

CONTRACT

This contract (this “Contract”), as authorized by N.C. Gen. Stat. § 143B-431.01¹, is hereby entered into by and between the North Carolina Department of Commerce (the “Department”) and Economic Development Partnership of North Carolina, Inc., a North Carolina nonprofit corporation (the “Contractor” and, together with the Department, the “Parties”) to assist the Department in fostering and retaining jobs and business development, international trade, marketing, and travel and tourism.

1. **Contract Documents.** This Contract consists of the following documents, which are fully incorporated herein by reference:
 - a. This document
 - b. Attachment A – General Terms and Conditions
 - c. Attachment B – Scope of Work
 - d. Attachment C – Budget and Payment Schedule
 - e. Attachment D – No Overdue Tax Debt Certification
 - f. Attachment E – Work Site Disclosure Form
 - g. Attachment F – Agreements to Be Assigned to Contractor

These documents constitute the entire Contract between the Parties and supersede all prior oral or written statements or agreements.

2. **Precedence Among Contract Documents and with Governing Statutes.** In the event of a conflict between or among the terms of the Contract Documents, the terms in the Contract Document with the highest relative precedence shall prevail. The order of precedence shall be the order of documents as listed in Paragraph 1 above, with the first-listed document having the highest precedence and the last-listed document having the lowest precedence. If there are multiple Contract amendments, the most recent amendment shall have the highest precedence and the oldest amendment shall have the lowest precedence. It is the intention of the Parties to conform their behavior and set their rights and obligations under this Contract to the applicable law. The Parties recognize that during the term of this Contract, the governing statutes providing for the relationship between the Parties (including but not limited to N.C. Gen. Stat. § 143B-431.01) may be amended. In the event of amendment to the the governing statutes, the Parties shall amend the Contract to implement the statutory changes.

¹ Session Law 2014-18, s. 1.1, created a new section in Article 10, Chapter 143B of the N.C. General Statutes – N.C. Gen. Stat. § 143B-431A (the “enabling legislation”). However, the Assistant Revisor of Statutes for the N.C. General Assembly has since determined that the proper section should be N.C. Gen. Stat. § 143B-431.01. Therefore, all references to the enabling legislation in this Contract have been changed to reflect the new section number.

3. **Effective Period.** This Contract shall be effective on October 6, 2014, and shall terminate on October 5, 2019, with the option to extend, if mutually agreed upon, through a written amendment as provided for in the General Terms and Conditions, and as follows. The term of the Contract may be extended by mutual agreement of the Parties in one year increments up to four times after no less than four fifths of the original Contract term has passed. A Contract extension may not extend the remaining term of the Contract, including the term of the extension, to more than two years. However, nothing in this section shall be construed as a prohibition against entering into a new contract with Contractor.
4. **Contractor's Duties.**
 - a. **General.** Contractor shall provide the services as described in Attachment B and in accordance with the additional terms of this Contract (the "Project"). Contractor shall ensure the funds provided in this Contract are used exclusively for the purposes set forth in Attachment B and this Contract.
 - b. **Initial Fundraising Representation.** Contractor represents and warrants that, as of the time immediately prior to the Effective Date of this Contract, it has received from fundraising efforts and sources, other than State funds, an amount totaling at least two hundred fifty thousand dollars (\$250,000) to support operations and functions of Contractor.
 - c. **Annual Fund Raising.** Contractor must receive from fund raising efforts and sources other than State funds an amount totaling at least five million seven hundred fifty thousand dollars (\$5,750,000) during the term of this Contract to support operations and functions of Contractor. Contractor shall raise at least seven hundred fifty thousand dollars (\$750,000) during the first year of the term of this Contract and shall raise at least one million two hundred fifty thousand dollars (\$1,250,000) during each subsequent year of the term of this Contract. Amounts raised prior to entering the Contract or during a year preceding the current year of this Contract shall not apply to the amount required to be raised during the current year.
5. **Department's Duties.** The Department shall pay Contractor in the manner and in the amounts specified in Attachment C. No other items shall be reimbursed or compensated without the prior written consent of the Department.

Funds appropriated to the Department for tourism and marketing purposes and allocated to Contractor as part of this Contract, as set forth in the budget contained in Attachment C, shall be used for a research-based, comprehensive marketing program directed toward consumers in key markets most likely to travel to North Carolina, and not for ancillary activities.

6. **Statement of No Overdue Tax Debts.** At the time of execution of this Contract, Contractor shall submit a sworn written statement in the form provided in Attachment D that the Contractor does not have any overdue tax debts, as defined by N.C. Gen. Stat. § 105-243.1, at the federal, state, or local level. The Contractor acknowledges that if it has any overdue tax debts in the future, it must immediately notify the Department and is not eligible to receive any additional funds under this Contract. Additionally, Contractor must provide an updated certification of no overdue tax debts annually along with the report required by Paragraph 16 of this Contract.
7. **Subcontractors.** The Contractor has the responsibility to ensure that all sub-contractors, if any, provide all information necessary to permit Contractor to comply with the standards set forth in this Contract.
8. **Contract Administrators.** All notices permitted or required to be given by one Party to the other and all questions about the Contract from one Party to the other shall be addressed and delivered to the other Party's Contract administrator. The name, post office address, street address, telephone number, fax number, and email address of the Parties' respective initial Contract administrators are set out below. Either Party may change the name, post office address, street address, telephone number, fax number, or email address of its Contract administrator by giving timely written notice to the other Party.
For the Department:

IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
A. John Hoomani General Counsel and Chief of Staff North Carolina Department of Commerce 4301 Mail Service Center Raleigh, NC 27699-4301 Telephone: (919) 715-5579 Fax: (919) 733-8356 Email: john.hoomani@nccommerce.com	A. John Hoomani General Counsel and Chief of Staff North Carolina Department of Commerce 301 N. Wilmington Street Raleigh, NC 27601

For the Contractor:

IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Richard Lindenmuth Chief Executive Officer Economic Development Partnership of North Carolina, Inc. 15000 Weston Parkway Cary, NC 27513 Telephone: (919) 447-7777 Fax: (919) 447-7780 Email: richard.lindenmuth@edpnc.com	Richard Lindenmuth Chief Executive Officer Economic Development Partnership of North Carolina, Inc. 15000 Weston Parkway Cary, NC 27513

9. **Outsourcing to Other Countries.** The Contractor certifies that no jobs have been placed in other countries, other than the specific items set forth in Attachment E. The Contractor further agrees that it will not outsource any such jobs during the term of this Contract without providing notice to the Department. International offices of the Contractor necessary for the development of international business in North Carolina shall not be deemed "outsourcing."
10. **E-Verify.** Pursuant to N.C. Gen. Stat. §§ 143-48.5 and 147-33.95(g), the undersigned hereby certifies that the Contractor named below, and the Contractor's subcontractors, comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system." E-Verify System Link: www.uscis.gov.
11. **Securities Violations.** Pursuant to N.C. Gen. Stat. § 143-59.2(b), the Contractor hereby certifies that none of the Contractor's officers, directors, or owners (if the Contractor is an unincorporated business entity) has been convicted of any violation of Chapter 78A of the North Carolina General Statutes or the Securities Act of 1933 or the Securities Exchange Act of 1934 within 10 years immediately prior to effective date of this Contract.
12. **Signature Warranty.** The undersigned represent and warrant that they are authorized to bind their principals to the terms of this Contract.
13. **Governing Board.** Contractor shall adhere to the following governance provisions related to its governing board (the "Board"):
 - a. The Board shall be composed in accordance with the requirements of N.C. Gen. Stat. § 143B-431.01(d)(2)(a), as may be amended.

- b. Contractor shall comply with the limitations on lobbying set forth in section 501(c)(3) of the Internal Revenue Code.
 - c. No State officer or employee may serve on the Board.
 - d. The Board shall meet at least quarterly at the call of its chair. Each quarter and upon request, the Board shall report to the Chair of the Economic Development Accountability and Standards Committee on the progress of the State's economic development.
 - e. At any time, and in its sole discretion, the Department may request in writing and the Board shall be required to perform one or more of the following duties:
 - i. To provide advice concerning economic and community development planning for the State, including a strategic business facilities development analysis of existing, available buildings or shell or special use buildings and sites;
 - ii. To recommend economic development policy to the Secretary of Commerce, the General Assembly, and the Governor;
 - iii. To recommend annually to the Governor biennial and annual appropriations for economic development programs;
 - iv. To recommend how best to coordinate economic development efforts among the various agencies and entities, including those created by executive order of the Governor, that receive economic development appropriations, including the assignment of key responsibilities for different aspects of economic development and resource allocation and planning designed to encourage each agency to focus on its area of primary responsibility and not diffuse its resources by conducting activities assigned to other agencies; and
 - v. To perform the responsibilities of the Secretary of Commerce under N.C. Gen. Stat. § 143B-434.01.
14. **Salary Limit.** The amount of State funds that may be used for the annual salary of any one of Contractor's officers or employees shall not exceed the amount set forth in N.C. Gen. Stat. § 143B-431.01(d)(3), as may be amended. Members of the Board may receive only per diem and allowances pursuant to N.C. Gen. Stat. § 138-5.
15. **Financial Statements.** Contractor will provide to the Joint Legislative Economic Development and Global Engagement Oversight Committee, the Department, and the Fiscal Research Division of the North Carolina General Assembly a copy of Contractor's annual audited financial statement within seven days of issuance of the statement.

16. **Reports.** Contractor will provide by September 1 of each year, and more frequently if the Department requests, a report to the Department on prior State fiscal year program activities, objectives, and accomplishments and prior State fiscal year itemized expenditures and fund sources. The report shall also include all of the following:
- a. Jobs anticipated to result from efforts of Contractor. This includes project leads that were not submitted to the Department for possible discretionary incentives pursuant to Chapter 143B of the North Carolina General Statutes.
 - b. Developed performance metrics of economic development functions itemized by county, by development tier area designation, as defined by N.C. Gen. Stat. § 143B-437.08, and by Collaboration for Prosperity Zones created pursuant to N.C. Gen. Stat. § 143B-28.1. The performance metrics shall include at least the information contained in N.C. Session Law 2014-18, s. 1.3, as may be amended.
 - c. Any proposed amendments to the areas of expertise required to be represented on the Board.
 - d. A detailed explanation of how annual salaries are determined, including base pay schedules and any additional salary amounts or bonuses that may be earned as a result of job performance. The explanation shall include the proportion of State and private funds for each position and shall include the means used by Contractor to foster employee efforts for economic development in rural and low income areas in the State. Any bonuses paid to employees shall be based upon overall job performance and not be based on a specific project lead.
 - e. Each certification required by Paragraph 25 ("Annual Certifications").
 - f. Any other information requested by the Department.
17. **Right to Require Compliance with Contract.** If the Department, in its discretion, determines that the Contractor has failed to comply in any part with this Contract (including, without limitation, any of the provisions of N.C. Gen. Stat. § 143B-431.01), then the Department, in its sole discretion, can require Contractor to comply with this Contract, including by making any remedial efforts which the Department, in its discretion, determines are necessary, or through a civil action for appropriate relief (including, without limitation, specific performance and injunctive relief). The Department's exercise of its right to require compliance with this Contract and/or Contractor's efforts to so comply shall not prejudice in any manner the Department's right to terminate this Contract at any time under Paragraph 18 below.
18. **Termination.** The Department may terminate this Contract with or without cause at any time and in its sole discretion, subject to the requirements set forth below. Upon termination of this Contract, or upon dissolution of, or repeal by the General Assembly of, the charter of Contractor with which the Department has contracted under this section, all assets and funds of Contractor, including interest on funds, financial and operational records, and the right to receive future funds pursuant to this Contract, will be

surrendered to the Department within 30 days of the termination, dissolution, or repeal. During the 30 day period, Contractor may not further encumber any assets or funds. However, during the 30-day period, Contractor may continue to spend funds in order to fulfill its legal obligations, subject to the following requirements: (1) Contractor must provide Commerce with 10 days' notice prior to any such expenditure, which notice period shall commence upon Commerce's actual receipt of the notice; and (2) Commerce has the right to reject any such expenditure in its sole discretion at any time during the 10-day period. For purposes of this paragraph, assets and funds of Contractor include assets and funds of any subsidiary or affiliate of Contractor. An affiliate of Contractor exists when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether the control is direct or through one or more subsidiary, affiliated, or controlled corporations.

19. **Conflicts of Interest.** Contractor shall adopt and publish a resolution or policy containing a conflict of interest policy and gift policy to guide actions by the governing Board members, officers, and employees of Contractor in the performance of their duties in accordance with the requirements of N.C. Gen. Stat. § 143B-431.01.
20. **Records of Contributions.** Contractor shall maintain and submit to the Department a record containing the name of all persons who have contributed to Contractor in accordance with the requirements of N.C. Gen. Stat. § 143B-431.01(e)(7), as may be amended. Contractor shall make such report available to the Department upon request, and include such report in the annual report required by Paragraph 16 of this Contract. Contractor shall also make available to the Department upon request the information required by Paragraph 21 of this Contract.
21. **Publication Requirement.** For any entity reported pursuant to N.C. Gen. Stat. § 143B-431.01(f)(6) for a gift, contribution, or item or service of value for which the fair market value exceeds one thousand dollars (\$1,000) and was not paid, Contractor shall publish within seven days of any award by the Department of a discretionary incentive to that entity: (i) the identity of the entity, (ii) the fair market value and description of that which was received from the entity by the Contractor or the affiliate entity of the Contractor, and (iii) the date and amount of the award to the entity. This publication requirement is satisfied if the Department publishes the information required in this subdivision within seven days of the award either separately or as part of a press release concerning the award, but the Department shall have no obligation to make such publication or release.
22. **Accounting Records.** Contractor shall maintain separate accounting records for and separate accounts for State and private funds. Contractor is expressly prohibited from commingling State and private funds. Records and accounts must be maintained according to generally accepted accounting principles.
23. **No Grants from Contractor.** Contractor shall not use its public or private funds to award grants, loans or discretionary incentives.

24. **Severance Pay.** Severance pay shall be limited in the matter set forth in N.C. Gen. Stat. § 143B-431.01(e)(11), as may be amended.
25. **Annual Certification.** Contractor must provide by September 1 of each year an annual certification to the Department that it is in compliance with the following:
 - a. The requirements of Chapter 55A of the North Carolina General Statutes.
 - b. All requirements of this Contract. For any provision that Contractor did not comply with, Contractor shall provide a detailed explanation of the circumstances and time of the noncompliance.
 - c. No overdue tax debts requirement, as set forth in Paragraph 6 of this Contract.
 - d. Any other items requested by the Department.
26. **Travel and Tourism.** Contractor must comply with and perform the duties set out in N.C. Gen. Stat. § 143B-434.2, the Travel and Tourism Policy Act.
27. **Availability of Funds.** The limitation of N.C. Gen. Stat. § 143C-6-8 applies to this Contract. The parties to this Contract agree and understand that the payment of the sums specified in this Contract is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the Department in that all funds contemplated to be paid to Contractor by the Department under this Contract are subject to the availability of appropriated funds. In the event that funds become unavailable, Contractor agrees that the Department may terminate this Contract effective immediately with no liability owed by the Department to Contractor upon termination.
28. **Use of State Funds.** Contractor shall comply with the requirements regarding the use of State funds set forth in N.C. Gen. Stat. § 143B-431.01(g), as may be amended.
29. **No State Employment.** An officer, employee, or member of the Board of Contractor is not a State employee, is not covered by Chapter 126 of the General Statutes, and is not entitled to State funded employee benefits, including membership in the Teachers' and State Employees' Retirement System and the State Health Plan for Teachers and State Employees. Contractor shall specifically inform its employees, officers or members of its Board of these facts in writing upon hiring or appointing such individuals.
30. **Tier One and Two Areas.** The funds raised by Contractor from sources other than State funds shall be allocated in accordance with the requirements of N.C. Gen. Stat. § 143B-431.01(k), as may be amended.
31. **Repayment.** If there is a breach of any of the requirements, covenants or agreements in this Contract, or if there are any representations or warranties which are untrue in this

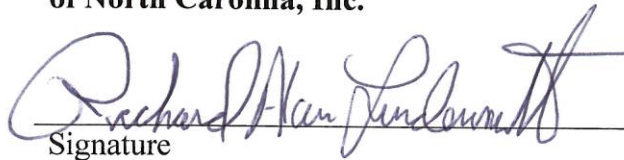
Contract, Contractor agrees that the Department may terminate this Contract and require repayment from Contractor of an amount of the funds already provided to Contractor under this Contract proportional to the breach, including interest earned on those funds, to be determined by the Department in its discretion.

32. **Assignment of Certain Contracts to Contractor.** The Department agrees to assign, and Contractor agrees to assume, all rights and obligations contained in the agreements described in Attachment F. Such assignment and assumption shall be effective as of the effective date of this Contract. The Parties agree to take whatever steps are necessary to accomplish such assignment and assumption, if additional steps are required. Additionally, Contractor agrees to indemnify and hold the Department harmless for any liability to any third party based on acts or omissions that occurred after the effective date of this Contract for matters arising after the effective date that relate to the agreements described in Attachment F. Contractor shall not owe indemnity and shall not hold the Department harmless for any third-party liability arising out of or relating to acts or omissions that occurred prior to the effective date of this Contract.
33. **Obligations of Contractor with Respect to Certain Third-Party Relationships.** Contractor agrees that it shall be responsible for complying with the provisions of this Contract even when Contractor utilizes a third party or parties to undertake all or any part of the Project if so allowed by the Department.
34. **Miscellaneous Provisions.**
 - a. **Graphic Design.** The Department, in its sole discretion, may allow Contractor continued reasonable access to and use of the Department's Graphic Design Division for a period of one year from the effective date of this Contract at no cost to Contractor. At the end of the one year period, the Parties shall re-evaluate this arrangement.
 - b. **Temporary Office Space.** The Department shall provide office space for Contractor for up to thirty days after the effective date of this Contract at no cost to Contractor.

Signatures follow on next page

In Witness Whereof, the Contractor and the Department have executed this Contract in duplicate originals, with one original being retained by each party.

**Economic Development Partnership
of North Carolina, Inc.**

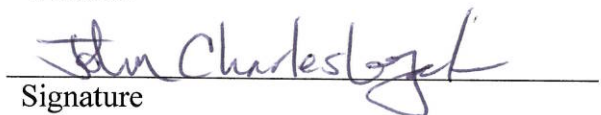

Signature

10-2-14
Date

Richard Alan Lindenmuth
Printed Name

CEO
Title

Witness:


Signature

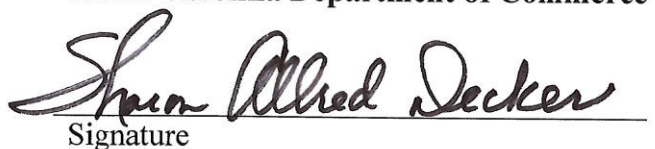
10/2/14
Date

John Charles Logack
Printed Name

VP, Business Services
Title

[Corporate Seal]

North Carolina Department of Commerce


Signature

10.1.14
Date

Sharon Allred Decker
Printed Name

Secretary of Commerce
Title
State of North Carolina

ATTACHMENT A - GENERAL TERMS AND CONDITIONS

Relationships of the Parties

Independent Contractor: The Contractor is and shall be deemed to be an independent contractor in the performance of this Contract and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Contractor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this Contract. Such employees shall not be employees of, or have any individual contractual relationship with, the Department. Any actions taken pursuant to the Contract shall not be deemed to create a partnership or joint venture between or among the Department, the Contractor or any third party. Nor shall the Contract be construed to make the Contractor (including its employees, agents, members or officials) or any third party employees, agents, members or officials of the Department. Neither the Contractor nor any third party shall have the ability to bind the Department to any agreement for payment of goods or services or represent to any person that they have such ability.

Subcontracting: The Contractor shall not subcontract any of the work contemplated under this Contract without prior written approval from the Department. Any approved subcontract shall be subject to all conditions of this Contract. Only the subcontractors specified in the Contract documents are to be considered approved upon award of the Contract. The Department shall not be obligated to pay for any work performed by any unapproved subcontractor. The Contractor shall be responsible for the performance of all of its subcontractors. This paragraph shall not operate to require Department approval of vendors to the Contractor who are necessary for the operation of the business in the ordinary course of business.

Assignment: No assignment of the Contractor's obligations or the Contractor's right to receive payment hereunder shall be permitted. However, upon written request approved by the issuing purchasing authority, the State may:

- (a) Forward the Contractor's payment check(s) directly to any person or entity designated by the Contractor, or
- (b) Include any person or entity designated by Contractor as a joint payee on the Contractor's payment check(s).

In no event shall such approval and action obligate the State to anyone other than the Contractor and the Contractor shall remain responsible for fulfillment of all Contract obligations.

Beneficiaries: Except as herein specifically provided otherwise, this Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, shall be strictly reserved to the State of North Carolina, including (without limitation) the Department, the North Carolina Attorney General and the named Contractor. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Department and Contractor that any such person or entity, other than the Department or the Contractor, receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.

Indemnity and Insurance

Release, Indemnification and Defense: The Contractor agrees to defend, release, indemnify and hold harmless the Department, the State of North Carolina, and any of their officers, agents and employees ("Indemnified Parties"), from any demands, actions, claims, complaints, liability, loss, cost or expense, including, without limitation, reasonable attorneys' fees, fines, penalties and civil judgments of Contractor or of third parties and any claims related to public records or open meetings, relating to the performance of this Contract. However, Contractor shall have no such obligation with regard to claims, fines, penalties, or civil judgments based upon allegations arising out of or relating to acts or omissions occurring prior to the effective date of the Contract. In addition, unless the parties agree otherwise, Contractor shall supply its own defense to such demand, action, claim or complaint at its own expense and not paid by state funds provided under this Contract.

Insurance: During the term of the Contract, the Contractor shall provide, at its sole cost and expense, commercial insurance of such types and with such terms and limits as may be reasonably associated with the Contract. At a minimum, the Contractor shall provide and maintain the following coverage and limits:

- (1) **Worker's Compensation Insurance:** The Contractor shall provide and maintain worker's compensation insurance, as required by the laws of the states in which its employees work, covering all of the Contractor's employees who are engaged in any work under the Contract.
- (2) **Employer's Liability Insurance:** The Contractor shall provide employer's liability insurance, with minimum limits of \$500,000.00, covering all of the Contractor's employees who are engaged in any work under the Contract.
- (3) **Commercial General Liability Insurance:** The Contractor shall provide commercial general liability insurance on a comprehensive broad form on an occurrence basis with a minimum combined single limit of \$1,000,000.00 for each occurrence.
- (4) **Automobile Liability Insurance:** The Contractor shall provide automobile liability insurance with a combined single limit of \$500,000.00 for bodily injury and property damage; a limit of \$500,000.00 for uninsured/under insured motorist coverage; and a limit of \$2,000.00 for medical payment coverage. The Contractor shall provide this insurance for all automobiles that are:
 - (A) owned by the Contractor and used in the performance of this Contract;
 - (B) hired by the Contractor and used in the performance of this Contract; and
 - (C) owned by Contractor's employees and used in performance of this Contract ("non-owned vehicle insurance"). Non-owned vehicle insurance protects employers when employees use their personal vehicles for work purposes. Non-owned vehicle insurance supplements,

but does not replace, the car-owner's liability insurance.

The Contractor is not required to provide and maintain automobile liability insurance on any vehicle – owned, hired, or non-owned -- unless the vehicle is used in the performance of this Contract.

- (a) The insurance coverage minimums specified in subparagraph (a) are exclusive of defense costs.
- (b) The Contractor understands and agrees that the insurance coverage minimums specified in subparagraph (a) are not limits, or caps, on the Contractor's liability or obligations under this Contract.
- (c) The Contractor may obtain a waiver of any one or more of the requirements in subparagraph (a) by demonstrating that it has insurance that provides protection that is equal to or greater than the coverage and limits specified in subparagraph (a). The Department shall be the sole judge of whether such a waiver should be granted.
- (d) The Contractor may obtain a waiver of any one or more of the requirements in paragraph (a) by demonstrating that it is self-insured and that its self-insurance provides protection that is equal to or greater than the coverage and limits specified in subparagraph (a). The Department shall be the sole judge of whether such a waiver should be granted.
- (e) Providing and maintaining the types and amounts of insurance or self-insurance specified in this paragraph is a material obligation of the Contractor and is of the essence of this Contract.
- (f) The Contractor shall only obtain insurance from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in the State of North Carolina. All such insurance shall meet all laws of the State of North Carolina.
- (g) The Contractor shall comply at all times with all lawful terms and conditions of its insurance policies and all lawful requirements of its insurer.
- (h) The Contractor shall require its subcontractors to comply with the requirements of this paragraph.
- (i) The Contractor shall demonstrate its compliance with the requirements of this paragraph by submitting certificates of insurance, if requested, to the Department before the Contractor begins work under this Contract.

Waiver of Default: Waiver by the Department of any default or breach in compliance with the terms of this Contract by the Contractor shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be modification of the terms of this Contract unless stated to be such in writing, signed by an authorized representative of the Department and the Contractor and attached to the Contract.

Force Majeure: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection,

earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

Survival of Promises: All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the Contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

Intellectual Property Rights

Ownership and Assignment: The term "Proprietary Rights" shall mean all trade secret, patent, copyright, trademark, trade name, service marks, all literary property and author rights, all designs and all other intellectual property rights throughout the world, and all materials incorporating, embodying or representing any of the Proprietary Rights.

Contractor acknowledges that all right, title and interest in and to, and ownership of, all Proprietary Rights, including all trade names, trademarks, service marks, logos, designs, marks of origin, works of authorship and other intangible property rights of the Department, whether now existing or that may arise in the future, and that the same are and shall remain the property of the Department, and Contractor agrees that it will not contest the Department's ownership, validity or enforceability of any such rights or aid or abet any other entity to do so, either during the term of this Contract or thereafter.

Contractor agrees that all inventions, compositions, improvements, trade names, trademarks, service marks, logos, designs, marks of origin, works of authorship and any derivatives thereof, which are made, devised, developed and discovered, composed or conceived by Contractor, whether entirely by Contractor or jointly with others ("Intangible Property") during the term of this Contract, which relate or pertain in any way to Contractor's functions, duties or obligations under this Contract or the actual or anticipated business, interests or economic development of the Department, shall be and shall remain the sole and exclusive property of the Department. Contractor agrees to, and hereby does, assign, transfer, and convey to the Department all rights, title, and interest (including but not limited to all patent, copyright, and trademark rights) in and to all Proprietary Rights applicable to such Intangible Property. Contractor agrees to execute such other documents and take all such actions as the Department may request in order to effectuate, secure or document the Department's ownership of such rights.

License: The Department hereby grants to Contractor a non-exclusive worldwide right and license to use, reproduce and distribute the Intangible Property during the term hereof, solely in connection with Contractor's functions, duties or obligations under this Contract.

Contractor agrees that any and all rights that might be acquired by its use of the Intangible Property, including but not limited to good will, shall inure to the sole benefit of the Department.

Trademarks: As to the Intangible Property to which state, federal or international rights may be applicable (“Marks”), Contractor agrees not to use or otherwise display any Mark except as permitted under this Contract or as otherwise allowed by the Department in writing. Contractor shall include all notices and legends with respect to the Marks as are or may be required by applicable federal, state and local trademark laws or that may be reasonably requested by the Department.

Contractor agrees that it shall use and display the Marks in a dignified manner, consistent with and enhancing the general reputation of the Mark and the State and the Department, and in accordance with good trademark practice. Any and all goodwill arising from Contractor's use of the Marks shall inure solely to the benefit of the Department, and Contractor shall not take any action that could be detrimental to the goodwill associated with the Marks, the Department or the State. Licensee shall take reasonable steps at its sole expense to protect and to avoid endangering the validity of the Marks, including compliance with the applicable laws or regulations of all countries in which the Marks are used.

Contractor shall use reasonable efforts to protect and maintain the designation of origin and distinctiveness of the Marks so as to enhance the goodwill associated by the Marks. If requested by the Department, Contractor will include in advertising and marketing and sales brochures an appropriate legend stating that the Marks are used under license from the Department. If, at any time, any use of any Mark shall fail to conform to the standards of quality required by the applicable specification and standards, Contractor shall promptly cease such use of the Mark.

Effect of Termination: Upon expiration or termination of this Contract for any reason, Contractor shall immediately discontinue all use of the Intangible Property and, within 30 days, shall return to the Department, all Intangible Property and all materials incorporating, representing or using the Intangible Property.

Remedies: Contractor acknowledges and agrees that its breach of any of its obligations related to its license of the Department's Intangible Property or Proprietary Rights, or any other breach of Contractor's obligations under this Contract, would cause immediate and irreparable harm to the Department for which money damages would be inadequate. Therefore, the Department shall be entitled to injunctive relief for Contractor's breach of such obligations without proof of actual damages and without the posting of bond or other security except as mandated by law. Such remedy shall not be deemed to be the exclusive remedy for any such breach, but shall be in addition to all other remedies available at law or in equity.

Federal Intellectual Property Bankruptcy Protection Act: The Parties agree that the Department shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365 (n) and any amendments thereto.

Compliance with Applicable Laws

Compliance with Laws: The Contractor shall comply with all laws, ordinances, codes, rules, regulations, and requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority, and including, without limitation, N.C.G.S. § 143B-431.01.

Equal Employment Opportunity: The Contractor shall comply with all federal and State laws relating to equal employment opportunity.

Health Insurance Portability and Accountability Act (HIPAA): The Contractor agrees that, if the Department determines that some or all of the activities within the scope of this Contract are subject to the Health Insurance Portability and Accountability Act of 1996, P.L. 104-91, as amended (“HIPAA”), or its implementing regulations, it will comply with the HIPAA requirements and will execute such agreements and practices as the Department may require to ensure compliance.

Executive Order # 24: By Executive Order 24, issued by Governor Perdue on October 1, 2009, and N.C.G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

- (1) have a contract with a governmental agency; or
- (2) have performed under such a contract within the past year; or
- (3) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Governor Perdue's October 1, 2009 Executive Order 24 and G.S. Sec. 133-32.

To find Governor Perdue's October 1, 2009 Executive Order 24:

- Go to <http://www.governor.state.nc.us/>;
- Click on “Newsroom”;
- Click on “Executive Orders and Proclamations”;
- Scroll down and click on the words “click here” in the sentence that states, “To view previous Executive Orders, please click here;” and
- Scroll down and click on “EO 24: Gift Ban.”

Oversight

Access to Persons and Records: Contractor grants the State and any of its related agencies, commissions or departments (including, without limitation, Commerce, the Economic Development Accountability & Standards Committee

established pursuant to N.C.G.S. § 143B-431.01(c), the North Carolina State Auditor and the North Carolina Office of State Budget and Management) and any of their authorized representatives, at all reasonable times and as often as necessary (including after the Termination Date), access to persons and access to and the right to inspect, copy, monitor, and examine all of the books, papers, records and other documents relating in any way to its performance under this Contract or the Scope of Work included as Attachment B to the Contract. In addition, Contractor agrees to comply at any time, including after termination of the Contract, with any requests by the State for other financial and organizational materials to permit the State to comply with its own monitoring or reporting responsibilities or to evaluate the short- and long-range impact of its programs

Record Retention: State basic records retention policy requires all records to be retained for a minimum of five years or until all audit exceptions have been resolved, whichever is longer. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action involving this Contract has been started before expiration of the five-year retention period described above, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five-year period described above, whichever is later. Nothing in this paragraph shall prevent the Contractor from destroying, purging or disposing of records in accordance with a records retention policy approved by the N.C. Department of Cultural Resources in accordance with G.S. § 121-5. Any such records retention policy shall be consistent with the applicable records retention policies of the Department.

Warranties and Certifications

Date and Time Warranty: The Contractor warrants that the product(s) and service(s) furnished pursuant to this Contract ("product" includes, without limitation, any piece of equipment, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interfaces therein) that perform any date and/or time data recognition function, calculation, or sequencing will support a four digit year format and will provide accurate date/time data and leap year calculations. This warranty shall survive the termination or expiration of this Contract.

Certification Regarding Collection of Taxes: N.C.G.S. § 143-59.1 bars the Secretary of Administration from entering into contracts with vendors that meet one of the conditions of N.C.G.S. § 105-164.8(b) and yet refuse to collect use taxes on sales of tangible personal property to purchasers in North Carolina. The conditions include: (a) maintenance of a retail establishment or office; (b) presence of representatives in the State that solicit sales or transact business on behalf of the vendor; and (c) systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. The

Contractor certifies that it and all of its affiliates (if any) collect all required taxes and that Contractor and its affiliates (if any) are not ineligible under N.C.G.S. § 143-59.1.

Miscellaneous

Choice of Law: The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, are governed by the laws of North Carolina. The Contractor, by signing this Contract, agrees and submits, solely for matters concerning this Contract, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be Wake County, North Carolina. The place of this Contract and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

Amendment: This Contract may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of the Department and the Contractor.

Severability: In the event that a court of competent jurisdiction holds that a provision or requirement of this contract violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect.

Headings: The Section and Paragraph headings in all documents comprising this Contract are not material parts of this Contract and should not be used to construe the meaning thereof.

Time of the Essence: Time is of the essence in the performance of this Contract.

Care of Property: The Contractor agrees that it shall be responsible for the proper custody and care of any property furnished to it for use in connection with the performance of this Contract and will reimburse the Department for loss of, or damage to, such property. At the termination of this Contract, the Contractor shall contact the Department for instructions as to the disposition of such property and shall comply with these instructions.

Sales/Use Tax Refunds: If eligible, the Contractor and all subcontractors shall ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this Contract, pursuant to N.C.G.S. § 105-164.14.

ATTACHMENT B - SCOPE OF WORK

The Contractor is a private, nonprofit corporation established for the purpose of developing North Carolina's economy and promoting the state as premier tourism destination. The Contractor will operate as the sales and marketing arm of the State, responsible for: business recruitment, existing industry and small business support, import and export assistance, marketing, tourism, film and sports development. All responsibilities for making grants, loans or other discretionary incentives will remain public with the Department of Commerce.

The mission of the Contractor is to guide the State's economic development efforts toward the creation and retention of high-quality jobs through new business attraction, existing business support and the cultivation of the tourism and film industries. It is the goal of the Contractor to be a statewide, collaborative organization that engages the business sector, economic development partners and community representatives at the local and regional levels to foster economic growth across the entire state.

The Contractor will perform the functions that have in the past been performed by the following divisions at the Department: Business and Industry, Marketing, Small Business and Entrepreneurship, International Trade and Investment, and Travel & Tourism (excluding Welcome Center operations, but including Film and Sports Development). The functions include, but are not limited to, the following:

- Business recruitment and expansion efforts for new businesses, both nationally and internationally, including providing business with a tailored view of the location benefits and resources available;
- Retention and expansion services to companies currently located in North Carolina;
- Helping North Carolina companies export their products to worldwide markets by brokering relationships and providing value-added support services;
- Developing and executing a comprehensive state-wide marketing and promotional program that is designed to bolster travel to and within the state;
- Implementing the branding strategy for the State, including managing the brand promotion and the relationship with the advertising agency contracted to develop the state brand;
- Working closely with tourism destination marketing organizations and private businesses – including hotels, restaurants, and attractions, non-profits, other state agencies, and a multitude of allies across the state – to collaborate, plan, and leverage resources;
- Developing and promoting North Carolina as a premier travel destination. Key focus areas include consumer advertising and promotions, public relations strategies designed to garner positive media attention about travel opportunities within the state, promotion of group travel, and recruitment of sporting events into the state;
- Providing technical assistance to communities that embrace tourism as an economic development strategy and seek to develop and promote tourism assets;

- Providing services to international, out-of-state and in-state production companies, North Carolina production support services and North Carolina film professionals;
- Handling all aspects of production including assisting companies and productions with set up in North Carolina, successfully negotiating and problem-solving issues that arise during the making of film, and leveraging the success of completed and distributed projects as an activation tool in promoting North Carolina tourism;
- Providing a centralized point of contact to assist small businesses and start-up companies by navigating them through the regulatory requirements for establishing a new business, and by linking them to other statewide resources for planning assistance, strategic performance and leadership development, help accessing government contracts, and assistance in commercializing new technologies and accessing innovation research.

ATTACHMENT C - BUDGET AND PAYMENT SCHEDULE

Based upon the amount appropriated annually to the Department by the N.C. General Assembly to fulfill the obligations which are contracted for performance by Contractor, Commerce shall pay Contractor in installments according to the following schedule:

1. During the period from the date of contract through June 30, 2015:
 - a. An amount equal to \$155,000.00 at the time of contracting in order to assist Contractor with initial start-up costs;
 - b. An amount equal to \$17,501,988, minus any costs incurred by the Department to support the functions being transferred to the Contractor from July 1, 2014 through the date of contract, in equal quarterly installments as follows:
 - i. At the time of contract;
 - ii. On or before October 1, 2014, or the date of contract, whichever is later;
 - iii. On or before January 1, 2015;
 - iv. On or before April 1, 2015.
2. During the period from July 1, 2015 through June 30, 2016, equal quarterly installments:
 - i. On or before July 1, 2015;
 - ii. On or before October 1, 2015;
 - iii. On or before January 1, 2016;
 - iv. On or before April 1, 2016.
3. During the period from July 1, 2016 through June 30, 2017, equal quarterly installments:
 - i. On or before July 1, 2016;
 - ii. On or before October 1, 2016;
 - iii. On or before January 1, 2017;
 - iv. On or before April 1, 2017.

4. During the period from July 1, 2017 through June 30, 2018, equal quarterly installments:
 - i. On or before July 1, 2017;
 - ii. On or before October 1, 2017;
 - iii. On or before January 1, 2018;
 - iv. On or before April 1, 2018.
5. During the period from July 1, 2018 through June 30, 2019, equal quarterly installments:
 - i. On or before July 1, 2018;
 - ii. On or before October 1, 2018;
 - iii. On or before January 1, 2019;
 - iv. On or before April 1, 2019.
6. During the period from July 1, 2019 through October 3, 2019, a quarterly installment on or before July 1, 2019.

Unless otherwise agreed by the Parties, all payments under this Contract shall be made by electronic deposit to the account provided by Contractor. Payments shall be deposited within ten (10) days following receipt by Commerce of proper invoices, which shall be submitted by Contractor on a quarterly basis.

ATTACHMENT D –CERTIFICATION OF NO OVERDUE TAX DEBT
ECONOMIC DEVELOPMENT PARTNERSHIP OF NORTH CAROLINA, INC.

October 4, 2014

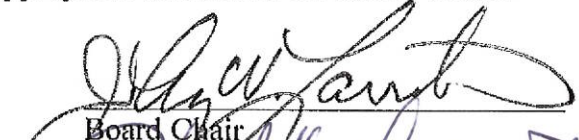
To: Secretary of Commerce and Chief Fiscal Officer

Certification:

We certify that Economic Development Partnership of North Carolina, Inc. does not have any overdue tax debts, as defined by N.C.G.S. § 105-243.1, at the federal, State, or local level. We further understand that any person who makes a false statement in violation of N.C.G.S. § 143C-6-23(c) is guilty of a criminal offense punishable as provided by N.C.G.S. § 143C-10-1.

Sworn Statement:

John Lassiter and Richard Lindenmuth being duly sworn, say that we are the Board Chair and Chief Executive Officer, respectively, of Economic Development Partnership of North Carolina, Inc. of Raleigh in the State of North Carolina; and that the foregoing certification is true, accurate and complete to the best of our knowledge and was made and subscribed by us. We also acknowledge and understand that any misuse of State funds will be reported to the appropriate authorities for further action.


Board Chair

Chief Executive Officer

Sworn to and subscribed before me on this the 2nd day of October, 2014.


(Notary Signature and Seal)

My Commission Expires: 4/3/2016



ATTACHMENT E – WORK SITE DISCLOSURE FORM

G.S. § 143-59.4 requires all Contractors to provide the information requested below. The text of the statute can be viewed at:

http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143/GS_143-59.4.pdf

U.S. Locations At Which Contract Work Will Be Performed By The Contractor and the Contractor's Subcontractors

Contractor/Subcontractor Name	Street/City/State/Zip
EDPNC	15000 Weston Parkway, Cary, NC 27513
EDPNC	416 Gallimore Dairy Road, Greensboro, NC 27409
EDPNC	1420-C East Arlington Boulevard, Greenville, NC 27858
EDPNC	164 S. Main Street, High Point, NC 27260
EDPNC	601 S. College Road, Wilmington, NC 28403
EDPNC	415 East Boulevard, Williamston, NC 27892

Non-U.S. Locations At Which Contract Work Will Be Performed By The Contractor and the Contractor's Subcontractors

Contractor/Subcontractor Name	Street/City/Province/State/Country
M. Todd Brennan	Opfern Turm D-60306 Frankfurt am Main Germany
Tracy Leland Gaskins	1 9-39-1123 Roppongi, Minato-ku, Tokyo 16-0032, Japan
Nancy Ward	45 Dentonia Park Avenue, Toronto, ON M4C 1W6
Laura Camberos Rodriguez	Ave. Vasco de Quiroga 3900, Torre A-P10, Col. Lomas de Santa Fe, 05300 Mexico, DF
William Chu	Room 805-6 Tesbury Centre, 28 Queens' Road East, Wan Chai, Hong Kong
Sumio Shibata	Toranomon-Suzuki Building 5F, 20-4, Toranomon 3-chome, Minato-ku, Tokyo 105-0001 Japan
Alglory Investment Limited	Unit A1, 9/F Silvercorp International Tower, 707-713 Nathan Road, Mongkok, Kowloon, Hong Kong
Paul Sinclair	The Cottage, Logaston Common, Almeley, Herefordshire HR36QJ

(Insert Additional Rows in Each Table if Needed)

Economic Development Partnership of North Carolina, Inc.

Economic Development Partnership of North Carolina, Inc.

Contractor's Name

Signature of Contractor's Authorized Agent

Printed Name of Contractor's Authorized Agent

Signature of Witness

Printed Name of Witness

Date

Title

Date

ATTACHMENT F – AGREEMENTS TO BE ASSIGNED TO CONTRACTOR

	Vendor Name	Annual \$Amt.	PO No.	Begin Date	End Date
1.	M. Todd Brennan	\$280,600.00		7/1/2014	6/30/2015
2.	Tracy Leland Gaskins	\$307,626.00		7/1/2014	6/30/2015
3.	Nancy Ward	\$160,000.00	RQ17787545	7/1/2014	6/30/2015
4.	Laura Camberos Rodriguez	\$204,834.00	NC10002041	7/1/2012	6/30/2015
5.	William Chu	\$225,120.00	NC10002040	7/1/2012	6/30/2015
6.	Sumio Shibata	\$206,090.40	NC10021808	7/1/2012	6/30/2015
7.	Algory Investment Limited	\$212,500.00	NC10148135	7/1/2014	6/30/2015
8.	Paul Sinclair	\$100,000.00		1/8/2014	1/7/2015
9.	LGA	\$6,740,850.00	NC10083904	7/1/2011	6/30/2016
10.	LGA	\$3,000,000.00	NC10083907	7/1/2012	6/30/2015
11.	LGA	\$1,500,000.00	NC10149478	5/16/2014	5/15/2015
12.	Connect-Worldwide Intl.	\$425,000.00	NC10083305	7/1/2013	6/30/2015
13.	Travel & Tourism Marketing Ltd.	\$425,000.00	NC10086039	7/1/2013	6/30/2015
14.	Wiechmann Tourism Service	\$425,000.00	NC10086038	7/1/2013	6/30/2015
15.	US Travel Association	\$52,600.00	NC10125553	2/1/2014	8/31/2014
16.	VisaVue Travel Data Subscription	\$29,050.00	NC10145457	1/1/2014	12/31/2014
17.	Plog Research, LLC dba TNS	\$32,000.00	NC10129034	1/1/2014	12/31/2014
18.	Plog Research, LLC dba TNS	\$19,500.00	NC10129034	1/1/2014	12/31/2014
19.	Smith Travel Research, Inc. STR	\$15,250.00	NC10129035	12/1/2013	11/30/2014
20.	Reel-Scout Mobile	\$1,600.00	NC10042943	10/1/2014	9/30/2015