

**West Piedmont Workforce Investment Board
Incumbent Worker Training Program Contract**

THIS INCUMBENT WORKER TRAINING PROGRAM CONTRACT (this "Contract") made and entered into as of this ___ day of _____, 20___, by and between **WEST PIEDMONT WORKFORCE INVESTMENT BOARD**, a local workforce investment board created in accordance with Section 117 of the Workforce Investment Act of 1998 ("WPWIB"); and _____ ("Employer");

W I T N E S S E T H :

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The parties recite the following facts:

a. Commonwealth of Virginia Title I Workforce Investment Act Program Funds have been identified as available to WPWIB to carry out the Incumbent Worker Training Initiative (the "IWTI") activities.

b. Employer has read and understands all applicable IWTI policies and procedures of WPWIB.

c. Employer submitted to WPWIB that certain Incumbent Worker Training Program Employer Information Form, a copy of which is attached hereto as Schedule 1(c) and incorporated herein by this reference (the "Information Form"), in furtherance of its application to WPWIB for reimbursement, pursuant to the IWTI, of a portion of the actual cost of the incumbent worker training program more fully described in the Information Form (the "Training Program").

d. WPWIB has selected the Training Program and has agreed to reimburse Employer a portion of the actual cost of the Training Program, pursuant to the IWTI and under the terms and conditions set forth in this Contract.

2. Term. The term of this Contract shall be for a period of _____ (___) months, commencing on the date first above written, and ending on _____, unless sooner terminated or extended as provided herein.

3. Training Program Reimbursement. Employer shall cause the completion of the Training Program. Upon completion of the Training Program, Employer shall send an invoice (including any receipts and vouchers substantiating the same) to WPWIB for the total actual cost of the Training Program incurred by Employer. Upon receipt of such invoice, WPWIB shall pay to Employer _____ percent (___%) of such total actual cost of the Training Program (the "Reimbursement Amount"), but in no event shall the Reimbursement Amount exceed the lesser of _____ **Dollars (\$_____)** or the maximum amount permitted by the IWTI and applicable law.

4. Representations. Employer hereby represents and warrants that all statements and other information contained in the Information Form are correct and complete. Any and all representations made by Employer in the Information Form are hereby reaffirmed, remade, and rewritten by Employer as of the date of this Contract, and Employer shall have a continuing obligation to immediately notify WPWIB if any representation made by Employer in the Information Form becomes materially inaccurate, incomplete or misleading. Any representation made by Employer in the Information Form which is or becomes materially inaccurate or misleading shall constitute a material breach of this Contract.

5. Stop Work/Suspension of Performance. Upon delivery of a written stop performance order from WPWIB (the "Stop Order"), Employer shall immediately stop incurring costs related to the Training Program on the Stop Date (as hereafter defined) until otherwise directed in writing by WPWIB. "Stop Date" shall mean the effective date specified in the Stop Order. Failure to comply with the Stop Order shall be deemed to be a material breach of this

Contract by Employer, and Employer shall be solely responsible for any costs Employer incurs after the Stop Date and for any damages WPWIB may have as a result of such breach by Employer. Except as otherwise provided in this Contract, a Stop Order shall not by itself constitute a Notice of Termination (as hereafter defined).

6. Termination for Convenience. Either party may terminate this Contract by giving at least thirty (30) days notice to the other party ("Notice of Termination"). In the event this Contract is terminated by WPWIB prior to completion of the Training Program, Employer shall have sixty (60) days after the date of termination to submit an invoice for the actual costs of the Training Program incurred by Employer as of the date of termination and prior to the issuance of any Stop Order, and Employer shall be entitled to reimbursement of such incurred costs, in the same proportion specified in paragraph 3 of this Contract and subject to the limitations set forth therein, provided Employer reasonably and promptly attempted to cancel all such incurred costs and subject to the limitations of paragraph 8 of this Contract. In the event this Contract is terminated by Employer prior to completion of the Training Program, Employer shall not be entitled to any reimbursement or other payment pursuant to this Contract.

7. Termination for Default. In the event Employer materially breaches any obligation of Employer pursuant to this Contract, and which breach cannot be cured or has not been cured to the reasonable satisfaction of WPWIB within fifteen (15) days after written notice of such breach (or such further time as WPWIB may agree), WPWIB shall have the right to immediately terminate this Contract and Employer shall not be entitled to any reimbursement or other payment pursuant to this Contract. Such right of termination shall be in addition to any other rights and remedies WPWIB may have under applicable law.

8. Availability of Funds. It is understood and agreed between the parties that WPWIB shall be obligated to pay the Reimbursement Amount only to the extent that adult and dislocated worker funds are available to WPWIB for incumbent worker training initiative activities (the "Incumbent Worker Training Funds"). In the event WPWIB receives written notice from a governmental agency governing, overseeing, controlling or otherwise affecting the operations of WPWIB (a "Governmental Agency"), including, but not limited to, the Virginia Employment Commission, the Virginia Workforce Council, and the U.S. Secretary of Labor, that the Incumbent Worker Training Funds are not available or no longer available for the purposes of this Contract, then WPWIB shall promptly give Employer notice of such event (a "No Funding Event"), and such notice shall constitute an immediate Stop Order. Upon the giving of such notice of a No Funding Event, this Contract shall terminate and the parties shall have no further obligations hereunder, except as otherwise provided in paragraph 26 of this Contract.

9. Reporting Requirements in General. For no additional compensation, Employer shall comply with any reasonable information requests of a Governmental Agency or WPWIB related to the Training Program, and Employer has read and agrees to cooperate and comply with any applicable provisions of any policies and procedures of WPWIB for oversight and evaluation of incumbent worker training initiatives applicable to all employers participating in the IWTI, as may be adopted or revised by WPWIB from time to time. This paragraph shall survive termination of this Contract.

10. Retention of Records. Employer shall be responsible for maintaining all financial records, statistical records, property records, supporting documentation, and any other documents (including electronic storage media) pertinent to this Contract for a period of five (5) years from the date of the final payment of this Contract, or until all audits are complete and findings on all claims have finally been resolved, whichever is longer. This paragraph shall survive termination of this Contract.

11. Right of Access. For a period of five (5) years from the date of final payment of this Contract, or until all audits are complete and findings on all claims have finally been resolved, whichever is longer, and at any reasonable time during normal business hours, a Governmental Agency, WPWIB, or any of their representatives shall have access to documents, papers, and records (including computer records) of Employer which are directly pertinent to this Contract, in order to conduct audits and examinations and to make excerpts, transcripts, and photocopies.

12. Due Authorization. Employer represents and warrants that it is a legal entity duly organized, validly existing, and in good standing under the laws of the Commonwealth of Virginia and that the execution and performance of this Contract have been duly approved by all necessary action and are not in violation of any other agreement Employer has with any third parties; and that this Contract is a valid binding, legal obligation of Employer, enforceable in accordance with its terms.

13. Assurances.

a. Compliance. Employer shall fully comply with all applicable laws, including, without limitation, the Workforce Investment Act and all federal regulations as are applicable to this Contract; and with all state and/or WPWIB policies and requirements. Employer represents and warrants that except as set forth in Schedule 13, attached hereto and incorporated herein by this reference, there are no pending or threatened claims by any past or present employee or government agency alleging any form of discrimination in employment practices or operations, violation of OSHA requirements, claims for wrongful discharge, or any other claims alleging sexual harassment, unsafe work conditions or environment, or other violations of applicable safety, health, or employment laws, rules, or regulations. During the term of this Contract, Employer shall promptly give written notice to WPWIB if any such claims are hereafter made or threatened against Employer.

b. Equal Opportunity and Nondiscrimination. Employer agrees that it:

- i. Shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by applicable law and shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause;
- ii. Shall comply with federal law, rules and regulations in all solicitations or advertisements for employees placed by or on behalf of Employer and state that Employer is an equal opportunity employer; and
- iii. Shall include provisions in any permitted subcontracts, purchase orders or similar agreements whose value is Ten Thousand Dollars (\$10,000) or greater, requiring compliance by its subcontractors and/or vendors related to the foregoing, so that such provisions shall be binding upon each such subcontractor and vendor.

Notices, advertisements and solicitations placed in accordance with federal law, rules or regulations shall be deemed sufficient for the purposes of meeting the requirements of this paragraph.

c. Drug Free Work Place. During the term of this Contract, Employer agrees to (i) provide a drug-free workplace for Employer's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, possession, or use of a controlled substance or marijuana is prohibited in Employer's workplace and specifying the actions that shall be taken against employees for violations of such prohibitions; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Employer that Employer maintains a drug-free workplace; and (iv) include the provisions of the foregoing in every subcontract or purchase order whose value is Ten Thousand Dollars (\$10,000) or greater, so that such provisions shall be binding upon each such subcontractor and vendor.

d. Immigration Reform and Control Act. Employer represents and agrees that it does not and will not during the term of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

14. Contingency Clause. Employer agrees to comply with all present or future federal and/or state rules and regulations imposed upon WPWIB as they relate to this Contract. The parties agree that in the event of any Development (as hereafter defined), the parties shall meet in good faith and work with diligent speed to restructure this Contract to bring it into compliance with such Development. "Development" shall mean any change in IWTI or Workforce Investment Act funding rules or regulations applicable to this Contract; the passage of replacement legislation, or other legislative or regulatory change that causes this Contract to be noncompliant with applicable law as interpreted in the good faith opinion of a party's legal counsel. In negotiating any such restructuring, the parties shall, to the extent reasonable possible, alter the terms of this Contract only to the extent necessary to comply with applicable law and the legal or funding requirements applicable to workforce investment boards and the IWTI; and the parties shall endeavor to preserve, to the extent reasonably possible, the provisions of this Contract. In the event that such noncompliance from such Development cannot be cured by mutual agreement after reasonable opportunity

to negotiate in good faith, this Contract may be terminated by either party upon thirty (30) days prior written notice to that effect to the other party. Such termination shall be treated as a No Funding Event under paragraph 8 of this Contract.

15. Amendment, Modification and/or Supplement. The parties may amend, modify, and/or supplement this Contract in such manner as may be agreed upon by the parties, provided such amendments, modifications, and/or supplement are reduced to writing and signed by the parties or their successors in interest.

16. Assignment. Employer shall not assign this Contract without the prior written consent of WPWIB, which consent may be withheld in the sole discretion of WPWIB, but in no case shall any such consent relieve Employer from the obligations under or change the terms of this Contract.

17. Interpretation – the Information Form and this Contract. In the event of any inconsistency between the Information Form and this Contract, this Contract shall control.

18. Notices. Any notice required or contemplated to be given to any party by the other party shall be in writing and shall be given by hand delivery, facsimile transmission, certified or registered United States mail, or a private courier service which provides evidence of receipt as part of its service, as follows:

If to WPWIB: West Piedmont Workforce Investment Board
Attn: Executive Director
914 Brookdale Street
P.O. Box 4043
Martinsville, VA 24115-4043
Facsimile: (276) 656-6092

If to Employer: _____

Any party may change the address to which notices hereunder are to be sent to it by giving written notice of such change in the manner provided herein. A notice given hereunder shall be deemed given on the date of hand delivery, facsimile transmission, deposit with the United States Postal Service properly addressed and postage prepaid, or delivery to a courier service properly addressed with all charges prepaid, as appropriate.

19. Non-waiver. No waiver of any term or condition of this Contract by any party shall be deemed a continuing or further waiver of the same term or condition or a waiver of any other term or condition of this Contract.

20. Other Documents. The parties agree that they shall execute, acknowledge, and deliver all such further documents as may be reasonably required to carry out and consummate the transactions contemplated by this Contract.

21. Headings. The descriptive headings in this Contract are inserted for convenience only and do not constitute a part of this Contract.

22. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. The parties hereby submit to the exclusive jurisdiction of the state court located in Martinsville, Virginia, or the U.S. District Court for the Western District of Virginia (Danville Division), in any action or proceeding arising out of, or related to this Contract, and the parties hereby agree that all claims in respect of any action or proceeding shall be heard or determined only in either of these courts. The parties agree that a final judgment in any action or proceeding shall, to the extent permitted by applicable law, be conclusive and may be enforced in other jurisdictions by suit on the judgment, or in any other manner provided by applicable law related to the enforcement of judgments. If any ambiguity or question of intent or interpretation arises, this Contract shall be

construed as if drafted jointly by the parties and no presumptions or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Contract.

23. Binding Effect. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns, and legal representatives.

24. Gender and Number. Throughout this Contract, wherever the context requires or permits, the neuter gender shall be deemed to include the masculine and feminine, and the singular number to include the plural, and vice versa.

25. Severability. The invalidity or unenforceability of any particular provision of this Contract shall not affect the other provisions hereof, and this Contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

26. Survival. Any termination, cancellation or expiration of this Contract notwithstanding, provisions which are by their terms intended to survive and continue shall so survive and continue.

27. No Third-Party Beneficiaries. Nothing in this Contract is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party to this Contract. Notwithstanding the foregoing, any Government Agency shall be a third-party beneficiary under this Contract and shall have the right to demand performance from Employer of any obligation hereunder.

28. Relationship Between the Parties. The parties recognize that for all purposes and during the term of this Contract, Employer is an independent contractor and not an agent of WPWIB. Nothing in this Contract shall be construed as creating any partnership, joint venture, employment relationship or agency relationship in any way between Employer and WPWIB. No party to this Contract shall make any representations to third parties tending to create apparent agency, employment, joint venture or partnership. Neither party to this Contract shall have authority to act for the other in any manner to create obligations or debts binding on the other, and neither party shall be responsible for any obligations or expenses whatsoever of the other.

29. Entire Agreement. This Contract and the schedules hereto contain the entire agreement and understanding of the parties to this Contract with respect to the transactions contemplated hereby; and this Contract and the schedules hereto supersede all prior understandings and agreements of the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties have caused this **INCUMBENT WORKER TRAINING PROGRAM CONTRACT** to be executed on the day and date first written above.

WPWIB:

WEST PIEDMONT WORKFORCE INVESTMENT BOARD

By: _____
Title: _____

EMPLOYER:

By: _____
Title: _____

List of Schedules

Schedule 1(c) – Incumbent Worker Training Program Employer Information Form

Schedule 13 – Pending or Threatened Claims

Schedule 13

(Pending or threatened claims against Employer by any past or present employee or government agency alleging any form of discrimination in employment practices or operations, violation of OSHA requirements, claims for wrongful discharge, or any other claims alleging sexual harassment, unsafe work conditions or environment, or other violations of applicable safety, health, or employment laws, rules, or regulations)