

RESOLUTION NO. RS2011-1707

A resolution authorizing a grant for the benefit of IQT, in an amount not to exceed One Million Six Hundred Ten Thousand dollars (\$1,610,000), comprised of Nine Hundred Sixty Thousand dollars (\$960,000) in the form of an economic and community development incentive grant to be administered through the Industrial Development Board of the Metropolitan Government of Nashville and Davidson County (IDB) and Six Hundred Fifty Thousand dollars (\$650,000) from revenues designated for economic development in the Capitol Mall Urban Development Action Grant (UDAG) to be administered by the Metropolitan Development and Housing Agency (MDHA).

WHEREAS, the Metropolitan Government of Nashville and Davidson County ("Metropolitan Government") is vitally interested in the economic welfare of the citizens living within the area of the Metropolitan Government and wishes to provide the leadership necessary to enhance this area's capabilities for growth and development; and

WHEREAS, the provision of quality jobs to area citizens by local business is both necessary and vital to the economic well-being of the Metropolitan Government; and

WHEREAS, pursuant to Tenn. Code Ann. § 5-9-101(26), the Metropolitan Government is authorized to use available funds to make grants for economic and community development purposes; and

WHEREAS, the Metropolitan County Council adopted Ordinance No. BL2010-806 on February 1, 2011, after determining that, in order to promote industry, develop trade, create jobs and reduce unemployment, and in order to further other public purposes of the Metropolitan Government, it was in the best interest of the Metropolitan Government to make economic and community development incentive grants to encourage the location and growth within the boundaries of the Metropolitan Government of manufacturing facilities, offices, distribution facilities, customer support or call center facilities of well known and successful companies, comparable, but not limited to, companies on the Fortune 500 listing, involved in the servicing, manufacturing or assembly of computers, or telecommunications equipment or component parts thereof, if the location within the political boundaries of the Metropolitan Government is expected to result in the creation of at least five hundred new jobs for citizens within the area of the Metropolitan Government during the next five years of operations; and

WHEREAS, Chapter 2.210 of the Metropolitan Code, as amended by BL2010-806, provides that, in order to promote industry, develop trade, create jobs and reduce unemployment, and in order to further other public purposes of the Metropolitan Government, it is in the best interest of the Metropolitan Government to make economic and community development incentive grants to the Industrial Development Board of the Metropolitan Government of Nashville and Davidson County (the "IDB") for the benefit of Technology firms (as redefined in BL2010-806) by taking into account, among other things, the amount of revenue from all sources that is anticipated to be received by the Metropolitan Government with respect to the location of the qualified company and its operations within the area of the Metropolitan Government and other

economic and community development opportunities that the qualified company is expected to create; and

WHEREAS, IQT, a world leader in providing integrated customer care, business process outsourcing and IT staffing solutions to Fortune 500 enterprises around the globe, has announced its decision to locate its United States Headquarters and operation center and employ an estimated 920 persons within the area of the Metropolitan Government during the following five years; and

WHEREAS, the Metropolitan Government finds that IQT meets the criteria to be eligible to receive the benefits of an economic and community development incentive grant authorized by Chapter 2.210.020(B) of the Metropolitan Code as amended by Ordinance No. BL2010-806; and

WHEREAS, the Metropolitan Government finds that IQT's location of its United States headquarters and operations center in the area of the Metropolitan Government and the related investment and growth in connection therewith will maintain and expand significant employment and other commercial opportunities for area citizens; and

WHEREAS, by Ordinance No. 090-1112, the Metropolitan Council allocated a portion of payments received in connection with the Capitol Mall Urban Development Action Grant (UDAG) to be administered by the Metropolitan Development and Housing Agency (MDHA) and used to provide economic development activities that provide direct benefit to persons residing within Nashville's designated Pocket of Poverty; and

WHEREAS, IQT proposes to create its United States headquarters and operations center in the Central Business District of Nashville which will create an estimated 920 job opportunities, during the following five years, a portion of which are likely to be filled by individuals residing in Nashville's designated Pocket of Poverty; and

WHEREAS, the execution of a grant agreement ("Agreement") in the form attached hereto and incorporated herein by reference promotes public purpose goals recited in Chapter 2.210 of the Metropolitan Code as amended by Ordinance No. BL2010-806, the Metropolitan Government finds that it is in the interest and welfare of the citizens of the Metropolitan Government to make an economic and community development incentive grant for the benefit of IQT in an amount of nine hundred and sixty thousand dollars which will be administered through the IDB and comprised of (1) an Additional Jobs Grant Payment, as defined in the Agreement, of up to four hundred sixty thousand dollars (\$460,000) calculated by multiplying the number of Additional Jobs, as defined in the Agreement, created by IQT during the term of the Agreement by five hundred dollars (\$500), and (2) the IDB portion of the Current Expenses Grant Payment up to five hundred thousand dollars (\$500,000) to be paid in recognition of the costs and expenses incurred in locating its United States headquarters and operations center within the area of the Metropolitan Government and training employees working within the area of Metropolitan Government during the term of the Grants Agreement, and

WHEREAS, the execution of the Agreement is to promote economic development opportunities for residents of Nashville's designated Pocket of Poverty, the Metropolitan Government finds that it is in the interest and welfare of the citizens of the Metropolitan Government that six hundred fifty thousand dollars (\$650,000) in revenues designated for economic development in the Capitol Mall Urban Development Action Grant (UDAG) be paid to IQT as reimbursement of Covered Expenses, as defined in the Agreement, and that MDHA administer those payments, and

WHEREAS, it is in the interest and welfare of the citizens of the Metropolitan Government to approve the grants and execute the Grants Agreement with the IDB, MDHA and IQT.

NOW, THEREFORE BE IT RESOLVED BY THE METROPOLITAN COUNTY COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That grants shall be made for the benefit of IQT in a total amount not to exceed one million six hundred ten thousand dollars (\$1,610,000).

Section 2. That nine hundred sixty thousand dollars (\$960,000) of the total grant funds be an economic and community incentive grant to be administered through the IDB for the benefit of IQT which is comprised of (1) up to four hundred sixty thousand dollars (\$460,000) calculated by multiplying the number of Additional Jobs, as defined in the Agreement, created by IQT during the term of the Agreement by five hundred dollars (\$500), and (2) up to five hundred thousand dollars (\$500,000) to be paid beginning in July of 2012 in recognition of the costs and expenses incurred in locating its United States headquarters and operations center within the area of the Metropolitan Government and training employees working within the area of Metropolitan Government during the term of the Grants Agreement.

Section 3. That six hundred fifty thousand dollars (\$650,000) of the total grant consist of an allocation of revenues designated for economic development in the Capitol Mall Urban Development Action Grant (UDAG) as reimbursement for Covered Expenses as defined in the Agreement, with the grant funds to be administered by MDHA.

Section 4. Notwithstanding anything to the contrary herein, the Metropolitan Government's obligation to make any payments hereunder is contingent upon the annual appropriation of funds for such purpose by the Metropolitan Council.

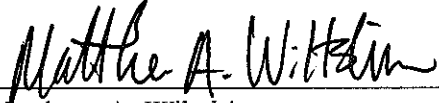
Section 5. That the Agreement by and among the Metropolitan Government, the IDB, MDHA and IQT, the form of which is attached hereto and incorporated herein by reference, is hereby approved, and the Mayor is authorized to execute the same.

Section 6. That any material amendments, renewals, or extension of the terms of the Agreement must be approved by resolution of the Metropolitan Council.

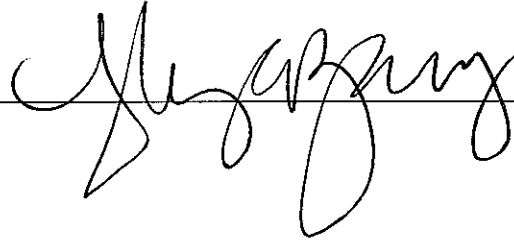
Section 7. That this Resolution shall take effect from and after its final passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

RECOMMENDED BY:

INTRODUCED BY:



Matthew A. Wiltshire
Director of the Mayor's Office of Economic
and Community Development



APPROVED AS TO AVAILABILITY OF FUNDS:



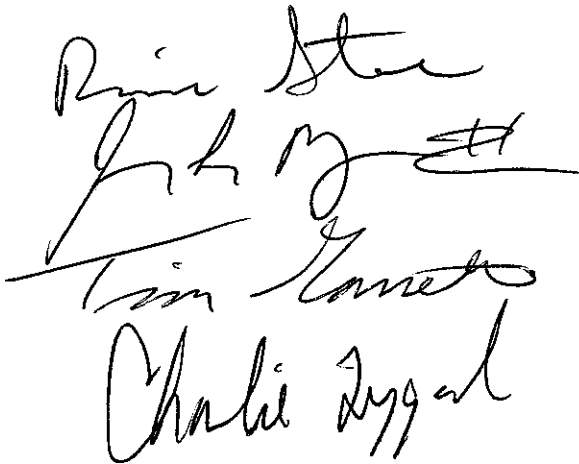
Richard M. Riebeling
Director of Finance

Council Members

APPROVED AS TO FORM AND LEGALITY:



Jenny L. Steward
Assistant Metropolitan Attorney



GRANTS AGREEMENT

This Grants Agreement ("**Agreement**") is entered into as of the Effective Date by and among The Metropolitan Government of Nashville and Davidson County (the "**Metropolitan Government**"), the Industrial Development Board of the Metropolitan Government of Nashville and Davidson County (the "**IDB**"), the Metropolitan Development and Housing Agency ("**MDHA**") and IQT, Inc., a Delaware corporation ("**IQT**") (collectively the "Parties").

RECITALS

WHEREAS, the Metropolitan Government of Nashville and Davidson County ("Metropolitan Government") is vitally interested in the economic welfare of the citizens living within the area of the Metropolitan Government and wishes to provide the leadership necessary to enhance this area's capabilities for growth and development; and

WHEREAS, the provision of quality jobs to area citizens by local business is both necessary and vital to the economic well-being of the Metropolitan Government; and

WHEREAS, pursuant to Tenn. Code Ann. § 5-9-101(26), the Metropolitan Government is authorized to use available funds to make grants for economic and community development purposes; and

WHEREAS, the Metropolitan County Council adopted Ordinance No. BL2010-806 on February 1, 2011, after determining that, in order to promote industry, develop trade, create jobs and reduce unemployment, and in order to further other public purposes of the Metropolitan Government, it was in the best interest of the Metropolitan Government to make economic and community development incentive grants to encourage the location and growth within the boundaries of the Metropolitan Government of manufacturing facilities, offices, distribution facilities, customer support or call center facilities of well known and successful companies, comparable, but not limited to, companies on the Fortune 500 listing, involved in the servicing, manufacturing or assembly of computers, or telecommunications equipment or component parts thereof, if the location within the political boundaries of the Metropolitan Government is expected to result in the creation of at least five hundred new jobs for citizens within the area of the Metropolitan Government during the next five years of operations; and

WHEREAS, Chapter 2.210 of the Metropolitan Code, as amended by BL2010-806, provides that, in order to promote industry, develop trade, create jobs and reduce unemployment, and in order to further other public purposes of the Metropolitan Government, it is in the best interest of the Metropolitan Government to make economic and community development incentive grants to the Industrial Development Board of the Metropolitan Government of Nashville and Davidson County (the "IDB") for the benefit of Technology firms (as redefined in BL2010-806) by taking into account,

among other things, the amount of revenue from all sources that is anticipated to be received by the Metropolitan Government with respect to the location of the qualified company and its operations within the area of the Metropolitan Government and other economic and community development opportunities that the qualified company is expected to create; and

WHEREAS, IQT, a world leader in providing integrated customer care, business process outsourcing and IT staffing solutions to Fortune 500 enterprises around the globe, has announced its decision to locate its United States Headquarters and operation center and employ an estimated 920 persons within the area of the Metropolitan Government during the following five years; and

WHEREAS, the Metropolitan Government has found that IQT meets the criteria to be eligible to receive the benefits of an economic and community development incentive grant authorized by Chapter 2.210.020(B) of the Metropolitan Code as amended by Ordinance No. BL2010-806; and

WHEREAS, the Metropolitan Government has found that IQT's location of its United States headquarters and operations center in the area of the Metropolitan Government and the related investment and growth in connection therewith will maintain and expand significant employment and other commercial opportunities for area citizens; and

WHEREAS, by Ordinance No. 090-1112, the Metropolitan Council allocated a portion of payments received in connection with the Capitol Mall Urban Development Action Grant (UDAG) to be administered by the Metropolitan Development and Housing Agency (MDHA) and used to provide economic development activities that provide direct benefit to persons residing within Nashville's designated Pocket of Poverty; and

WHEREAS, IQT proposes to locate its United States headquarters and operations center in the Central Business District of Nashville which will create an estimated 920 job opportunities, during the following five years, a portion of which are likely to be filled by individuals residing in Nashville's designated Pocket of Poverty; and

WHEREAS, the execution of a grant agreement ("Agreement") in the form attached hereto and incorporated herein by reference promotes public purpose goals recited in Chapter 2.210 of the Metropolitan Code as amended by Ordinance No. BL2010-806, the Metropolitan Government finds that it is in the interest and welfare of the citizens of the Metropolitan Government to make an economic and community development incentive grant for the benefit of IQT in an amount of nine hundred and sixty thousand dollars which will be administered through the IDB and comprised of (1) an Additional Jobs Grant Payment, as defined in the Agreement, of up to four hundred sixty thousand dollars (\$460,000) calculated by multiplying the number of Additional Jobs, as defined in the Agreement, created by IQT during the term of the Agreement by five hundred dollars (\$500), and (2) the IDB portion of the Current Expenses Grant Payment up to five hundred thousand dollars (\$500,000) to be paid in recognition of the costs and expenses incurred in locating its United States headquarters and operations center within

the area of the Metropolitan Government and training employees working within the area of Metropolitan Government during the term of the Grants Agreement, and

WHEREAS, the execution of the Agreement is to promote economic development opportunities for residents of Nashville's designated Pocket of Poverty, the Metropolitan Government finds that it is in the interest and welfare of the citizens of the Metropolitan Government that six hundred fifty thousand dollars (\$650,000) in revenues designated for economic development in the Capitol Mall Urban Development Action Grant (UDAG) be paid to IQT as reimbursement of Covered Expenses, as defined in the Agreement, and that MDHA administer those payments, and

WHEREAS, it is in the interest and welfare of the citizens of the Metropolitan Government to approve the grants and execute the Grants Agreement with the IDB, MDHA and IQT.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties contained herein and other good and valuable consideration, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I

DEFINITIONS

- 1.1 **Recitals.** The foregoing Recitals are hereby incorporated herein as if fully set forth below and are material terms and provisions of this Agreement representing the intent of the Parties.
- 1.2 **Definitions.** Certain terms are defined in the text of this Agreement. As used in this Agreement and unless otherwise expressly indicated, the following terms shall have the following meanings:

"Additional Jobs" shall mean the number of IQT jobs located or created within the area of the Metropolitan Government during the prior year, calculated by determining the amount by which the number of full-time IQT Jobs as of June 30 of such year exceeds the number of full-time IQT Jobs as of June 30 of the prior year. For the purpose of determining "Additional Jobs" for 2012, the amount shall be the number created from the inception of operations through June 30, 2012.

"Additional Jobs Grant Payment" shall mean the amount calculated by multiplying the number of Additional Jobs with respect to each Grant Year by \$500, up to a maximum amount not to exceed \$460,000 for the term of this Agreement.

"Applicable Law" shall mean any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation,

judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by any Governmental Authority.

“Annual Settlement Statement” shall mean the annual reporting document that includes the items set forth in **Exhibit A**.

"IQT Entity" shall mean (a) IQT, (b) any successor to IQT, including, without limitation, any corporation, partnership, limited liability company or other entity that (i) acquires, directly or indirectly, a controlling interest in IQT (whether through merger, stock purchase, stock swap or otherwise), (ii) merges or consolidates with IQT, or (iii) acquires substantially all of the assets of IQT, and (c) any corporation, partnership, limited liability company or other entity that is controlled by, or is under common control with, any of the foregoing.

"IQT Jobs" shall mean all Full Time jobs located or created within the area of the Metropolitan Government by any IQT Entity.

“Covered Expenses” shall mean all documented expenses incurred by IQT or an IQT Entity related to acquisition, preparation or occupancy of office space and other facilities, moving and relocation costs, and costs associated with training employees working within the area of the Metropolitan Government during the term of this Grant Agreement up to an amount not to exceed \$1,150,000.

"Director of Finance" shall mean the Director of Finance of the Metropolitan Government.

"Effective Date" shall mean date of the Agreement is filed with the Metropolitan Clerk's office.

"Governmental Authority" shall mean any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise), whether now or hereafter in existence.

“Covered Expenses Grant Payment” shall mean \$1,150,000 in total grant funds available to IQT for Covered Expenses that is first payable from MDHA using \$650,000 in UDAG funds and then payable from the IDB using \$500,000 in economic and community development incentive grant funds..

“Grant Period” shall mean the Term of this Agreement for which IQT is eligible for Grant Payments.

"Grant Year" shall mean the period beginning July 1 and ending June 30 for each of the years beginning July 1, 2011 and ending June 30, 2016.

"Metropolitan Clerk" shall mean the Metropolitan Clerk of the Metropolitan Government.

"Metropolitan Council" shall mean the Metropolitan County Council of the Metropolitan Government.

"Person" shall mean any natural person, firm, partnership, association, corporation, limited liability company, trust, entity, public body, government or other entity.

"State" shall mean the State of Tennessee.

1.3 **Additional Terms.** The definitions in Section 1.2 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." All references to Articles, Sections and Paragraphs shall be deemed references to Articles, Sections and Paragraphs of this Agreement, unless the context shall otherwise require. All references herein to Exhibits shall be deemed to be references to the Exhibits attached to this Agreement (**Exhibit A, Exhibit B and Exhibit C**). The terms "this Agreement", "hereof," "hereunder" and similar expressions refer to this Agreement as a whole and not to any particular Article, Section or Paragraph or other portion hereof and include any agreement supplemental hereto. The conjunction "or" shall be understood in its inclusive sense (and/or).

1.4 **Headings.** The division of this Agreement into Articles, Sections and Paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

ARTICLE II

GRANTS

2.1 **Economic and Community Development Grant.** The Metropolitan Government shall pay to the IDB for the benefit of IQT, and the IDB shall pay to IQT, the Additional Jobs Grant Payment within sixty (60) days of receipt of the Annual Settlement Statement, as specified below and in Exhibit A, following each Grant Year where IQT provides Additional Jobs up to a maximum cumulative Additional Jobs Grant Payment of \$460,000. Through an appropriation from the Metropolitan Government, the IDB shall reimburse IQT for Covered Expenses documented and incurred during the Grant Period up to maximum cumulative amount of \$500,000. This shall be the IDB's portion of

the Covered Expenses Grant Payment and shall be made as specified below and in Exhibit A. .

- 2.1.1 **Capitol Mall Urban Development Action Grant.** MDHA shall use UDAG grant funds to reimburse IQT, on a monthly basis, for Covered Expenses incurred no earlier than January 1, 2011 up to \$650,000. This shall be MDHA's portion of the Covered Expenses Grant Payment. To receive the UDAG funds, IQT must submit reasonable proof of expenses and make commercially reasonable efforts to hire full time employees living in the Pocket of Poverty.
- 2.1.2 After the first Grant Year, Covered Expenses Grant Payments and Additional Jobs Grant Payments for a particular Grant Year are conditioned upon maintenance of at least 500 IQT full-time Jobs in Nashville and retention of IQT's United States headquarters and operations center within the area of the Metropolitan Government as of the end of Grant Year with respect to which such payment is made.
- 2.2 **Annual Settlement Statement.** Within ten (10) days following the end of each Grant Year, IQT shall furnish at least one hardcopy to the IDB with either a hardcopy or electronic copy to the Director of Finance and with an Annual Settlement Statement listing the calculations of the number of Additional Jobs and an affidavit from an officer of IQT which affirms the continued employment of at least 500 existing jobs and the continued location of the United States headquarters and operations center in Nashville. IQT shall also provide the amount of the Additional Jobs Grant Payment determined in accordance with this Agreement. Such Annual Settlement Statement shall also include a summary of the Covered Expenses related to the Covered Expenses. IQT shall provide the Director of Finance such additional documentation as he shall reasonably determine is necessary.
- 2.3 **Manner of Payment.** Each Additional Jobs Grant Payment and the IDB portion of the Covered Expenses Grant Payment shall be paid annually upon receipt and approval of the Annual Settlement Statement. Payment shall be made within sixty (60) days of receipt of the Annual Settlement Statement by the Metropolitan Government, by check to IQT at its address set forth in Section 4.1 or by wire transfer of immediately available funds, and, if paid by wire transfer, the payment shall be made into such bank account in the State as IQT may specify in advance from time to time by completing the form in **Exhibit C** attached hereto and returning to the Metropolitan Government. The approval process by the IDB and Metropolitan Government is set forth in **Exhibit A**,
- 2.4 **Annual Appropriation.** Notwithstanding anything to the contrary herein, the Metropolitan Government's obligation to make any payments hereunder is contingent upon the annual appropriation of funds for such purpose by the Metropolitan Council. Although the Parties recognize that such annual appropriation is a legal requirement of the Metropolitan Government, the

Metropolitan Government acknowledges that this Agreement has served as a material inducement to IQT to locate within Nashville.

ARTICLE III

TERM

- 3.1 **Term.** The term of this Agreement (the "**Term**") shall commence on the Effective Date and shall expire upon the earlier to occur of (i) the payment of the entire Additional Jobs Grant Payment and the Covered Expenses Grant Payment to IQT as expressly contemplated in Article II or (ii) the later to occur of: (a) the date payment is made with respect to the Annual Settlement Statement for the Grant Year ending June 30, 2016 or (b) end of the approval process for the June 30, 2016 payment as set forth in **Exhibit A**.

ARTICLE IV

STANDARD TERMS AND CONDITIONS

- 4.1 **Notices.** All notices, requests, demands and other communications which are required or may be given pursuant to the terms of this Agreement shall be in written or electronic form and shall be deemed delivered (i) on the date of delivery when delivered by hand, (ii) on the date of transmission when sent by facsimile transmission during normal business hours with telephone confirmation of receipt, (iii) one day after dispatch when sent by overnight courier maintaining records of receipt, or (iv) three days after dispatch when sent by certified mail, postage prepaid, return-receipt requested; provided that, in an any such case, such communication is addressed as provided below:

To the Metropolitan Government:

The Metropolitan Government of
Nashville and Davidson County
106 Metropolitan Courthouse
P.O. Box 196300
Nashville, TN 37219
Attention: Director of Finance
Telephone: (615) 862-6151
Facsimile: (615) 862-6156

With copy to:

Director of Law of the Metropolitan Government
108 Metropolitan Courthouse
P.O. Box 196300
Nashville, TN 37219

Telephone: (615) 862-6341
Facsimile: (615) 862-6352

If to the Industrial Development Board:

c/o Mr. Matthew A. Wiltshire
The Industrial Development Board of the Metropolitan Government of
Nashville and Davidson County
100 Metropolitan Courthouse
P.O. Box 196300
Nashville, TN 37219
matt.wiltshire@nashville.gov
Telephone: (615) 862-6021
Facsimile: (615) 862-6025

If to IQT:

Alex S. Mortman
Co-Chief Executive Officer
Address
Telephone
Fax
Email

With a copy to:

Name
Title
Address
Telephone
Fax
Email

Any Party may change its address or the designation of the intended recipient of notice provided that it notifies the other Parties in accordance herewith.

4.2 **Applicable Law; Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State. The Parties hereby agree that any suit, action or proceeding may be instituted with respect to this Agreement in any federal or state court in Davidson County. The Parties hereby consent to *in personam* jurisdiction of such courts and irrevocably waive any objection and any right of immunity on the ground of venue, the convenience of forum or the *in personam* jurisdiction of such courts or from the execution of judgments resulting therefrom.

4.3 **Entire Agreement; Amendments and Waivers.** This Agreement and the Exhibits hereto constitute the entire agreement between the Parties pertaining to

the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and there are no warranties, representations or other agreements between the Parties in connection with the subject matter hereof. No amendment, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the Parties. Amendments, supplements, or modifications to the maximum Grant Payment or Additional Jobs Grant Payment must first be approved by the Metropolitan Council by Resolution. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless expressly agreed to in writing by the affected Party. Any Party's failure to enforce any provision of this Agreement or its acceptance of any payment shall not constitute a waiver thereof and shall not prevent such Party from enforcing that provision or any other provision of this Agreement in the future.

- 4.4 **Remedies Cumulative.** No reference to any specific right or remedy shall preclude any Party from exercising any other right or from having other remedy or from maintaining any other action to which it would otherwise be entitled at law or in equity.
- 4.5 **No Third Party Beneficiaries.** This Agreement is solely for the benefit of the Parties hereto, and their successors and assigns permitted under this Agreement, and no provisions of this Agreement shall be deemed to confer upon any other Person any remedy, claim, liability, reimbursement, cause of action or other right.
- 4.6 **No Merger.** The terms and provisions of this Agreement (including, without limitation, the representations, warranties and covenants) shall not merge, be extinguished or otherwise affected by the delivery and execution of any document delivered pursuant to this Agreement unless such document shall specifically so state and shall be signed by the Metropolitan Government, the IDB, MDHA and IQT.
- 4.7 **Relationship.** Nothing contained in this Agreement shall be deemed or construed by the Parties or by any third Person to create the relationship of principal and agent, partnership, joint venture or any association between or among the Metropolitan Government, the IDB and IQT.
- 4.8 **Multiple Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 4.9 **Compliance with Laws.** IQT agrees to comply with all applicable federal, state and local laws and regulations.
- 4.10 **Contingent Fees.** IQT hereby represents that IQT has not been retained or retained any persons to solicit or secure this Agreement upon an agreement or

understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this paragraph is material breach of this Agreement.

- 4.11 **Nondiscrimination.** It is the policy of the Metropolitan Government not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, IQT certifies and warrants it will comply with this policy. No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in programs or activities funded with a Grant Payment or Additional Jobs Grant Payment, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the employment practices of IQT. Accordingly, IQT shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination within the area of the Metropolitan Government.
- 4.12 **Ethical Standards.** It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any requirement of this Agreement. Breach of the provisions of this paragraph is material breach of this Agreement.
- 4.13 **Audit.** The Metropolitan Government or the IDB, or their respective designees, shall have the right to perform on-site audits of the Annual Settlement Statements and underlying data and all supporting documentation, generated by IQT pertaining to this Agreement, no more than annually, upon reasonable notice and during the customary business hours. IQT agrees to make books and records and all other relevant information available to the Metropolitan Government or its designee and to the IDB. The right to perform such audits shall extend three (3) years from the termination of this Agreement.
- 4.14 **Liability.** The Metropolitan Government and the IDB shall have no liability except as specifically provided in this Agreement.

- 4.15 **Force Majeure.** The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- 4.16 **Severability.** If any covenant or provision hereof is determined to be void or unenforceable in whole or in part, it shall not be deemed to affect or impair the invalidity of any other covenant or provision, each of which is hereby declared to be separate and distinct. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable. If any provision of this Agreement is declared invalid or unenforceable for any reason other than overbreadth, the offending provision will be modified so as to maintain the essential benefits of the bargain among the Parties to the maximum extent possible, consistent with Applicable Law and public policy.
- 4.17 **Interpretation.** Each of the Parties has agreed to the use of the particular language of the provisions of this Agreement, and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the draftsman, but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred upon the Parties hereto and the limitations and restrictions upon such rights and benefits intended to be provided.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of this ____ day of _____, 2011, and effective as of the Effective Date.

**METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY**

Karl F. Dean, Mayor

APPROVED AS TO AVAILABILITY OF FUNDS:

Director of Finance

APPROVED AS TO FORM AND LEGALITY:

Metropolitan Attorney

ATTEST:

Metropolitan Clerk

**METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY
INDUSTRIAL DEVELOPMENT BOARD**

Chair

ATTEST:

Secretary

**METROPOLITAN DEVELOPMENT AND
HOUSING AGENCY**

Chair

ATTEST:

Director

IQT, Inc., a Delaware corporation

By: _____
Title:

Date: _____

Exhibit A
Annual Settlement Statement
Requirements

Each Annual Settlement Statement shall include a summary of the Grant Year's Covered Expenses which shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).

- (1) Reference Number (assigned by the IDB).
- (2) Expense Date.
- (3) Expense Period.
- (4) IQT's Federal Employer Identification
- (5) IQT's Address
- (6) IQT's Contact for the Annual Settlement Statement Questions (name, phone, and/or fax).
- (7) Itemization of Reimbursement Requested for the Grant Year— it must detail, at minimum, all of the following:
 - i. The amount expended
 - ii. The total amount requested (all line-items) for the Grant Year.
 - iii. Specific Covered Expense item.
 - iv. The amount reimbursed under the Agreement to date.

The IDB and Metropolitan Government will approve or deny Covered Expenses within forty-five (45) days from submission of the Annual Settlement Statement. Should any Covered Expense be questioned, IQT shall have thirty (30) days to correct and submit approved invoices for review by the IDB and Metropolitan Government. Any revised Annual Settlement Statement shall be approved within thirty (30) days and IQT shall be paid per section 2.3.

Should the Annual Settlement Statement be approved without denial of any Covered Expenses, IQT will be paid within sixty (60) days from submission of the Annual Settlement Statement as set forth in Section 2.3.

Exhibit B
Affidavits

State of _____ County of _____

Compliance with Laws: After first being duly sworn according to law, the undersigned (Affiant) states that he/she is the _____ (Title) of IQT, and that IQT is presently in compliance with, and will continue to maintain compliance with, all applicable laws. Thus, Affiant states that IQT has all applicable licenses, including business licenses, copies of which are attached hereto. Finally, Affiant states that IQT is current on its payment of all applicable gross receipt taxes, real property taxes, personal property taxes and other taxes payable to the Metropolitan Government.

Contingent Fees: In accordance with 1992 Procurement Code of the Metropolitan Government, it is a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a Metropolitan Government contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. After first being duly sworn according to law, the undersigned (Affiant) states that the IQT has not retained anyone in violation of the foregoing.

Nondiscrimination: The undersigned (Affiant), after being first duly sworn, affirms that IQT, by its employment policy, standards and practices it does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, religion, color, national origin, age or sex and that it is not in violation of and will not violate any applicable laws concerning the employment of individuals with handicaps and/or disabilities. It is the policy of the Metropolitan Government not to discriminate on the basis of age, race, sex, color, religion, national origin or handicap and/or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services and activities. With regard to all aspects of this Agreement, IQT certifies and warrants it will comply with this policy within the area of the Metropolitan Government.

And Further Affiant Sayeth Not:

By: _____

Title: _____

Address: _____

Sworn to and subscribed before me on this ____ day of _____, 20____.

Notary Public

My commission expires: _____

Exhibit C
ACH Form for Electronic Payment

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
DEPARTMENT OF FINANCE
TREASURY DIVISION
ACH (AUTOMATED CLEARING HOUSE) CREDITS

Company Name: _____

Federal Identification Number or Social Security Number (under which you are doing business with Metro) _____

I (We) hereby authorize the Treasurer of the Metropolitan Government of Nashville and Davidson County, hereafter called METRO TREASURER, to initiate credit entries to my (our) (*select type of account*) CHECKING or SAVINGS account indicated below and the depository named below, hereinafter called DEPOSITORY, to credit the same to such account.

This authority is to remain in full force and effect until METRO TREASURER has received written notification from me (or either of us) of its termination in such time and in such manner as to afford METRO TREASURER and DEPOSITORY a reasonable opportunity to act on it.

.....

Many banking institutions use different numbers for ACH. Please call your bank for verification of ACH transit and account number.

Bank Official contacted: _____ Phone _____

.....

DEPOSITORY/BANK NAME _____ BRANCH _____

CITY _____ STATE _____

ACH TRANSIT/ABA NO. _____ ACCOUNT NO. _____

NAME(S) _____

(Please print names of authorized account signatory)

SIGNED _____ DATE _____

SIGNED _____ DATE _____

Phone _____

Please mail to:
Finance - Division of Accts
Attn: Starla Friedmann
222 3rd Ave N Ste 750
Nashville, TN 37201

or Fax to: 615-862-6109
Attn: Starla Friedmann