

CONTRACT BETWEEN AUROBINDO PHARMA U.S.A., INC. AND THE CITY OF DURHAM REGARDING INCENTIVES FOR JOB CREATION WITHIN THE CITY LIMITS

THIS CONTRACT (“Contract” or “Agreement”) is dated, made, and entered into as of the ____ day of _____, 2016, by the City of Durham (“City”) and Aurobindo Pharma U.S.A., Inc. (“Company” or “Contractor”), organized and existing under the laws of the State of Delaware and authorized to transact business in the State of North Carolina, and the City of Durham (the “City”), a North Carolina municipal corporation.

Background and Purpose. The Company is a pharmaceutical company with U.S. headquarters in New Jersey and is a market leader in semi-synthetic penicillin and has a presence in therapeutic segments such as neurosciences, cardiovascular, anti-retrovirals, anti-diabetics, gastroenterology, cephalosporins and others. This project includes the creation of 200 jobs in an existing facility within the city limits in Durham, North Carolina. The jobs to be created by the Company 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) “Capital Investment” – facility construction and improvements, including equipment, machinery, fiber and cable installation, required for the Project and as defined under Section 3 of the Resolution, including the requirement that all qualifying property improvements be subject to City and County property taxes from the time when the Capital Investment is installed or constructed and continuing until the final incentive payment by the City is made.

(b) “Certificate of Compliance” – the official document issued by the local governing authority certifying that a newly constructed or renovated building or structure is in compliance with applicable building codes, regulations and laws, such that said building or structure may be lawfully occupied.

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

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

(e) “Project” – refers to the activities to be performed by the Company under this Agreement according to Section 2, “Required Capital Investment and Job Creation” as necessary for the Company to be eligible for the City incentive payments described under Section 3, “City Incentive Payment Schedule” below.

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(f) “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 the final City Incentive Payment is made in order 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 “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, but the Company may also post such jobs in other, additional locations or by other methods. Except for the business travel requirements of Company, a Qualified Job under this Contract shall require that the employee holding such job to spend a majority (at least 51 percent) of his or her working time in the ordinary course of employment at the facility located within the city limits in Durham, North Carolina.

Sec. 2. Required Capital Investment and Job Creation. The City agrees to pay Company up to an overall total of two hundred thousand dollars (\$200,000.00) in incentive payments for creation of 200 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) Minimum Capital Investment - the Company shall complete the installation or construction of at least \$31,700,000.00 in Capital Investment within three (3) years of City Council Approval of this Agreement. Completion of the minimum Capital Investment shall be evidenced by the following:

- (i) (Certificate of Compliance) - issuance of a certificate of compliance (sometimes referred to as a Certificate of Occupancy) from the Durham City-County Inspections Department allowing occupancy or use of the facility in which the minimum Capital Investment was made; and
- (ii) (Accounting) - Company shall provide to the City a full and accurate accounting of Capital Investment expenditures with such detail as the City may reasonably require to verify that such expenditures qualify as Capital Investment; and,
- (iii) (Certification) - If required by the City, Company shall deliver to the City a written certification, in such form as the City reasonably requires, that the Company has satisfied all applicable requirements of this Agreement.

(b) Job Creation Requirements – the Company shall create at least 200 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 substantially 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. Listing(s) will contain unique position identifiers, date of hire, date of termination, if relevant, and date of replacement for terminated positions, wages for the Qualified Jobs, will be created by the Company, and must be attested to and notarized by the Company. Verification of

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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, , minimum healthcare benefits for the employees hired into the Qualified Job in which Company pays 100% of the premium for the employee and 50% of the premium for eligible dependents. The same healthcare plan options made available to the employees hired for the Qualified Jobs shall be equal to or better than the healthcare benefit options offered to all other Company employees.

- (c) Assurance by Company of Appropriate Treatment of Contractors and Lower Tier Subcontractors. -- In order to remain eligible for City Incentive Payment, upon written request by the City delivered in accordance with the notice provisions of this Agreement, Company shall provide to the City (i) lien waivers demonstrating that all entities with whom it has contracted to construct all or any portion of the Capital Investment have been paid in full, or (ii) documentation demonstrating that a bona fide dispute over the satisfactory completion of the work to be performed exists and is in the process of being resolved in accordance with applicable law (collectively, the “Required Documentation”). Evidence of bona fide disputes over the satisfactory completion of any work pursuant to any contract or subcontract shall include, but not be limited to, unsatisfied property or payment liens, pending lawsuits or unresolved contract claims made in writing. If Company fails to provide the Required Documentation following a request from the City, the City shall give the Company thirty (30) days written notice of its intent to suspend the City Incentive Payment. If the Company has not provided the Required Documentation at the end of this thirty (30) day period the City may suspend the City Incentive Payment. The City shall have no power to suspend the City Incentive Payment due to failures of contractors and subcontractors with whom the Company does not have a direct contractual relationship to comply with the terms of contracts to which the Company is not a party.

Sec. 3. City Incentive Payment Schedule. The Company’s entitlement to payment from the City under this Agreement is conditioned upon the Company sending an invoice to the City, which documents the completion of Capital Investment and creation of Qualified Jobs pursuant to this Agreement. By complying with the requirements of Section 2 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>\$200,000.00</u>	<u>Completion of minimum Capital Investment of \$31,700,000.00 pursuant to Section 2(a) and creation and cumulative retention of at least 200 Qualified Jobs.</u>	<u>The first business day following January 1st after the first anniversary date that Company complied with the payment conditions for Year 1.*</u>

* By way of example, if the Year 1 Payment Conditions are met on March 1, 2017, the Year 1 City Incentive Payment would be made within 60 days after receipt of the invoice with appropriate documentation, but no sooner than January 2, 2019 (which is the first business day after January 1 after the 1st anniversary date of the completion of the Year 1 Payment Conditions).

** No later than three (3) years after the Effective Date, in addition to completion of the minimum Capital Investment, the Company must have achieved the creation and cumulative retention of at least 200 Qualified Jobs.

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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. 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.

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

Company contact
[Mailing/Courier address]

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 via first-class U.S. Mail or overnight courier delivery (such as Federal Express or United Parcel Service) or via facsimile to:

Mr. Kevin Dick
Director - Office of Economic and Workforce Development
City of Durham
807 E. Main St., Suite 5-100
Durham, North Carolina 27701
[919-560-4986 Insert Facsimile Number]

and to the Company by delivery via first-class U.S. Mail or overnight courier delivery (such as Federal Express or United Parcel Service) or via facsimile to:

Company contact
[Mailing/Courier address]
[Facsimile number]

Either party may change the address or facsimile number by delivering written notice of the change to the other party.

Sec. 6. Change of Address. Date Notice Deemed Given. Any notice or other communication under this Contract shall be deemed given at the time of actual delivery or expressly rejected by the recipient, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail (postage pre-paid), 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 abide by the terms of the Equal Employment Practices Act, N.C. Gen. Stat section 143-422, *et. seq.*; (2) The Company shall post in conspicuous places, available to employees and applicants for employment, notices setting forth such language as required under the Equal Employment Practices Act; (3) The Company shall in all solicitations or advertisement for employees placed by or on behalf of the Company, state that its hiring practices conform with the Equal Employment Practices Act; and (4) In the event of the Company's noncompliance with the requirements of this Section 7 of the Agreement, the City may cancel, terminate, or suspend this Contract, in whole or in part. As used in this Section 7, subsection (4), the term "noncompliance" may ultimately be determined by a court of competent jurisdiction if the City cancels, terminates, or suspend s this Contract based on a finding by the City of noncompliance.

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 the Company.

(b) If, however, any required certification or representation made by the Company is determined by the City to be 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 related to the alleged falsified Capital Investment or Qualified Jobs. If, after removing said falsely represented Capital Investment or Qualified Jobs from the level of Capital Investment or 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. The determination of the City that the Company has defaulted pursuant to this Section 9(b) may be challenged by the Company in a court of competent jurisdiction consistent with Section 13 below. If the Company does not deliver to the City the certification(s) and information required under Section 2, and does not seek payment under Section 2, the Company shall not be considered in default for failing to deliver the certification. The aforementioned clawback 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 the target numbers set forth in this Agreement 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.

Attachment B, "Durham-Based Business Plan," containing 5 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. In no event shall the Company's indemnification costs exceed the Incentive Payment Amount. (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 one (1) year 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

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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 Indemnitees 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 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. If this Contract is assigned, then unless the City otherwise agrees in writing, the assignee(s) of the Company 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

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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 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.

Sec. 25. 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 List – Iran, and all other lists issued from time to time by the N.C. State Treasurer to comply with G. S. 143C-6A-4 of the N.C. Iran Divestment Act.

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

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AUROBINDO PHARMA U.S.A., INC.

By: _____ (SEAL)

Title of officer: _____
(Affix corporate seal.)

State of _____
County of _____

ACKNOWLEDGEMENT BY
AUROBINDO PHARMA U.S.A., 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 AUROBINDO PHARMA U.S.A, 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



Attachment A

Workforce Development Plan

Project Restorative

PLAN OBJECTIVE:

The objective of this workforce development plan (“Plan”) is to establish a partnership between the NCWorks Career Center – Durham and Aurobindo Pharma U.S.A., Inc. (hereinafter referred to as “Business”) in which Business will utilize the NCWorks Career Center – Durham as a primary source for recruitment to maximize the placement of Durham residents for as many of the new jobs created by this project as practical. The Business has no obligation to hire referred candidates from the NCWorks Career Center. This Plan refers to new positions created as a result of the project and positions created during construction/renovation/redevelopment for project as applicable.

NCWorks Career Center – Durham services are provided to the Business on a prepaid basis by revenue generated through taxes.

This workforce development plan is referenced in the contract or agreement titled, ‘CONTRACT BETWEEN AUROBINDO PHARMA U.S.A., INC. AND THE CITY OF DURHAM REGARDING INCENTIVES FOR JOB CREATION WITHIN THE CITY LIMITS’, dated **XXXXXX** (the “Contract”)

Defined terms used but not defined herein shall have the meanings ascribed thereto as provided in the Contract.

PLAN EXECUTION:

GENERAL TERMS:

1. Business will utilize NCWorks Career Center – Durham as a source for recruiting by notifying the NCWorks Career Center – Durham of specific job opportunities with Business during the life of the project once the need is identified. Business will notify the NCWorks Career Center – Durham of positions through a detailed job description (the NCWorks Career Center –

Durham Position Listing form may be used if a formal job description is not available). When able, Business will notify the NCWorks Career Center – Durham of positions that will be created after the construction phase (ex: a hotel is being constructed; both construction and hotel job opportunities may be provided at appropriate timeframe). A requirement of this workforce plan is for the Business to list positions with the NCWorks Career Center – Durham and consider referrals from the NCWorks Career Center – Durham foremost before candidates from other sources. In cases where construction/renovation/redevelopment are involved, the general contractor and all sub-contractors are required to utilize the NCWorks Career Center – Durham for recruitment for all positions that are created as a result of the project. A list of all sub-contractors shall be provided by Business prior to the start of the project for comparison to job listings recorded at the NCWorks Career Center – Durham at the end of the project.

It is the intent of the NCWorks Career Center – Durham to carefully screen individuals for the appropriate skill sets for prospective positions and to refer candidates that meet the knowledge, skills and abilities of those positions.

This agreement does not preclude the Business from using other sources to conduct recruitment, referral and placement activities. Job openings to be filled by internal promotion from Business' current workforce need not be listed with the NCWorks Career Center.

2. In cases where construction/renovation/redevelopment is involved in the project, Business will provide appropriate safety items and tools for new hires recruited through the NCWorks Career Center.
3. Business will use commercially reasonable efforts to partner with the NCWorks Career Center – Durham to participate in job fairs/on-going recruitment opportunities/outreach events.
4. Business shall provide quarterly workforce reports as stated under the section of this plan titled, 'Reporting Requirements'.
5. NCWorks Career Center – Durham and Business agree that for purposes of this Plan, new hires and jobs created include all Business' job openings and vacancies in the County of Durham including those created as a result of internal promotions, terminations, and expansions of Business' workforce, as a result of this project.
6. The NCWorks Career Center – Durham will screen jobseekers according to the position qualifications as listed on the job descriptions provided by the Business and refer candidates per instructions from Business. The NCWorks Career Center – Durham shall attempt to place a percentage of the Business'

openings commensurate with the number of applicants within the given occupational areas of the positions being recruited.

7. The NCWorks Career Center – Durham will make every reasonable effort to implement cost-savings incentives such as work experience, on-the job training and relevant tax credits when relevant and appropriate to assist Business with recruiting efforts. Specifications and cost for such incentives will be mutually agreed upon by the Business and the NCWorks Career Center – Durham set forth in a separate agreement.
8. This Plan is made only in conjunction with the Contract and shall not be construed as an approval of any Business bid package, bond application, and lease agreement, zoning application, loan, incentive proposal or contract/subcontract.

DURHAM YOUTHWORX INTERNSHIP PROGRAM

The purpose of the program (formerly Mayor’s Summer Youth Program) is to connect businesses with 14-24 year olds to assist with temporary assignments and for youth to be provided exposure to the workplace and meaningful work experience. Temporary assignments could be utilized for special projects, vacation leave or assistance in general and would be an opportunity to develop individuals on an as-needed basis for future temporary needs. Positions should be appropriate for the age and skill level and not be considered high risk or otherwise dangerous. Youth are assigned to a business based on the needs of the business and the interest and ability of the youth.

As part of the Durham YouthWork Internship Program, Business will agree to participate in the interviewing process of youth that are candidates for a possible internship in the program (either with the temporary construction opportunities or at the business itself). Business shall not be required to hire an individual but shall pay for any intern(s) hired. Internship hours and schedule would be based on the need of the Business.

AGREEMENT MODIFICATIONS

- A. If, during the term of this Agreement, Business should transfer possession of all or a portion of its business concerns affected by this Plan to any other party by lease, sale, assignment, merger, or otherwise, Business as a condition of transfer shall:
 1. Notify the party taking possession of the existence of Business’ contractual agreement concerning this Plan, and that full compliance with this Plan is required of the party taking possession.

2. Business shall, additionally, advise the NCWorks Career Center – Durham within seven (7) business/calendar days of the transfer. This notice will include the name of the party taking possession and the name and telephone of that party's representative.

REPORTING REQUIREMENTS

Business shall deliver to the City a quarterly report (City shall provide report template) within 45 days after the close of the preceding calendar quarter that reflects the following information for the immediately preceding calendar quarter:

1. Job openings during quarter
2. Number of hires during the quarter
3. Physical address including zip code for all new hires (to determine Durham residency)
4. Number of jobs and job openings from jobs listed with the NCWorks Career Center
5. Number of referrals received from the NCWorks Career Center
6. Number of referrals from the NCWorks Career Center – Durham that were interviewed
7. Number of hires from the NCWorks Career Center – Durham referrals
8. Types of Positions Listed with NCWorks Career Center – Durham Per Quarter
9. Quality of Referrals Received from NCWorks Career Center – Durham per Quarter (Satisfactory, Unsatisfactory, NA. If unsatisfactory feedback is requested)
- 10.** Reports should be comprehensive and cumulative for the duration of the Contract. Reports should indicate timeframes for quarters represented and should reflect quarterly and cumulative totals for relevant data.

Attachment B AUROBINDO PHARMA U.S.A., INC. Durham-Based Business Plan

Pursuant to that certain Contract between the City of Durham, a North Carolina municipal corporation (the “City”) and Project Restorative, organized and existing under the laws of Delaware (hereinafter referred to as “Business”), regarding incentives for job creation, effective as of _____ 2016 (the “Contract”), the Business has agreed to create certain jobs in the City (the “Project”). Defined terms used but not defined herein shall have the meanings ascribed thereto as provided in the Contract.

Purpose/Goals

The purpose of this Durham-Based Business Plan (this “Plan”) is to encourage the use of qualified Durham-based firms in connection with the Project. Durham-based firms that may not have otherwise received consideration due to lack of exposure to the larger business community may have the opportunity to become involved in this Project as a result of this Plan.

Administration

This Plan shall be administered by the Business and the City and shall be fully effective until Completion Date (as defined in the Contract), including any extensions or modifications. The Plan will implement the following guidelines and activities:

A. Durham-Based Firm Identification Resources. The Business agrees to undertake the following:

- 1. Prior to the execution of the Contract, meet with the Director of the Office of Economic and Workforce Development or appropriate staff to establish project goals.**

The Business and the City, through the Director of the Office of Economic and Workforce Development or such other authorized employee of the City, will meet and mutually set specific goal(s) under the Plan for the Project (the “Goals”). The Goals for this Project shall be those set forth in Section C of this Plan.

- 2. Use the City’s database.**

The Business will review the list of Durham-based firms that are supplied by the City for those qualified and available to work on the Project.

- 3. Use of local organizations.**

In the event a review of the City’s database does not identify any Durham-based firms eligible to work on the Project, the Business agrees to request from one or

more of the offices listed below, as the Business determines, the identity of any qualified Durham-based firms for work on the Project:

- Durham Business & Professional Chain
- NC Institute of Minority Economic Development, Inc. contractors and vendor listing
- RDU International Airport Authority Minority Database
- Small Business Administration (SBA) Minority Database
- North Carolina Department of Transportation (NCDOT) Database

B. Outreach. The Business will solicit interest by qualified Durham-based firms for the Project utilizing the following:

1. Provision of written notice to qualified Durham-based firms with the list supplied in the City database that could perform the work to be subcontracted.

The Business will send invitations to bid to qualified Durham-based firms, as determined by the Business, in the City SDBE database expressing the desire to receive a proposal from such qualified Durham-based firms for scope of work in their respective areas of expertise. The Business will provide to the City a complete listing of all qualified firms that received invitations to bid on the Project. The Business will maintain documentation on any written requests made to SDBE firms in regards to solicitation of work on the Project.

2. Timelines of notice to permit sufficient time for response of Durham-based firms.

In the event the Business is able to provide the City with notice of upcoming projects, the Business agrees to permit the City to notify Durham-based firms of those upcoming projects. These notifications may include a brief description of the project, potential subcontracting opportunities and anticipated solicitation dates. Some of the specific efforts the City may employ for notifying small business firms include, but are not limited to, direct notification through phone calls or written notification through fax or email, and advertisements in local and statewide minority newspapers.

3. Pre-bid Meetings with qualified Durham-based firms.

As commercially reasonable, the Business will host pre-bid meetings and invite qualified Durham-based firms to attend. The Business will provide, when commercially reasonable and practicable, qualified Durham-based firms at least two weeks to submit bids related to the Project.

C. Procurement & Recruitment

With the understanding that firms must meet qualification requirements and that the Business, its contractors and sub-contractors will have the intent and make commercially reasonable efforts toward ensuring equal contracting opportunities for qualified Durham-based firms, the following contracting goal will be established for the Project:

- An aggregate of \$31,700,000.00 of capital expenditures will be completed or performed
- The proposed goals for the project are 25% of contracting value to qualified Durham-Based firms, including qualified Durham-based Small Disadvantaged Business Enterprises, as defined by City Code 1982, § 26-3; Ord. No. 12793, § 1, 5-8-2003.

The aforementioned goal will be established for work including, but not limited to the following construction trades, professional services, vendor and supplier, and non-professional services:

- Asphalt work
- Site utilities
- Flooring
- Painting
- Cable/Fiber installation
- Case work
- Saw cutting
- Landscaping
- Concrete
- Doors & framing
- Hardware
- Miscellaneous metals and steel erection
- Equipment installation and maintenance
- Building maintenance and janitorial
- Signage and printing
- Food service and vending
- Security services and monitoring

The Business will employ the following efforts in order to recruit businesses:

1. Distribute lists of qualified Durham-based firms, as determined by the Business, to prime bidders at the pre-bid meeting.

The Business will document any correspondence and information related to qualified Durham-based firms that has been provided to prime bidders. The Business will maintain a visitor sign-in log at the local office of the Construction Manager for all prime bidders and qualified Durham-based firms who attend meetings related to the Project.

D. Technical Assistance

The Business will provide technical assistance to qualified Durham-based firms to aid them in the preparation of prequalification statements and proposals by:

- 1. Provide construction schedules with the bid packages to allow qualified Durham-based firms to better understand their general conditions.**
- 2. Offer referral assistance to qualified Durham-based firms by providing them with a list, when available of vendors, service providers, and/or prime contractors.**
- 3. Provide assistance with prequalification forms.**

The Business will provide commercially reasonable assistance to qualified Durham-based firms with prequalification forms.

E. Other Purchases

The Business will involve qualified Durham-based firms in the Project through:

- 1. Allowing qualified Durham-based firms to bid on the professional services, vendor and supplier and non-professional services aspects of the Project to the extent that such qualified Durham-based firms are able, in addition to the construction aspects of the Project.**

F. Monitoring and Reporting

The Business will document this Plan's actual accomplishments by:

1. Analyzing majority trade contractors' bidding records to assure a commercially reasonable effort. To the extent reasonably requested in writing by the City, the Business will provide a letter certifying as to compliance of these actions within 30 calendar days of receipt of such written request.
2. Providing quarterly reporting. Reports shall be submitted by the 15th day of the month following the close of each quarter (January, April, July and October) and shall include a list of any Durham-based firms participating in the Project during the prior quarter, the category of each Durham-based firm, a description of the work completed by such Durham-based firm during the prior quarter and the amount paid to each Durham-based firm in the prior quarter.

3. Preparing and presenting a final report on the recruitment of Durham-based firms to work on the project.

Following the completion of the Project, the Business will compile all quarterly reports previously provided to the City into one comprehensive Project Report and will deliver this to the City within 120 days following the completion of the Project.

G. Right to Contract

Notwithstanding anything to the contrary contained in this Plan, the Business shall have the sole, exclusive, and unilateral right to make all decisions regarding the contracting, employment, retention, and termination of all firms, contractors, and sub-contractors as required to meet the needs of the Business. Failure to meet the goal(s) set forth in section C of this Plan shall not be deemed a breach of the Plan or a breach of the Contract.