractor under this contract. (e) Limitations of the Contractor'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 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.

Sec. 12. Trade Secrets; Confidentiality. The request for proposals (RFP) section titled "Trade Secrets and Confidentiality" shall apply to any Trade Secrets disclosed to the City during the process leading to the parties' entering into this Contract (including all of the Contractor's responses to the RFP). This section (titled "Trade Secrets; Confidentiality") 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. For purposes of this contract, the word "candidate" in the RFP section just cited shall mean the "Contractor."

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Sec. 13. 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 excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. 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, and 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.

Sec. 14. State Law Provisions.

(a) E-Verify Requirements. (A) If this contract is awarded pursuant to North Carolina General Statutes (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.

(b) Iran Divestment Act Certification. The Contractor certifies that, if it submitted a successful bid for this contract, then as of the date it submitted the bid, the Contractor was not identified on the Iran List. If it did not submit a bid for this contract, the Contractor certifies that as of the date that this contract is entered into, the Contractor is not identified on the Iran List. It is a material breach of contract for the Contractor to be identified on the Iran List during the term of this contract or to utilize on this contract any subcontractor that is identified on the Iran List. In this Iran Divestment Act Certification section -- “Contractor” means the person entering into this contract with the City of Durham; and “Iran List” means the Final Divestment List – Iran, the Parent and Subsidiary Guidance– Iran list, and all other lists issued from time to time by the N.C. State Treasurer to comply with G. S. 147-86.58 of the N.C. Iran Divestment Act.

Sec. 15. Financial Records. The Contractor shall establish and maintain a financial management system which will account for all funds received under this Contract and

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expenditures made in furtherance of the Project. Such system shall be created and maintained in accordance with generally accepted accounting principles. This system shall be documented to the satisfaction of the City and shall include:

- a. A general ledger (balance sheet and statement of revenue and expenses) in which a summary of all accounting transactions are recorded. In addition, the Contractor shall maintain a cash receipt and disbursement register in which receipts and disbursements will be documented. Funds disbursed by the Contractor shall be made by pre-numbered checks, used in numerical sequence and must be supported by appropriate documentation. This documentation includes items such as payroll, time and attendance records, invoices, contracts, records of travel payments, and notations showing the approval of an authorized official of the Contractor.
- b. The Contractor shall maintain such records and accounts including property, personnel, and financial records so as to assure a proper accounting for all Project funds. These records shall be retained by the Contractor for a period of three years after the City makes final payments to the Contractor pursuant to this Contract and after all other pending matters are closed. At any time after the Contract termination, however, the Contractor may turn these over to the City for retention after completion and acceptance of required audits.
- c. The Contractor shall provide an accounting for all funds paid to it by the City under this Contract. More specifically, Contractor's financial management system shall provide for:
 - i. Records which identify adequately the source and application of funds under this Contract. These records shall contain information pertaining to encumbrances and unencumbered balances, assets, liabilities, outlays and income.
 - ii. Effective control over and accountability for all funds, property and other assets attributed to the Contract. The Contractor shall adequately safeguard all such assets and shall assure that they are used solely for the performance of the Contract.
 - iii. Comparison of actual expenditures with budgeted amounts for those expenditures and comparison of financial information with performance or productivity data, including the production of per participant cost information whenever required by the Office of Economic & Workforce Development (OEWD).
 - iv. Procedures for determining the allowability and allocation of costs.
- d. The Contractor's financial records shall be audited by a Certified Public Accountant at least annually. The auditor shall be obtained and paid by the Contractor

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without any City funds. Should there be an exception taken during the audit, the Contractor shall resolve the findings and recommendations within thirty (30) days after completion of the audit.

e. Contractor shall have available for in-house reviews, as needed, sufficient additional documentation to justify costs all that are funded under the contract, including, but not limited to:

8. Time sheets or payroll registers.
9. Documentation related to the fringe benefit percentages for each employee whose salary is charged to the contract.
10. Documentation of supply costs.
11. Documentation of other program costs such as, technology, food and meeting costs, professional services, employee morale, insurance, criminal background checks, maintenance and repair and other costs allowable under the NC Department of Commerce and the policies of the Durham Workforce Development Board.
12. Documentation of client support service costs such as childcare, books, supplies, and other costs allowable under the NC Department of Commerce and the policies of the Durham Workforce Development Board.

Sec. 16. Audits and Inspections. At any time during normal business hours and as often as the City, Durham Workforce Development Board, the State of North Carolina, the U.S. Department of Labor, or the Comptroller General of the United States (said four entities and agencies are referred to hereafter as “said Entities”) may deem necessary, the Contractor shall make available to said Entities or the duly authorized representatives of any of said Entities, all of the Contractor’s books, documents, papers, and records pertaining to this contract.

Programs must be conducted in accordance with auditing standards set forth in the financial and compliance handbook entitled “Standards for Audit of Governmental Organizations, Program Activities and Functions”, issued by the Comptroller General of the United States and circulars A-128 and A-133 issued by the Federal Office of Management and Budget. Contractor shall submit a copy of the Contractor’s annual audit report to the OEWD within sixty days of completion of the audit.

Sec. 17. Property Management. All non-expendable personal property acquired for the Project with funds provided in whole or in part under this Contract shall:

- a. become property of the City at the time of acquisition,
- b. be marked by the Contractor with City property numbers obtained from City, and
- c. be turned in to the City upon termination of the Project or at such time as the City makes a request for such property.

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Non-expendable personal property is defined as property which will not be consumed or lose its identity during the contract term, has a value of \$100.00 or more at the time of purchase, and is expected to have a useful life of one year or more. Property records for non-expendable personal property shall be accurately maintained by the Contractor and shall reflect the following:

- a. a description of the property;
- b. acquisition date and costs;
- c. vendor of the property; and
- d. percentage of the cost of the property purchased with funds from this Contract.

An inventory of non-expendable personal property shall be made by the Contractor for each calendar quarter and upon completion will be transmitted to OEWD. A final inventory is to be submitted by the Contractor to the City upon the termination of this Contract.

Non-expendable personal property shall not be purchased by the Contractor from funds from this Contract unless OEWD has given its approval. The Contractor shall insure that adequate safeguards are provided to prevent loss, damage or theft of the property. In the case of all suspected thefts and if there is any possibility of a criminal cause of the loss or damage, the Contractor shall report the loss, damage, or theft to the Police of the City, unless the possible crime occurred in another jurisdiction, in which case the Contractor shall report it to the law enforcement authorities with jurisdiction and the Contractor shall provide a copy of the investigation report to OEWD.

Real property shall not be purchased by the Contractor with Project funds unless OEWD had first made a specific, written authorization of such purchase. For the purpose of this Contract, real property means land, land improvements and interests in land, structures and appurtenances thereto.

Sec. 18. Proof of Contracting Requirements. The Contractor shall furnish to the City within ten days after a subcontract is entered into a copy of any subcontract if it is funded, in whole or in part, with funds provided from this Contract. Such subcontracts shall require subcontractors to comply with all applicable federal, state, and local laws and regulations. The Contractor shall not assign any rights under this Contractor or subcontract any portion of the work without express written approval by the City Manager of the City. Contractor shall not use this Contract or its anticipated proceeds to borrow money.

Sec. 19. Procurement. Without limiting the section of this contract titled "Compliance with Law," (Subsection 18 (f)) it is agreed that the Contractor shall comply with all applicable bid and procurement laws with respect to all transactions to purchase apparatus, supplies, materials, and equipment which the Contractor may enter as a result of this Contract.

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Sec. 20. Maintenance of Effort. The Contractor further represents that it would have not performed the scope of work in the absence of this contract and that the scope of services is in addition to what the Contractor's level of funds and services would have been in the absence of this contract.

Sec. 21. Miscellaneous

(a) Choice of Law and Forum; Service of Process. (i) 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 subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" 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. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

(b) 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.

(c) 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.

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

(e) 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 Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs,

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personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including but not limited to applicable provisions of the following: Contractor shall be in compliance with prohibitions on conflict of interest, political activities, lobbying provisions in Attachment C, Certification Regarding Lobbying, and the provision of a drug-free workplace in Attachment E. Contractor will comply with the attached financial and program assurances and certifications in Attachments D and E respectively. (g) Notice of 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.

(h) EBOP. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(i) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(j) Principles of Interpretation and Definitions. (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) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar day. (8) The word "Work" is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

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(k) 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.

(l) 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.

Sec. 22. Identification of Documents. All reports, and other documents completed as a product of this Contract, other than documents used in the administration of the Contract such as reports to the City, shall have placed thereon by the Contractor the following statement: The preparation of this document was financed in part or in whole through funds from the City of Durham Office of Economic and Workforce Development and the NC Department of Commerce.

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

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ATTEST:

CITY OF DURHAM

BY: _____

Preaudit Certificate, if applicable _____

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EDUCATIONAL DATA SYSTEMS, INC.

By: _____ (SEAL)

Title: _____

NORTH CAROLINA

ACKNOWLEDGMENT BY EDUCATIONAL DATA SYSTEMS INCORPORATED

COUNTY OF _____

I, a notary public in and for the aforesaid county and state, certify that

_____ personally appeared before this day and stated that she or he is the (~~strike through the inapplicable:~~) chairperson/ president/ chief executive officer/ vice-president/ assistant vice-president/ treasurer/ chief financial officer of Educational Data Systems Incorporated a corporation, 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

ATTACHMENT A
STATEMENT OF WORK

Durham Workforce Development Board

EDUCATIONAL DATA SYSTEMS, INC. (EDSI)

Background

Contractor shall perform the following services and activities as part of the Workforce Innovation and Opportunity Act Adult and Dislocated Worker services program with a budget not to exceed \$655,000 (in program dollars) between July 1, 2016 and June 30, 2017:

Educational Data Systems Incorporated will direct the provision of Basic Career services for 2,750 to 3,000 (distinct individuals) adult and dislocated workers who reside in Durham. Of those 2,750 participants that will be served, at least 200 distinct individuals will receive Individualized Services and another 45 (at least) distinct individuals will receive Training Services.

Deliverables

The Adult program annual performance outcome measures implemented by the U.S. Department of Labor Employment and Training Administration and set by the Office of Economic and Workforce Development for program year 2016 are as follows:

End of Year Performance Measures:

Performance Measure	Definition
Entered Employment	<i>The percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program</i>
Employment Retention	<i>The percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program</i>
Median Earnings	<i>The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program</i>
Credential Rate	<i>The percentage of program participants who obtain a recognized postsecondary credential, or a secondary school diploma or its recognized equivalent (subject to clause 4</i>

	<i>(iii)), during participation in or within 1 year after exit from the program</i>
Measurable Skills Gain	<i>The percentage of program participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains toward such a credential or employment</i>
Services to Employers	<i>To Be Determined</i>

The Contractor (EDSI) is expected to meet or exceed Program Year 2016 performance measures for the Durham Local Area as set by the State of North Carolina.

The primary goal of the Operator is to create a seamless system of partners among workforce development, economic development, business, and community agencies in order to meet the needs of businesses and jobseekers in the Durham WDB region. The Operator will work closely with the Durham WDB staff to effectively implement a system for businesses and jobseekers.

Outcome Measurements

Educational Data Systems Incorporated will maintain systems in place to measure program performance and ensure continuous quality improvement. The Contractor is expected to have participant data keyed into NCWorks Online within 15 days of service to ensure that outcomes can be measured in a timely fashion.

Performance Evaluation & Monitoring

- The EDSI Program Manager will participate in monthly review meetings with the Adult and Dislocated Worker Program Coordinator in the City of Durham’s Office of Economic and Workforce Development (OEWD). Program performance and progress toward anticipated outcomes will be reviewed and analyzed at these meetings, and strategies to ensure favorable outcome results will be developed and implemented by the Program Manager. The EDSI Program Manager will participate in weekly Career Center Staff meetings in order to report results and program information as well as to further the achievement of the Career Center towards the success indicators.
- The Program Manager will compile and analyze performance reports on a monthly basis and discuss results in one-on-one meetings with each Case Manager. The entire EDSI team will meet once a month to review and discuss Performance Reports, to develop strategies for ensuring favorable results, and to review current caseloads and ensure that

adults and dislocated workers are on track to meet the goals in their individual service strategies.

- EDSI's Program Manager will work collaboratively with the Adult and Dislocated Worker Program Coordinator in OEWD to provide an ongoing assessment (monthly) of the project/customer flow and the alignment and/or clear delineation of the assigned roles/responsibilities of each EDSI Case Manager in order to provide an ongoing evaluation of program performance and the ability of the program to meet and/or exceed state negotiated goals.

Outreach and Orientation

The EDSI staff will work in partnership with Career Center staff to provide services in the community. This includes an expansion of services and provides opportunities for orientation and for completing applications in targeted communities. EDSI will assist Career Center staff and/or conduct orientations at the Career Center or at locations determined by the OEWD staff to provide ongoing outreach to the community. EDSI staff will be available to participate in the design and implementation of recruitment efforts designed to reach more jobseekers.

Eligibility Determination (Orientation, Testing, Assessment, Intake)

The Adult and Dislocated Worker Program will utilize the Talent Development Case Managers for assessment/intake as necessary with the implementation of Integrated Service Delivery to ensure appropriate eligibility determination for WIOA intensive services. The customer is notified at orientation regarding documentation necessary for eligibility and provides this information to the Talent Development Case Manager during a separate assessment/intake appointment. EDSI will utilize Basic Skills testing with every customer enrolled in the WIOA program during this initial application process. Including Basic Skills Testing in the application process allows for a more meaningful conversation during assessment should training be the identified need. Customers that are identified as having a need that WIOA could assist with will begin and complete the development of an initial Individual Employment Plan. Customers will be assigned to a Talent Development Case Manager based on their needs. Once the customer is determined to be a candidate for services they will receive the appropriate services.

Ongoing Assessment

Once a customer is assigned a Case Manager, he/she will also receive additional objective assessment of their barriers and strengths in developing an Individual Employment Plan (IEP) to identify program goals. Program Staff will work in direct collaboration with the OEWD Adult and Dislocated Worker Program Coordinator to identify assessment tools (such as the Career Readiness Certification assessed through WorkKeys) as additional and/or viable options in conducting assessments. When a customer's interest is unidentified, the Talent Development Case Manager will recommend and provide an interest inventory.

Individual Employment Plan

The EDSI staff will work in partnership with the customer to identify an appropriate service strategy and to develop the Individual Employment Plan (IEP). The IEP is essential in providing good case management to achieve both short- and long-term goals. This employment plan is a written, structured set of steps to provide concrete and achievable goals for customers. It is a living document, which should be changed as necessary to meet the needs of the customers and to facilitate their entry into the workforce.

The EDSI staff will prioritize and address the customer's barriers and obstacles immediately. At the same time, they will begin to facilitate employment and/or training and to help the customer develop a long-term career path.

Follow-up Services

The EDSI Program Staff will provide appropriate follow-up services to ensure job retention and to ensure that performance measures are met. These follow-up services are completed the 1st, 2nd and 3rd quarter after exit to ensure that the program meets performance measures established by the Division of Workforce Solutions. The Talent Development and Employment Services Specialists are responsible for following up with customers after exit when appropriate. These cases are not exited until there are no further needed services required for 90 days after exit.

A wide range of services are provided following placement with the goal of ensuring that the support and planning needed to maintain employment are in place. Utilizing the monthly report, Program Staff will track which customers are currently in follow-up stages. During this time, staff will be able to reach out to customers via phone, mail, and email to verify their employment. The Talent Development Specialist will notify the customers at the time of exit they are being exited. The Specialist will make sure that the customers understand the availability of additional employment services over the next year. The Program Staff will provide a "professional development" session for these customers, so they can reach them in a group setting and allow them to continue to network. An opportunity for a "job upgrade" will be greatly enhanced by attending these sessions.

Individual Training Accounts

For eligible customers who are unable to secure employment through less intensive services, the Program Staff will coordinate occupational skills training through approved vendors or, when possible, on-the-job training opportunities. Before training begins, the Talent Development Specialist will work with the customer to ensure that barriers to successful program completion are removed. The Talent Development Specialist is expected to help the customer evaluate training options to ensure that any program selected leads to an occupation that suits the customer's work preferences and abilities and is one in which the customer can be reasonably expected to experience success.

Supportive Services

The Program Staff will be trained in and will sustain professional development opportunities in how to best assess and identify when support services are needed to ensure client success. Prior to using funds for these services, EDSI will assist the client in exploration of personal resources and other community programs and in making plans for addressing ongoing needs. In some cases, supportive services will be necessary in order for customers to obtain and retain a job. When necessary, EDSI will provide transportation assistance, emergency childcare, clothing, and emergency housing. Supportive services should be used as a tool for work. The need for these items should not interfere with a customer being successfully employed.

Integrated Service Delivery of the Adult/Dislocated Worker Program into the Durham NCWorks Career Center

The WIOA Adult and Dislocated Worker Program is an initiative that is the next level for a customer looking for work. When he/she is unable to find employment on their own, WIOA is one of the many case management programs that can be offered for additional employment services. The Program Staff will collaborate in Career Center events and participate in notifying and training all Career Center partners about WIOA and services available. The Program Staff will work as part of the seamless service delivery team with the other system partners at the Career Center to ensure that the needs of local jobseekers and employers are being met. EDSI will also be encouraged to participate in the following ways with the Career Center System:

- The Program Manager will operate utilizing the Integrated Service Delivery (ISD) model in consultation with the OEWD Adult and Dislocated Worker Program Manager. EDSI staff will serve either on the Talent Engagement Team, Talent/Skills Development Team, and/or the Employment Recruitment and Placement Function Team. The EDSI Program Manager and/or staff designee will attend and contribute at the Durham Career Center Business Solutions Team meeting (specifically in an effort to advance “pipeline” and/or employment connections between Career Center participants and local businesses).
- The EDSI Program Manager and/or staff designee will attend and contribute at Durham Career Center Leadership and Business Services Team meetings.

Customer Confidentiality

All counseling activities are confidential, and the staff consists of trained counselors who adhere to all counseling ethics and who must sign a statement to this effect at the time of hire. All records are confidential, and standard federal guidelines for the maintenance of records will be maintained.

Enrollment of Latino/a participants and speakers of other languages into the WIOA Program

The Program Staff will work to include members of Durham’s Latino population in its service pool. Staff will work to support Career Center bilingual staff to ensure that appropriate resources and information will be in the Latino community. The Program Staff will assist in connecting

individuals to employment where their language is not a barrier by utilizing our employer network and when appropriate may refer the customer to ESL classes.

Job Search/Job Development Design

The Program Staff will work with a “universal” client to introduce the fundamentals of good job techniques. Skills will be developed through individual assessment and group workshops. At the Career Center, WIOA will offer clients access to counselors who will discuss their specific goals and barriers and who will direct individuals to appropriate plans and action steps. WIOA offers the entire community employability coaching through workshops, both in-house and in the community. The universal client is also invited to join networking opportunities to foster peer relationships and peer coaching. For example, participants in the Professional Placement Network (PPN) will have shared information on job opportunities, tips for accessing services, and tips for surviving the job search.

Clients that apply to and become clients of WIOA will receive intensive services as appropriate that include more individualized coaching; identification of gaps, needs and barriers; and action plan development. As appropriate, clients will benefit from one-on-one mentoring and advocacy relationships that allow them to hone their job-seeking skills through receipt of active assignments, sourced job opportunities, interview practice/coaching, and access to various job experiences. To round out the WIOA experience, clients will have access to their WIOA staff after attaining employment for job-retention coaching.

EDSI will support consistent job placement numbers by developing meaningful relationships with industry employers. EDSI will provide a job development professional to solely work on identifying workforce trends, employer needs, and active job opportunities. This Job Developer will work with staff to provide Lead Generation, schedule interviews, and follow up with employers.

Job Development

EDSI will provide a full-time Job Developer to support the Durham Workforce Development Board’s and OEWD’s efforts in connecting jobseekers and businesses. To accomplish this they will do the following:

- Encourage clients to engage in job searching as a full-time activity through the use of daily assignments in the form of signed contracts from their Employment Specialist.
- Focus on relationships with employers and developing partnerships with them.
- Provide services to employers as well as to clients.
- Focus on job matching.
- Assist customers in identifying realistic and immediate job goals and to develop a plan to reach their long-term career goals.

- Incorporate the Professional Placement Network (PPN) to facilitate customer networking opportunities and employer contacts for the mid-career customer base.
- Incorporate bi-weekly mock interview sessions into its program framework.

Outreach Activities to Local Businesses

Businesses tend to use services they are familiar with, so it is important that they are introduced to the local One-Stop and the benefits available to jobseekers and employers. EDSI Program Staff will also continue in partnership with the Career Center to look to the business community as a client and partner utilizing their input to drive the types of training opportunities offered and the avenues of employment for clients. The Program Staff will ask the business community to identify which skills (technical and soft) they need and to provide that information to clients. In this way, WIOA is uniquely serving two diverse, yet interrelated, client bases.

The Program Staff will continue to promote on-the-job (OJT), Work Experience (WEX) services, and short-term Vocational (market driven) Training as mutually-beneficial vehicles for candidate recruitment and client work opportunities. OJT and WEX provide local employers financial incentives for working with WIOA customers. OJT and WEX provide customers with necessary training and exposure. As such, the employer retains the customer for full-time employment. EDSI will support in the development of OJT and WEX opportunities. Both opportunities will be structured to ensure that they provide the employer and employee with concrete performance objectives. Programs will be designed to meet the specific needs of the individual employer, and placements will be monitored by the Employment Specialist until the individual's training is completed.

To accomplish this, staff will do the following:

- Ensure that they understand the needs of the business community;
- Invite employer input to help identify market needs and drive client services;
- Utilize the NCWorks Online database and track both contacts and outcomes;
- Utilize the NCWorks Online database based on skills to assist with employer recruitment;
- Provide marketing and customer service training to the entire staff;
- Partner with Career Center entities as part of the Business Service Team; and
- Encourage businesses and clients to attend Professional Placement Networking groups to make connections with businesses, human resourced representatives, and other business professionals.

Training Relevant to Current Labor Market

In order to ensure that customers choose employment and training options in which they will become competitive and gain job security in the forefront of local labor market demand, training will most often be approved in high-demand occupations and when it is felt that the individual has a reasonable opportunity for success in their chosen field. The Program Staff will work in

collaboration with OEWD staff and Career Center partners in order to provide an ongoing assessment of the current labor market. All training must be provided by an approved training vendor who is monitored by the Board. In **all** cases, training is contingent upon completing due diligence. Specifically, Program Staff will require all customers to research and then provide information about their chosen field. In turn, EDSI will provide the customers with information and feedback regarding their desired training choices. Open dialogue regarding the pros and cons of the proposed training will help to secure commitment and validate the choices made. EDSI Program Staff will provide the customer with information from the DWDB's strategic plan and will encourage them to look into training in high-growth industries.

Customer Specialized Assessments

Accurate, objective assessments are key to customer success. Throughout their relationship with the Career Center and WIOA, customers will be provided opportunities for assessment. From the beginning, customers will be given a basic skills and interest assessment. As the client progresses within the program, they will be offered mock interviews, technical skills assessments, and interest inventories to assist them and their Placement Specialist. Career counseling and planning will be tailored to clients based on understood client deficiencies.

Operator Responsibilities

As the Career Center Operator, EDSI will do the following:

1. Manage daily operations to support the center and operation of the facility and provide functional supervision of Center staff.
2. Manage partner responsibilities defined in the Memorandum of Understanding (MOU) among partners.
3. Facilitate regular meetings of the partners.
4. Manage hours of operation.
5. Manage services for individuals and businesses.
6. Ensure that basic services are available such as orientations, labor market information, and the resource room.
7. Implement Durham Workforce Development Board (DWDB) policies.
8. Adhere to all federal and state regulations and policies, e.g., follow federal and state regulations pertaining to the handling of EEO responsibilities, customer complaints, and physical and programmatic accessibility.
9. Report to the DWDB on operations, performance, and continuous improvement recommendations and to work cooperatively with DWDB staff.
10. Coordinate service delivery among partners.
11. Coordinate service delivery among onsite service delivery and NCWorks Online.
12. Improve access to and the effectiveness of the One-Stop and program services.
13. Prepare documentation to ensure and maintain center certification.
14. Increase customer satisfaction by developing flows and processes that are driven by feedback from both businesses and jobseekers.

15. Assure the delivery of services to individuals with limited English proficiency, disabilities, or other significant barriers.
16. Conduct community outreach.

Attachment B

Program Budget

Durham WIOA Total Program Budget July 2016 – June 2017
Agency Name: Educational Data Systems Incorporated (EDSI)

Attachment C

Program Costs	Line Item Totals	AW Services	DW Services
Staff Salaries	\$289,227	\$155,257	\$133,970
Staff Fringe Benefits	\$81,591	\$43,798	\$37,793
Staff travel, training, and Development	\$5,184	\$2,783	\$2,401
ITA & Training	\$46,000	\$24,000	\$22,000
WEX	\$24,869	\$14,211	\$10,658
OJT	\$90,000	\$48,000	\$42,000
Apprenticeship	\$16,000	\$8,000	\$8,000
Support Services	\$6,531	\$4,242	\$2,289
Postage	\$300	\$161	\$139
Communications	\$3,840	\$2,061	\$1,779
Supplies	\$9,008	\$4,835	\$4,173
Computer Leases	\$5,400	\$2,899	\$2,501
Product Box	\$5,000	\$2,684	\$2,316
Subtotal Training/Support Costs	\$582,950	\$312,931	\$270,019

Administrative Costs	Line Item Totals	AW Services	DW Services
Staff Salaries	\$10,639	\$5,711	\$4,928
Staff Fringe Benefits	\$3,001	\$1,611	\$1,390
Admin Allocation	\$58,410	\$31,354	\$27,056
Subtotal Administration Costs	\$72,050	\$38,676	\$33,374

Total Project Costs	Line Item Totals	AW Services	DW Services
Total Program Costs	\$655,000	\$351,607	\$303,393
Profit @	-	-	-
Total Program Costs**	\$655,000	\$351,607	\$303,393

Certification Regarding Lobbying Certification for Contracts, Grants, Loans, and Cooperative Agreements

Durham Workforce Development Board

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature

Date

Attachment D

FINANCIAL ASSURANCES AND CERTIFICATION

A. The Program Applicant (hereinafter referred to as the "Contractor") assures that it will fully comply with the requirements of the Workforce Innovation and Opportunity Act (Public Law 113-128) and its regulations, the WIOA Local Area Plan approved by the DWDB, and the North Carolina Division of Workforce Solutions.

B. The Contractor assures that it will administer its services under the WIOA in full compliance with safeguards against fraud and abuse as set forth in WIOA and the WIOA Regulations; that no portion of its WIOA service will in any way discriminate against, deny benefits to, deny employment to, or exclude from participation any person on the grounds of race, color, national origin, religion, age, sex, disability, or political affiliation or belief; that it will target employment and training services to those most in need of them.

C. The Contractor assures that it will administer its services funded under the WIOA in accordance with these provisions: (1) a trainee will receive no payments for training activities in which the trainee fails to participate without good cause; (2) on-the-job training participants will *be* compensated by the employer at the same rate, including periodic increases, as similarly situated employees or trainees and in accordance with applicable law, but in no event less than the higher of the rate specified in Section 6(a)(1) of the Fair Labor Standards Act of 1938 of the applicable State Minimum Wage Law; and (3) participants employed in activities authorized under the Act must be paid wages which will not be less than the highest of (a) the minimum wage under Section 6(a)(1) of the Fair Labor Standards Act of 1938, (b) the minimum wage under the applicable State Minimum Wage Law, or the prevailing rates of pay for individuals employed in similar occupations by the same employer.

D. The Contractor assures that it will administer its services under the WIOA in full compliance with health and safety standards established under State and Federal law and that conditions of employment and training be appropriate and reasonable in light of such factors as the type of work, geographical area and proficiency of the participant.

E. The Contractor assures that all staff and participants/enrollees paid from the grant funds and employed in any service will be covered by workers compensation benefits in accordance with State law; that enrollees in WIOA work-related training will be provided accident or medical insurance to cover any injury resulting from participation in the program; and that enrollees employed in subsidized jobs will be provided benefits and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.

F. The Contractor assures that no funds available under the WIOA will be used for contributions on behalf of any enrollee to retirement systems or plans; to impair existing conditions for services or collective bargaining agreements; to assist, promote, or deter union organization; and to displace any currently employed worker.

G. The Contractor assures that no enrollee will be employed or fill a job opening when any other individual is on layoff from the same or substantially equivalent job, or when the employer terminates the employment of any regular employee or otherwise reduces its work force with the intention of filling vacancies so created by hiring participants subsidized under the Act; and no funds may be used to create promotional lines that infringe upon any current promotional opportunities.

H. The Contractor assures compliance with all federal rules and regulations which prohibit *the* use of WIOA funds to lobby the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. If lobbying has occurred utilizing other than Federal appropriated funds, the Contractor agrees to file a disclosure report if applicable.

I. The Contractor assures and certifies that it is in compliance with federal rules and regulations, Debarment and Suspension, 29 CFR Part 98 and is not presently debarred, suspended, for debarment, declared ineligible, or involuntarily excluded from participation in this transaction by any Federal department or agency.

J. The Contractor assures and certifies that the Contractor has in place an established grievance procedure to be utilized for grievances or complaints about its program and activities from participants/enrollees, sub-grantees, and subcontractors and other interested parties.

K. The Contractor will comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) which requires fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs.

L. The Contractor will comply with the provisions of the Hatch Act, which limits the political activity of certain State and local government employees and enrollees in federally funded programs.

M. The Contractor will comply with NC-GS-234, which prohibits public officials and employees from having a personal interest in any contract to which s/he is also a party in an official capacity.

N. The Contractor assures and certifies that it will comply with restrictions regarding conducting business with businesses on the Environmental Protection Agency's List of Violating Facilities. Contracts and subcontracts in excess of \$100,000, or circumstances where the Division of Workforce Development has determined that orders under an 'indefinite quantity financial agreement' in any year will not exceed \$100,000, or *if* a facility to be used has been the subject of a conviction under the Clean Air Act [42 U.S.C. 1319 (c)] and is listed by the Environmental Protection Agency (PA) or is not otherwise exempt, the Contractor assures that: (1) no facility to be utilized in the performance of the grant has been listed on the EPA List of Violating Facilities; and (2) it will notify the DWDB, prior to award of the receipt of any communication from the Director of Federal Activities, U.S.E.P.A., indicating that a facility to be utilized for a contract is under consideration to be listed on the EPA List of Violating Facilities.

O. The Contractor will comply with the provisions of nepotism related to federally funded programs.

P. The Contractor assures and certifies that enrollees will not be employed on the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place for religious worship.

Q. The Contractor assures and certifies that it, and all of its subcontractors, will comply with applicable provisions of the following laws as they relate to employment and training procedures:

- The Drug Free Workplace Act
- The Davis-Bacon Act
- The Immigration Reform Act
- Child Labor Laws
- The American's with Disabilities Act
- The Fair Labor Standards Act

Certification

This is to certify that all specifications contained in the DWDB's Request for Proposal have been read, understood, and addressed in the proposal; that the required format has been followed; that all of the information contained in this proposal is true and correct that the Contractor organization will comply with all of the above assurances; and that this proposal has been duly authorized by the governing body of the Contractor organization.

CONTRACTOR NAME _____

SIGNATURE _____ DATE _____

Attachment E

Drug-Free Workplace Disclaimer

Name of Contractor: _____ Date: _____

Contractor Signature: _____

In accordance with the Drug-Free Workplace Act of 1988, Contractor will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity or work associated with this contract.

Attachment F

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

LOWER TIER COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS BELOW WHICH ARE AN INTEGRAL PART OF THE CERTIFICATION)

- (1) The prospective recipient of Federal assistance funds certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name and Title of Authorized Representative

Signature

Date

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.

3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to which proposal is submitted if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective recipient of Federal assistance funds agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
6. The prospective recipient of Federal assistance funds further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions, “without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the List of Parties Excluded from Procurement or Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may pursue available remedies, including suspension and/or debarment.

Attachment G

Assurances and Certifications of Adherence to Program Requirements and Restrictions of Workforce Innovation and Opportunity Act

Name of Contractor: _____ Date: _____

Contractor Signature: _____

In order to receive funding under the Workforce Innovation and Opportunity Act of 2014 (WIOA) (Public Law 113-128) and its regulations, the following program requirements, and restrictions must be adhered to, in as such, the Contractor certifies to the following statements:

1. Certifies that funding for activities that involve sectarian activities have been prohibited in accordance with **Section 667.266** and **Section 188(a)(3)**.

2. Certifies that procedures to prohibit the displacement of current workers, the impairment of existing contracts for services or collective bargaining agreements, the replacement of laid-off workers and the infringement on promotional opportunities of current workers. **Section 181(b)(2)(3)**.

3. Certifies that working participants are covered by workman's compensation or other insurance. **Section 181(b)(4)/667.274**.

4. Certifies that provisions have been made that all individuals in programs shall be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working in similar length of time and doing the same type of work. **Section 181(b)(5), 667.272**.

5. Certifies that provisions have been made to ensure that no funds are being used to assist, promote, or deter union organizing. **Section 181(b)(7)**.

6. Certifies that provisions have been made that all individuals in programs be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills. **Section 181(a)** (In no event shall the rate be less than the applicable State or local minimum wage law.).

7. Certifies that provisions have been made to prohibit the use of funds to encourage or induce relocation of a business. No funds provided under this title shall be used or proposed for use to

encourage or induce the relocation of a business or part of a business if such relocation would result in a loss of employment for any employee of such business at the original location and such original location is in the United States. **Section 181(d)(1).**

8. Certifies that provisions have been made to prohibit the use of funds for customized or skill training and related activities after the relocation of a business until after 120 days. **Section 181(d)(2).**
9. Certifies that provisions have been made to prohibit the use of funds for employment- generating activities, economic development activities and similar activities that are not directly related to training for eligible individuals; and no funds may be used for foreign travel. **Section 181(e).**
10. Certifies that provisions been made that allow for the testing and sanctioning of participants for the use of controlled substances. **Section 181(f).**
11. Certifies that provisions been made to prohibit any discrimination based on: (a) age, disability, race, color, national origin, or sex; (b) participation in a program or activities that receive funds under this title; (c) certain non-citizens. **Section 188(a).**
12. Certifies that provisions have been made to ensure that funds are not used to duplicate services available in the area. **Section 194(2)**
13. Certifies that provisions have been made to ensure that participants are not being charged fees for placement or referral. **Section 194 (5).**
14. Certifies that provisions have been made to ensure that no financial assistance is provided to any program that involves political activities. **Section 194(6)**
15. Certifies that provisions have been made that ensure that participants are aware of grievance procedures.
16. Certifies that the contractor will abide by the WIOA Act, regulations, and applicable business licensing, taxation and insurance requirements.
17. Certifies that the contractor has provisions regarding modification of the contract, the handling of disputes, and termination, including termination for convenience of the government.
18. Certifies that the contractor will maintain records until such time that they may be disposed of but not before a final audit on the records. Also certifies and grants access to the records by the NCCCS, the State, and the USDOL.

- 19.** Certifies liability, sanctions, and debt repayment.

- 20.** Certifies the contractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

- 21.** Certifies provision to prohibit political activities (Hatch Act).

Attachment H

Insurance requirements for Workforce Innovation and Opportunity Act Contractors

Contractor shall maintain insurance not less than the following:

Commercial General Liability, covering

- premises/operations
- products/completed operations
- broad form property damage
- contractual liability
- independent contractors, if any are used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- combined single limit not less than \$1,000,000 per occurrence

Automobile Liability

- single limit combined coverage in the amount of \$1 million

Workers' Compensation Insurance, covering

- statutory benefits;
- covering employees; covering owners partners, officers, and relatives (who work on this contract) (this must be stated on the certificate)
- employers' liability, \$1,000,000.
- Waiver of subrogation in favor of the City of Durham

Insurance shall be provided by:

- companies authorized to do business in the State of North Carolina
- companies with Best rating of A-VIII or better.

Insurance shall be evidenced by a certificate:

- providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- certificates shall be addressed to:
City of Durham, North Carolina

attention: Finance Director

101 City Hall Plaza

Durham, NC 27701

both the insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract.