

## ***CONTRACT FOR HOPE LEARNING CENTERS***

This contract is dated, made, and entered into as of the 29<sup>th</sup> day of September 2020, by the County of Durham (“County”), a N. C. municipal corporation, and the Durham Public Schools Foundation (“Contractor”).

Sec. 1. Background and Purpose. HOPE Learning Centers - Harnessing Our Partnerships for Education - is a community response to ensuring all K-12 students have safe, welcoming and supportive space to access their online learning. These learning centers respond to a need seen across the state and country to provide a supervised, supportive environment for students who do not have access to a space conducive to remote learning during the day. These centers will not only provide an environment and adult support to access their online learning but will also provide support for meeting our most vulnerable students’ social-emotional and nutrition needs.

Durham Public Schools, Durham City, Durham County and the broader Durham community are making significant investments in making DPS a 1:1 district (one device for every student) and putting in place the infrastructure to support strong digital instruction and remote learning. The community’s investment in HOPE Learning Centers is an investment in ensuring the full ecosystem necessary for equitable access to digital remote learning is in place for all students, including our most vulnerable students.

The HOPE Learning Centers model has been developed through a partnership of Durham Public Schools, Student U, YMCA, Durham Children’s Initiative, Made in Durham, Emily K, and Boys and Girls Club. The current partners that have committed to run one or more learning site as part of this collaborative are Durham Public Schools, Student U, YMCA and Kate’s Corner. These partners will provide:

- Safe and supportive space to complete DPS online learning.
- Two meals a day and snacks throughout the day to sustain learning.
- Activities and experiences which increase the social and emotional capacity of our young people during this challenging time.
- Recreation/physical activity

HOPE Learning Centers aims to provide free access to as many DPS students with the greatest need for this resource as possible. Based on available funding and space, partners will prioritize providing free access to vulnerable students.

Sec. 2. Services and Scope to be Performed. The contractor will perform the Services as defined hereunder, subject to the terms and conditions of this Agreement. All work completed by the Contractor under the Agreement shall be subject to review and approval by the County. The contractor will provide the following service(s):

The Contractor is serving as the fiscal sponsor for HOPE Learning Centers. In this role, the contractor will administer project funds to HOPE Learning Center partners and manage reporting. Community partners who formally join the collaborative will agree to:

- Prioritize serving children and families in our community who could not otherwise access care during this time.
- Follow all DHHS rules for safely operating childcare centers in NC.
- Provide an experience that focuses on: creating a safe and supportive space to complete DPS online learning, providing two meals a day and snacks throughout the day to sustain learning and implementing activities and experiences which increase the social and emotional capacity of our young people during this challenging time.
- Participate in training on 1) child abuse prevention 2) providing trauma informed care 3) understanding DPS curriculum and expectations for online learning 4) Administering first aid and CPR trained
- Create accessible enrollment processes for the families to access and work closely with DPS, DHA, DSS and other partners to identify vulnerable students.
- Support the public campaign for Learning Centers throughout the community.
- Share resources and learnings with each other to better serve all our children.

Partners will prioritize free seats for our most vulnerable children who will suffer devastating consequences from loss of learning and lack of social-emotional support if they do not have a safe, nurturing space to access their online learning. Partners are currently working with DHA, Durham County Social Services, and DPS school social workers to identify students with the greatest need. Durham HOPE Centers will prioritize providing free access to children who:

- Are experiencing homelessness or transitional housing
- Qualify for free or reduced lunch
- Have parents who work in essential jobs and aren't able to have childcare at home during the day (food industry, custodial staff, healthcare)
- Have parents who have become unemployed due to COVID
- Are part of the foster care system
- Live in Public Housing

HOPE Learning Centers will be located at DPS schools as well as in community sites across Durham County. We are currently seeking additional community spaces that meet our space requirements for ensuring safety. All learning centers connecting to this initiative will operate within all DHHS guidelines. This includes but is not limited to:

- Students will be assigned to learning pods with no more than 12 children.
- Students will be screened daily upon entering the building.
- All learning centers will require universal masking and keep children 6 feet apart.

The contractor will:

- Submit a COI from all participating partners to Durham City and Durham County that meets insurance requirements;
- Hold and administer funds dedicated to HOPE Learning Centers to the participating partners;
- Collect reporting from partners and submit reporting to Durham City and Durham County.

The contractor will collect and submit the following reporting from HOPE Learning Center partners:

- By October 30, 2020:
  - a. Enrollment report showing the number of students enrolled per site per week, number of students who live in DHA, number of students who qualify for FRL, number of students who were referred by a DSS or school social workers.
  - b. Overview from partners on efforts to recruit students and identify the most vulnerable students for enrollment.
  - c. Update on the assessment of demand and need from partners based on early recruitment.
  - d. Update on ongoing work with Durham Public Schools to coordinate resources and enrollment between the DPS remote learning sites and the community-based sites.
- By November 30, 2020:
  - a) Enrollment report showing the number of students enrolled per site per week, number of students who live in DHA, number of students who qualify for FRL, number of students who were referred by a DSS or school social workers.
  - b) Narrative report from participating partners on what is going well, challenges that have arisen and strategies to address challenges.
  - c) Overview from partners on projected plans for 2021 based on current knowledge of school reopening plans.
  - d) Update on ongoing work with Durham Public Schools to coordinate resources and enrollment between the DPS remote learning sites and the community-based sites.
- By December 30, 2020:
  - a) Enrollment report showing the number of students enrolled per site per week, number of students who live in DHA, number of students who qualify for FRL, number of students who were referred by a DSS or school social workers.
  - b) Update on plans for 2021.
  - c) Update on ongoing work with Durham Public Schools to coordinate resources and enrollment between the DPS remote learning sites and the community-based sites.
- By January 30<sup>th</sup>, 2021
  - a) Enrollment report showing the number of students enrolled, number of students who live in DHA, number of students who qualify for FRL, number of students who were referred by a DSS or school social workers.
  - b) Update on plans for 2021.
  - d) Update on ongoing work with Durham Public Schools to coordinate resources and enrollment between the DPS remote learning sites and the community-based sites.

Sec. 3. Term. This contract shall be effective September 8, 2020 – January 15<sup>th</sup>, 2021. This contract may be renewed at the expiration of the initial term at the request of the County. The contract may be renewed by mutual agreement in additional 30 day increments. Any renewal shall be based on the same terms and conditions as the initial term with the exception of rates / additional funding, which shall be negotiated.

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the County, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 5. Contractor's Billings to County. Compensation. The County shall pay the Contractor for the Work as follows: Upon signing this contract, contractor will invoice the County \$202,500 as an advance payment against services to be billed during the contract period. In addition to the funds for administration (\$7,436), the Contractor shall be compensated at a rate of \$200/student/week at any of the approved community centers.

The contractor may submit up to one additional invoice per month for additional funds, detailing past and forecasted numbers of students served at the various sites to justify the additional payment. The invoices shall be in a form approved by City, and County may request supporting documentation providing proof of performance of services, and/or any other supporting documentation deemed necessary by County.

Any County funds which have been received by the Contractor which have not been justified at the per student / per week rate shall be returned to the County within 30 calendar days.

The County shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section. The County will pay the Contractor for services provided based on the Scope of Work outlined in Exhibit A. The total dollar amount to be paid under this contract by the County to the Contractor shall not exceed \$405,000.

Sec. 6. Insurance. Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following applicable coverages and limits:

- Commercial General Liability – Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.
- Umbrella or Excess Liability – Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest 'Each Occurrence' limit for required policies.
- Certificate of Insurance – Contractor agrees to provide County of Durham a Certificate of Insurance evidencing that all coverage's, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Contractor's insurer. If Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the County within

five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

County of Durham, North Carolina  
Attention: Janelle Owens, Risk Manager  
201 East Main Street  
\_\_\_\_\_ Floor  
Durham, NC 27701

- All insurance companies must be authorized to do business in North Carolina with a Best rating A-VIII or higher.

The requirements listed above, as well as County's review or acceptance of insurance maintained by Contractor, is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract.

Sec. 7. Performance of Work by County. If the Contractor fails to perform the Work in accordance with the schedule required by this contract, the County may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the County's rights and remedies. Before doing so, the County shall give the Contractor 30 days' notice of its intention. The Contractor shall reimburse the County for additional costs incurred by the County in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 8. Exhibits. Exhibit A – Scope of Work.

Sec. 9. Notice.

(a) In General. This subsection (a) pertains to all notices related to or asserting default, breach of contract, claim for damages, suspension or termination of performance, suspension or termination of contract, and extension or renewal of the term. All such notices must be in writing and made by personal delivery, UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or certified United States mail, return receipt requested; in addition, subsection (b) must also be complied with.

(b) Additional Notice by Fax or Email. In addition to complying with subsection (a), the party giving notice or other communication shall also send it by fax or email if the other party has provided a valid, working fax number or email address.

(c) When Notice Period Is Less than 9 Days. If a required notice period is less than 9 days, the party shall also make reasonable attempts, before or promptly after giving written notice under subsections (a) and (b), to use a telephone to orally communicate the substance of the contents of the written notice. Communicating the substance of the contents by an in-person conversation will satisfy the preceding sentence.

(d) Change of Address; Discovery of Invalid Fax Number or Email Address. A change of address, fax number, email address, telephone number, or person to receive notice may be made by either party by notice given to the other party. At any time that a party discovers that

the other party has provided it a fax number or email address that is not valid, the discovering party shall provide notice of the discovery to the other party, so that it can substitute a valid fax number or email address.

(e) Date Notice Deemed Given. If a notice is sent by United States mail, it is deemed complete upon actual delivery or on the third day following the day on which it is deposited with the United States Postal Service, whichever occurs first. Notice is deemed given when both subsection (a) and subsection (b) have been complied with.

(f) When Undeliverable Notice Is Deemed Sent. If a notice is undeliverable because the address or other information provided to the sender by the other party is incorrect, incomplete, or out of date, the notice will be deemed sent on the date that the sender attempts to deliver by fax or email, or the date it places the notice in the custody of UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or the U. S. Postal Service for certified United States mail, return receipt requested. If a fax is not received because the recipient's fax number is busy on three attempts to fax that are at least ten minutes apart during a 4-hour period, the fax will be deemed undeliverable.

(g) Addresses. Subject to change pursuant to subsection (d), the addresses for these notices, are:

To the County:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_+

Durham, North Carolina 27701

Email:

To the Contractor:

Magan Gonzales-Smith, Executive Director  
Durham Public Schools Foundation  
411 W. Chapel Hill St., Suite C2  
Durham, NC 27701  
Email: magan@bullCountyschools.org

Sec. 10. Indemnification.

To the fullest extent permitted by laws and regulations, Contractor shall indemnify and hold harmless the County and its officials, agents, and employees from and against all claims, damages, losses, and expenses, direct, indirect, or consequential (including but not limited to fees and charges of attorneys, and other professionals and costs related to court action or mediation) arising out of or resulting from Contractor's performance of this Contract or the actions of the Contractor or its officials, employees, or subcontractors under this Contract or under contracts entered into by the Contractor in connection with this Contract. This indemnification shall survive the termination of this Contract.

In claims against any person or entity indemnified under this provision by an employee of the Contractor, a subcontractor, an employee of a subcontractor, or an agent of the Contractor or a subcontractor, the indemnification obligation under this provision shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the

Contractor or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

Sec. 11. Trade Secrets; Confidentiality. The request for proposals (RFP) section titled "Trade Secrets and Confidentiality" shall apply to any Trade Secrets disclosed to the County during the process leading to the parties' entering into this Contract (including all of the Contractor's responses to the RFP). This section (titled "Trade Secrets; Confidentiality") shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. For purposes of this contract, the word "candidate" in the RFP section just cited shall mean the "Contractor."

Sec. 12. Termination for Convenience ("TFC"). (a) *Procedure*. Without limiting any party's right to terminate for breach, the parties agree that the County may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations*. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the County all Work, including partly completed Work. In case of TFC, the Contractor shall follow the County's instructions as to which subcontracts to terminate. (c) *Payment*. The County shall pay the Contractor an equitable amount for the costs and charges that accrue because of the County's decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the County shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the County shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Sec. 13. State Law Provisions.

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 County 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. 14. Miscellaneous.

(a) Choice of Law and Forum; Service of Process. (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising

out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (i) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

(b) Waiver. No action or failure to act by the County shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the County from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

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

(e) Assignment, Successors and Assigns. Without the County'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 County Manager may consent to an assignment without action by the Board of County Commissioners. Unless the County otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the County's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the County's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) Notice of County Policy. The County 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 County contracts.

(h) EBOP. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham County Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the County Manager determines that the Contractor has failed to comply with the provisions of the Contract, the County Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or



such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies.” It is stipulated and agreed that those two quoted sentences apply only to the Contractor’s alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor’s alleged violations of other obligations.

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

(j) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns “it” and “its” include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words “include,” “including,” etc. mean include, including, etc. without limitation. (2) References to a “Section” or “section” shall mean a section of this contract. (3) “Contract” and “Agreement,” whether or not capitalized, refer to this instrument. (4) “Duties” includes obligations. (5) The word “person” includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word “shall” is mandatory. (7) The word “day” means calendar day. (8) The word “Work” is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

(k) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the County unless it is signed by the County Manager, a deputy or assistant County Manager, or, in limited circumstances, a County department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(l) County’s Manager’s Authority. To the extent, if any, the County has the power to suspend or terminate this contract or the Contractor’s services under this contract, that power may be exercised by County Manager or a deputy or assistant County Manager without County Council action.

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

ATTEST:

COUNTY OF DURHAM

By:\_\_\_\_\_

\_\_\_\_\_  
Print Name and Title

Preaudit certificate, if applicable:  
\_\_\_\_\_

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DURHAM PUBLIC SCHOOLS FOUNDATION

BY: \_\_\_\_\_  
Magan Gonzales-Smith, Executive Director

NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, a notary public in and for the aforesaid county and state, certify that \_\_\_\_\_,  
on behalf of DPS Foundation personally appeared before me this day and acknowledged the  
execution of the foregoing agreement with the County of Durham. This the \_\_\_\_\_ day of  
\_\_\_\_\_, 2020.

My commission expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public