

Terms of One NC Grant

Local Government: Town of Huntersville
Project Company: Nutec Inc.
Grant Amount: \$100,000

Guarantor	Grupo Nutec, S.A. de C.V.
Project Description	A location of a manufacturing plant (the "Facility") at which the company will manufacture ceramic fiber.
Facility Location	11810 Mt. Holly – Huntersville Road Huntersville, North Carolina Mecklenburg County
Grant Period	July 9, 2015 through July 9, 2018 THREE YEARS
Grant End Date	July 9, 2018
Target New Jobs (goal)	61
Target New Investment (goal)	\$19,212,400
Required New Jobs (required for full grant)	55
Required New Investment (required for full grant)	\$17,000,000
Average weekly wage for all full-time jobs (Wage Standard)	\$796.00
Retained Jobs, if any	NA
Closeout	The earlier of when performance is complete, or the Grant End Date

Other Requirements

- Health insurance for all fulltime jobs
- Use grant proceeds for installation or purchase of equipment; structural repairs, improvements, or renovations to existing buildings to be used for expansion; construction of or improvements to new or existing water, sewer, gas or electric utility distribution lines or equipment for existing buildings, or for new or proposed buildings to be used for manufacturing and industrial operations
- Must provide verification that Project has received all environmental permits

- The grant is subject to the requirement that the Local Government deliver to the Department of Commerce a copy of the agreement with the Company governing the local incentives to be provided for the Project.
- By no later than February 1 following the end of each year during the later of the end of the Grant Performance Period or the date on which the Local Government provides the final funds that would bring the local matching contribution to the level provided by the Grant, the Company will submit a report to the DOC in the form of Exhibit B, documenting the Local Government contribution of eligible matching funds, through the just completed calendar year, and a copy of the Company's fourth calendar quarter performance, ending December 31. In addition, during the Grant Period, the Company shall provide a statement indicating whether the Company expects to have completed Performance Criteria sufficient to request a disbursement during the upcoming state fiscal year (July 1 through June 30).

Disbursement of Grant

4 installments equal to 25% of grant each, on demonstration of creation of:

- 25% of Target New Jobs;
- 50% of Target New Jobs
- 75% of Target New Jobs
- Required New Jobs and Required Investment

and evidence of making Statutorily Qualifying Expenditures, Environmental Permits, and Retained Jobs (if required, as set forth above).

Obligation to Repay Grant

- Failure to provide required health insurance
- Failure to achieve Wage Standard
- Ceasing project operations
- Failure to maintain jobs for the requisite time beyond Closeout (1-2 years depending on Closeout timing)

Adjustments to Grant at Closeout

- If Closeout occurs on the date three years from the date of the Grant award and the Company has failed to:
 - Create and retain Required New Jobs, or
 - Make statutorily qualifying expenses equal to 100% of the grant, or
 - Make the Required Investment

the amount of the Grant will be reduced on a pro rata basis to reflect the percentage by which the Company failed to meet its performance goals.

To the extent the amount of the reduced Grant is *less* than the amount that has been previously disbursed, the Company must reimburse DOC for the difference.

Obligations beyond Closeout

- If Closeout occurs more than one year prior to the Grant End Date, the Company must maintain **at least 90%** of the New Jobs in place at Closeout for **two years** after the date of Closeout.
- If Closeout occurs less than one year prior to the Grant End Date, the Company must maintain **at least 90%** of the New Jobs in place at Closeout until the date that is the one year anniversary of the Grant End Date.
- If the Company fails to maintain **at least 90%** of the number of New Jobs in place at Closeout for **the required time period**, the Company must reimburse DOC the entire amount of the Grant.

Statute and Guidelines Governing Grant

- N.C. Gen. Stat. 143B-437.70 *et seq.*
- Guidelines And Procedures for Commitment of Funds from the One North Carolina Fund.

COMPANY PERFORMANCE AGREEMENT

THE ONE NORTH CAROLINA FUND

STATE OF NORTH CAROLINA

COUNTY OF WAKE

This Company Performance Agreement (the "CPA"), effective the 9th day of July, 2015 (the "Effective Date"), by, between, and among Nutec Inc., a Delaware corporation authorized to do business in North Carolina (the "Company"), Grupo Nutec, S.A. de C.V., a corporation (the "Guarantor"), who, together with the Company shall be jointly and severally liable for the obligations under this CPA, and The Town of Huntersville, North Carolina (the "Local Government," and together with the Company and Guarantor, the "Parties");

WITNESSETH:

WHEREAS, the Local Government has applied for a One North Carolina Fund grant from the North Carolina Department of Commerce (the "DOC"); and

WHEREAS, a One North Carolina Fund grant award in the amount of One Hundred Thousand Dollars (\$100,000) (the "Grant") has been negotiated and agreed to by DOC and the Parties; and

WHEREAS, the Grant has been approved by DOC for disbursement to the Local Government pursuant to the terms of the One North Carolina Fund Local Government Grant Agreement between the Local Government and DOC (the "LGGA"); and

WHEREAS, the Grant is to be used by the Company toward the goal of creating sixty one (61) new jobs (the "Target New Jobs") which shall be permanent full-time jobs (each, a "New Job") and Nineteen Million Two Hundred Twelve Thousand Four Hundred Dollars (\$19,212,400) (the "Target Investment") in new investment in the State of North Carolina; and

WHEREAS, the Company and Guarantor have represented that the Grant is necessary to enable the investment and job creation by the Company to occur and go forward in North Carolina; and

WHEREAS, the Grant will stimulate economic activity and create new jobs for the citizens of this State; and

WHEREAS, the Grant is issued pursuant to and subject to the terms of N.C. Gen. Stat. § 143B-437.70 *et seq.* and the Guidelines and Procedures for Commitment of Funds from the One North Carolina Fund (the "Program Guidelines"); and

WHEREAS, the Guarantor has agreed to guarantee the performance and obligations of the Company hereunder, and its guaranty is made for the benefit of the DOC and the Local Government and to induce the

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DOC and the Local Government to enter into this CPA, in consideration of the benefits provided to the Company and to the Guarantor by virtue of its ownership interests;

WHEREAS, pursuant to, inter alia, N.C. Gen. Stat. § 143B-437.07 and G.S. 143B-437.72(b), as these statutes may be amended from time to time, the DOC is required to submit regular reports to the North Carolina General Assembly regarding operation of the One North Carolina Fund and the performance and funding requirements for each One North Carolina Fund grant awarded;

NOW, THEREFORE, in consideration of the representations set forth above and the mutual covenants and promises set forth below, the Company, the Guarantor, and the Local Government hereby agree as follows:

1.0 PERFORMANCE CRITERIA

In order to be eligible for the full amount of the Grant, the Company must fulfill the following requirements:

- 1.1 The Company shall undertake and operate in a timely manner the following project at the following location (the **"Project"**):

A location of a manufacturing plant (the **"Facility"**) at which the company will manufacture ceramic fiber in or around 11810 Mt. Holly-Huntersville Road, Town of Huntersville, Mecklenburg County, North Carolina.

- 1.2 The Company shall maintain its current operations at its facilities in North Carolina.

- 1.3 The Company shall make good faith efforts to create and maintain the Target New Jobs as part of the Project, as described in the Company's application to DOC (the **"Company Application"**). The New Jobs must be filled by employees hired for the Project on or after the Effective Date, who work for at least thirty-five (35) hours per week, and whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statute. Independent contractors, consultants, seasonal and temporary employees are not to be included as New Jobs. In order to be eligible for the full Grant, the Company must create fifty five (55) New Jobs (the **"Required New Jobs"**) 90% of the Target New Jobs), by July 9, 2018 (the **"Grant End Date,"** which shall be three years from the date on which the Grant was formally awarded) (the period between July 29, 2015 and July 29, 2018, the **"Grant Period"**).

The New Jobs will be new jobs and cannot be existing North Carolina positions or employees of the Company or the Guarantor or any of their related members that are transferred or shifted such that a previously existing North Carolina job, or a North Carolina job that was not previously part of the Project, is counted towards performance under this CPA.

- 1.4 The average weekly wage of the group of all permanent full-time jobs at the Facility, including the New Jobs, will equal or exceed Seven Hundred Ninety Six Dollars (\$796.00) per week (the **"Wage Standard"**).

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- 1.5 The Company shall provide health insurance for all permanent full-time employees at the Facility, including the New Jobs, in at least the minimum amount required for eligibility for tax credits under Article 3J in N.C. Gen. Stat. § 105-129.83(d).
- 1.6 The Company shall make good faith efforts to make the Target Investment in the form of privately funded investment in real property and/or machinery and equipment as part of the Project, and must invest at least Seventeen Million Dollars (\$17,000,000) by the Grant End Date (the "**Required Investment**") (90% of the Target Investment).
- 1.7 The proceeds of the Grant may be used only to offset statutorily qualifying expenses as set out in N.C. Gen. Stat. § 143B-437.71(b) ("**Statutorily Qualifying Expenses**"). Those expenses are installation or purchase of equipment; structural repairs, improvements, or renovations to existing buildings to be used for expansion; construction of or improvements to new or existing water, sewer, gas or electric utility distribution lines or equipment for existing buildings, or for new or proposed buildings to be used for manufacturing and industrial operations; or such other expenses as specifically provided for by an act of the General Assembly.
- 1.8 Release of any Grant funds under this CPA is contingent on the Company providing verification that the Project has received all of its required environmental permits.

2.0 DISBURSEMENT OF GRANT

- 2.1 Proceeds of the Grant up to a total amount of One Hundred Thousand Dollars (\$100,000) will be disbursed by DOC to the Local Government in four installments based on creation and maintenance of the New Jobs and satisfaction of other performance criteria set out in Section 1.0 above ("**Performance Criteria**"). The number of New Jobs to be counted shall be determined as provided in Paragraph 6.1 hereof. At the time of any requested disbursement, the Company must certify its performance by submitting a duly executed disbursement request and certification in the form of Exhibit A hereto (the "**Company Disbursement Request**"), and the Local Government must submit a duly executed disbursement request and certification in the form of Exhibit A to the LGGA (the "**Local Government Disbursement Request**"). Disbursement will occur on the following schedule and will be subject to any adjustments required by this CPA:
 - a. The first twenty-five percent (25%) of the Grant will be disbursed to the Local Government upon proof that the Company has (i) created and retained not less than twenty-five percent (25%) of the Target New Jobs (i.e., 15 New Jobs), (ii) satisfied the Wage Standard and health insurance requirements; (iii) invested the amount to be disbursed in Statutorily Qualifying Expenses, and (iv) obtained all required environmental permits.
 - b. The second twenty-five percent (25%) of the Grant will be disbursed to the Local Government upon proof that the Company has (i) created and retained not less than fifty percent (50%) of the Target New Jobs (i.e., 31 New Jobs); (ii) satisfied the Wage Standard and health insurance requirements; and (iii) invested the amount to be disbursed in Statutorily Qualifying Expenses.

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- c. The third twenty-five percent (25%) of the Grant will be disbursed to the Local Government upon proof that the Company has (i) created and retained not less than seventy-five percent (75%) of the Target New Jobs (i.e., 46 New Jobs); (ii) satisfied the Wage Standard and health insurance requirements; and (iii) invested the amount to be disbursed in Statutorily Qualifying Expenses.
- d. The final twenty-five percent (25%) of the Grant will be disbursed to the Local Government upon proof that the Company has (i) created and retained the Required New Jobs; (ii) satisfied the Wage Standard and health insurance requirements; and (iii) made the Required Investment; and (iv) invested the amount to be disbursed in Statutorily Qualifying Expenses.

The Local Government will submit or cause to be submitted to DOC each Company Disbursement Request and Local Government Disbursement Request, upon proof of the creation of the required number of New Jobs and the satisfaction of all other Performance Criteria necessary for disbursement. Following receipt of Grant funds from DOC, the Local Government will disburse funds to the Company.

The Company may qualify for disbursement of multiple installments on a single date.

2.2. DOC will close out the Grant on the first to occur of

- (i) The date as of which DOC shall have received and accepted proof reasonably satisfactory to it that the Project has been completed and the Performance Criteria satisfied.
 - (ii) The Grant End Date.
- ("Closeout").

Following Closeout, to the extent any Grant proceeds may be due and upon submission of a duly completed Company Disbursement Request and Local Government Disbursement Request, a final Grant payment will be disbursed. A request for final payment, if not made previously, must be made to DOC within thirty (30) days following the Grant End Date, provided, however, that if the Company has completed performance and become entitled to a final disbursement of funds under Paragraph 2.1d of this CPA, during any time earlier in the Grant Period, the Company must submit a completed Company Disbursement Request and Local Government Disbursement Request within one year from the date of completed performance (but in no event later than thirty (30) days following the Grant End Date) or forfeit the disbursement.

3.0 OBLIGATION TO REPAY GRANT

- 3.1 **Failure to Provide Health Insurance.** If, at any time during the Grant Period or during the period set forth in Section 5.0 hereof, the Company fails to provide health insurance to all permanent full-time employees at the Facility in the amount required for eligibility for tax credits under Article 3J in N.C. Gen. Stat. § 105-129.83(d), the Company will be in default of this CPA

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and the Company and/or Guarantor will reimburse DOC the total amount of the Grant previously disbursed in accordance with this CPA.

- 3.2 **Ceasing Project Operations.** If at any time during the Grant Period, or during the period set forth in Section 5.0 hereof, the Company substantially ceases operations at the Facility, the Company and/or Guarantor shall immediately repay all Grant funds previously disbursed in accordance with this CPA.
- 3.3 **Failure to Achieve Wage Standard.** If at any time during the Grant Period, or during the period set forth in Section 5.0 hereof, the average weekly wage of the group of all permanent full-time jobs at the Facility fails to equal or exceed the Wage Standard, the Company will be in default under this CPA, no further disbursement will be made, and the Company and/or Guarantor will reimburse DOC the total amount of the Grant previously disbursed in accordance with this CPA.
- 3.4 **Reserved.**
- 3.5 **Other Failures to Comply.** The Company may be required to reimburse Grant funds previously disbursed for failure to comply with Paragraphs 6.4 and 6.16 hereof, or as provided in Paragraphs 4.1 and 5.3 hereof.
- 3.6 **Recovery of Costs.** If the Company and/or Guarantor fail to reimburse any amount payable hereunder, on demand, the Local Government and DOC may recover the costs of collection to obtain recovery, from the Company and/or Guarantor, including reasonable attorneys' fees.

4.0 ADJUSTMENTS TO GRANT AT CLOSEOUT

4.1 If Closeout occurs on the Grant End Date and the Company has failed to create and retain the Required New Jobs, has failed to make the Required Investment, or has failed to invest an amount equal to 100% of the Grant in Statutorily Qualifying Expenses, the amount of the Grant shall be reduced to the smallest of the following amounts (the "Adjusted Grant"):

- a. The amount obtained by multiplying the Grant by a fraction the denominator of which is the Required New Jobs and the numerator of which is the number of New Jobs actually created and retained as of that date, as expressed in the following formula:

$$\text{Adjusted Grant} = \text{Original Grant Amount} \times \frac{\text{New Jobs Actually Created and Retained}}{\text{Required New Jobs}}$$

- b. The amount obtained by multiplying the Grant by a fraction the denominator of which is the Required Investment and the numerator of which is the investment actually made as of that date, as expressed in the following formula:

$$\text{Adjusted Grant} = \text{Original Grant Amount} \times \frac{\text{Investment Actually Made}}{\text{Required Investment}}$$

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c. The amount the Company has spent on Statutorily Qualifying Expenses

4.2 To the extent the amount of the Adjusted Grant is less than the amount that has been previously disbursed to the Company, the Company shall reimburse DOC for the difference between the Adjusted Grant and the amount previously disbursed.

5.0 OBLIGATIONS BEYOND CLOSEOUT

5.1 If Closeout occurs on or before the date that is exactly one year prior to the Grant End Date, the Company will maintain at least ninety percent (90%) of the number of New Jobs in place at Closeout for two (2) years after the date of Closeout.

5.2 If Closeout occurs after the date that is exactly one year prior to the Grant End Date, the Company will maintain at least ninety percent (90%) of the number of New Jobs in place at Closeout until the date that is the one year anniversary following the Grant End Date.

5.3 If the Company fails to maintain at least ninety percent (90%) of the number of New Jobs in place at Closeout for the required time period following Closeout, as specified in Paragraphs 5.1 and 5.2 hereof, the Company will be in default of this CPA and shall reimburse to DOC the total amount of the Grant funds previously disbursed in accordance with this CPA.

6.0 ADDITIONAL PROVISIONS

6.1 The Company and Guarantor shall provide to DOC and the Local Government all documentation deemed necessary by DOC or the Local Government to verify creation and retention of New Jobs, salary levels, health insurance, investments, Statutorily Qualifying Expenses, environmental permits and other Performance Criteria specified in this CPA, including copies of the N.C. Department of Commerce Division of Employment Security Employer's Quarterly Tax and Wage Report ("NCUI 101"), a list of all positions used in accounting for the Grant and the names of the individuals filling those positions. The threshold numbers of New Jobs created for the Company to be eligible for disbursements under Paragraph 2.1 hereof, shall be measured by adding the three figures that represent the average number of New Jobs (calculated after deducting any positions that do not qualify as New Jobs) that have been created during the Grant Period and have been retained during each of the three months of the quarter reported in the Company's NCUI 101, and dividing that sum by three, or in such other manner determined by the DOC to reasonably reflect New Job creation. **The Company shall not include in such count, any temporary, seasonal, contract, or part-time employees, employees that were hired prior to the Effective Date, or employees that were hired from affiliates of the Company or Guarantor in North Carolina, even if those employees are included in the NCUI 101s. The Company and Guarantor will certify how many of the employees listed on the NCUI 101s in each month qualify under the definition of New Jobs. For verification of Required Investment, the Company shall provide a fixed asset report and any other documentation requested by DOC. The Company's compliance with the job creation and/or retention, investment, Statutorily Qualifying Expense, environmental permit and other Performance Criteria set out in this CPA shall be attested to under oath by an officer of each of the Company and the Guarantor.**

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- 6.2 By not later than February 1 of each year during the Grant Period (and with respect to Paragraph 6.2A, through the later of February 1 following the date established pursuant to Paragraph 5 hereof or the date on which the Local Government provides the final funds that would bring the local matching contribution to the level provided by the Grant), the Company must submit the following to the DOC, in the form of Exhibit B hereto:
- A. a copy of the Company's fourth calendar quarter performance (ending December 31) NCUI 101 for the previous calendar year, containing all information required by Exhibit B (N.C. Gen.Stat. §143B-437.07).
 - B. a statement indicating whether the Company expects to have completed Performance Criteria sufficient to request a disbursement during the upcoming state fiscal year (July 1 through June 30). Failure to identify the expected performance over the coming fiscal year may result in ineligibility for a disbursement during that period, or may limit the amount of disbursement available to the Company during the upcoming fiscal year. (N.C. Gen. Stat. §143B-437.72(b)(6b)).
- 6.3 If unforeseen calamity, an Act of God, or financial disaster is the cause of the Company's failure to satisfy or perform its obligations under this CPA, the Company and the Local Government may request an extraordinary modification of this CPA from the Secretary of DOC (the "Secretary"). The Parties agree that any decision to allow such modification shall be at the sole discretion of the Secretary, that such modifications are rarely, if ever, granted, and that the Secretary's decision regarding any extraordinary modification shall be final and not subject to review or appeal.
- 6.4 The Company and Guarantor shall keep and maintain books, records, and other documents relating to the receipt and disbursement of the Grant and fulfillment of this CPA, including, but not limited to, records to verify employment, salaries, health insurance, investment amounts, Statutorily Qualifying Expenses and environmental permits.

Subject to any applicable federal or North Carolina laws or regulations respecting employee privacy, the Company and Guarantor each agree that any duly authorized representative of the Local Government or the State of North Carolina, including the DOC, the Office of the North Carolina State Auditor, and the Office of State Budget and Management, shall, at all reasonable times and on reasonable notice, have access to and the right to inspect, copy, audit, and examine all of the relevant books, records, and other documents relating to the Grant and the fulfillment of this CPA throughout the Grant Performance Period and for a period of six years thereafter.

If the Company or Guarantor fail to keep and maintain books and records necessary for verifying fulfillment of this CPA, including, but not limited to, adequate records for the verification of employment, salaries, investment amounts, Statutorily Qualifying Expenses and environmental permits, or if the Company or Guarantor fail to provide access and right of inspection sufficient to verify compliance with this CPA, the Local Government or the Secretary, as applicable, may in its or his discretion declare this CPA to be in default, withhold payments for or under this CPA or the LGGA, and/or require reimbursement of all or any portion of the Grant previously paid.

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The Company and/or Guarantor shall provide any information DOC requests in order to produce reports or compile data required by the General Assembly.

- 6.5 To the extent any information or documents gathered by or provided to the Local Government or the DOC would be regarded as confidential or not subject to disclosure under federal law or the North Carolina General Statutes (including, without limitation, N.C. Gen. Stat. §§ 132-1 *et seq.*, commonly referred to as the “**Public Records Act**”), the Company or Guarantor, as applicable, shall clearly identify and mark them as such and that information will, to the extent allowed by law, be treated as confidential and not subject to disclosure by the Local Government and DOC and their authorized representatives.

The Company and Guarantor have read and understand North Carolina’s laws regarding the treatment of public records and confidential information, including without limitation, those provisions set forth in Exhibit C.

The Company and Guarantor shall be responsible for any and all costs, expenses, fees, or losses that they or the Local Government or DOC or any other State entity may incur as a result of responding to or resisting any request, subpoena, legal complaint, court order, or other demand seeking to compel such party to release or disclose records, documents, or information pertaining to the Company or Guarantor, to the extent that the Company or Guarantor notified the State entity that it objects to such disclosure or release and the State defends against such release; and the Company and Guarantor shall indemnify the Local Government, DOC, and State entities and their authorized representatives for all costs associated therewith, provided that, no such indemnified party shall be obligated to take any such action.

- 6.6 Notwithstanding anything herein to the contrary, the Parties acknowledge the due execution of the LGGGA and agree that any conflict between the provisions, requirements, duties, or obligations of this CPA and the LGGGA shall be resolved in favor of the LGGGA. The Parties further agree that any conflict between the provisions, requirements, duties, or obligations of this CPA and any program documentation for this Grant other than the LGGGA shall be resolved in favor of this CPA.
- 6.7 The Company and Guarantor acknowledge that none of the North Carolina operations owned by the Company or Guarantor or any related entity or affiliate shall be curtailed as a result of the Project.
- 6.8 The Company and Guarantor shall perform and abide by all commitments they made in the Company Application, except as otherwise expressly stated herein. The Company and Guarantor affirm their commitments made in the Company Application, and the commitments contained therein are incorporated herein by reference, as if set out in full. The Parties agree that any conflict between the provisions of this CPA and any commitments made in the Company Application to DOC shall be resolved in favor of this CPA.
- 6.9 The Company and Guarantor indemnify and hold harmless the Local Government, DOC, and State entities, and their respective members, officers, directors, employees, agents and attorneys (hereinafter collectively referred to as "Indemnified Parties"), from any claims of third parties arising out of or any act or omission of the Company and/or Guarantor in connection with the

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performance of this CPA, and for all losses arising from implementation of this CPA. Without limiting the generality of the foregoing, the Company and Guarantor release the Indemnified Parties from, and agree that such Indemnified Parties are not liable for, and agree to indemnify and hold harmless the Indemnified Parties against, any and all liability or loss, cost or expense, including, without limitation, reasonable attorneys' fees, fines, penalties, and civil judgments, resulting from or arising out of or in connection with or pertaining to, any loss or damage to property or any injury to or death of any person occurring in connection with or on or about the Facility, or resulting from any defect in the fixtures, machinery, equipment, or other property used in connection with the Project or arising out of, pertaining to, or having any connection with, the Project or the financing thereof (whether or not arising out of acts, omissions, or negligence of the Company or Guarantor or any of their agents, contractors, servants, employees, licensees, lessees, or assignees). Each Indemnified Party is an express, third party beneficiary of the Company's and Guarantor's obligations under this Paragraph.

- 6.10 The representations made by the Company and Guarantor in the Company Application to DOC or as part of the application process are incorporated herein by reference and deemed by the Parties to be material to this CPA. The Company and Guarantor affirm these representations. The Parties agree that any conflict between any representations contained in this CPA and those representations contained in the Company Application to DOC or made as part of the One North Carolina Fund application process shall be resolved in favor of this CPA.
- 6.11 The recitals are an integral part of this CPA.
- 6.12 If the Company or Guarantor has an overdue tax debt owing to the State of North Carolina, as defined in N.C. Gen. Stat. § 105-243.1, no payments will be made under this CPA or the LGGA until that tax debt has been satisfied. If an overdue tax debt goes unsatisfied by the Company or Guarantor for more than one year, this CPA may be declared in default and terminated at the direction of DOC.
- 6.13 The Local Government's obligation to make disbursements to the Company under this CPA is contingent upon the Local Government's receipt under the LGGA of the necessary disbursements from DOC, which are, in turn, contingent on appropriation, allocation and availability of funds for the Grant to DOC.
- 6.14 This CPA constitutes a legally enforceable contract and shall be governed and construed in accordance with the laws of the State of North Carolina. The Parties agree and submit, solely for matters concerning this CPA, to the exclusive jurisdiction of the courts of North Carolina and agree, solely for such purpose, that the only venue for any legal proceedings shall be Wake County, North Carolina. The place of this CPA, 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 its validity, construction, interpretation, and enforcement, shall be determined.
- 6.15 The Parties agree that the State of North Carolina Department of Commerce is a third party beneficiary of this CPA and may, at its option, enforce the terms of this CPA or appear as a party in any litigation concerning it or the Grant.

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- 6.16 The Company and Guarantor shall comply with all applicable federal, state, and local laws and regulations. If the Company or Guarantor fail to comply with any law or regulation applicable to them, the Secretary may, in his sole discretion, terminate the Grant and declare that no future Grant disbursement shall be due and payable and/or require the Company and/or Guarantor to reimburse DOC all or part of any Grant funds previously disbursed following the date of any such violation. The Secretary may determine, in his sole discretion, that where the Company or Guarantor is under investigation for an act involving violation of federal, state, local law or regulation, including an unresolved environmental violation, Grant funds be withheld until such time as a determination of culpability or liability is made, and, if the Company or Guarantor is determined to be in violation, the Grant may be terminated and the Company and/or Guarantor may be required to reimburse the DOC for all or part of any Grant funds previously disbursed. If such investigation is not concluded within two (2) years of the Grant End Date, the DOC may terminate the Grant.
- 6.17 Failure of the Local Government or DOC at any time to require performance of any term or provision of this CPA shall in no manner affect the rights of the Local Government or DOC at a later date to enforce the same or to enforce any future compliance with or performance of any of the terms or provisions hereof. No waiver of the Local Government or DOC of any condition or the breach of any term, provision or representation contained in this CPA, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of that or any other term, provision or representation.
- 6.18 The Company is encouraged to utilize the services of North Carolina small businesses and minority, female, and disabled contractors, to offer positions in connection with the Project to North Carolina residents, and to use the North Carolina state ports when reasonable and commercially practicable.
- 6.19 In addition to any rights and remedies provided to the Local Government and DOC by law, DOC has the right, without prior notice to Company or Guarantor, any such notice being expressly waived by Company and Guarantor to the extent permitted by applicable law, upon the occurrence of any event herein which would result in the Company's obligation to repay some or all of Grant monies disbursed hereunder (including without limitation Section 3, 4 and 5 hereof), to set-off and apply against any amounts due hereunder, any amount owing from DOC or the State to the Company or Guarantor.
- 6.20 **This Grant award shall terminate and be null and void on September 15, 2015 if by that date the Company has not delivered back to the DOC, two originals of this CPA, duly executed by authorized officer of each of the Company and of the Guarantor, and attested in the manner provided below. This Grant is also subject to the requirement that the Local Government deliver to the DOC, one original each of the LGGA and this CPA, duly executed by an authorized official of the Local Government, within sixty (60) calendar days following the date on which the DOC sends the LGGA and CPA to the Local Government, together with a copy of the agreement with the Company governing the local incentives to be provided for the Project.**

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7.0 GUARANTY

- 7.1 The Guarantor represents and warrants, as of the date hereof, and as of the date of any disbursement of Grant funds, that (a) both the Company and Guarantor are duly organized, validly existing and in good standing under the laws of the state of their registration, with power adequate for the carrying out their businesses; (b) the execution, delivery, and performance of this CPA are within the Company's and the Guarantor's power and authority and the Company and Guarantor have duly authorized, executed and delivered this CPA; (c) this CPA is signed by an authorized representative of each of the Company and the Guarantor, and is a legally valid and binding obligation of the Company and the Guarantor, enforceable against them in accordance with its terms, except as may be limited by bankruptcy, insolvency, or similar laws affecting creditors' rights; (d) it has taken or will take all actions reasonably necessary to carry out and give effect to the transactions contemplated by this CPA; (e) all written statements, representations, and warranties made by or on behalf of the Company and the Guarantor to the DOC, the State, and the Local Government in connection with the Grant are true, accurate and complete in all material respects, to its best knowledge and belief, and the Company is eligible for this Grant; (f) the Company and the Guarantor are financially solvent and not subject of any bankruptcy proceedings; and have no interest, and shall not acquire any interest, direct or indirect, which would conflict with the performance of their obligations under this CPA; (g) the Guarantor owns 100% of the membership interests/shares of the Company and will derive substantial benefit from the transactions contemplated by the CPA; and (h) the making and performance of this Guaranty will not violate any provision of or result in the acceleration of any obligation under any instrument or agreement, order, judgment or decree to which the Guarantor is a party or by which it or any of its property is bound. There are no conditions precedent to the effectiveness of this Guaranty that have not been satisfied or waived.
- 7.2 In order to induce the Local Government to enter this CPA, and the Local Government and DOC to enter the LGGA, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Guarantor unconditionally and irrevocably guarantees, as primary obligor and not as surety, the full, prompt, and punctual performance by the Company of all of the Company's obligations, agreements and covenants under and with respect to this CPA. The Guarantor unconditionally guarantees, the prompt payment (and not merely the collection) of all amounts that may now or in the future be owing to the DOC or the State, or the Local Government under this CPA and the LGGA, or any extension or renewal thereof however and whenever made, and shall be liable for any remedies or recoveries (including the cost of attorney fees incurred in enforcing this CPA and the LGGA) available to the DOC or the State, or the Local Government under or with respect to this CPA. The liability of the Guarantor shall be primary, joint and several.
- 7.3 This Guaranty shall operate as a continuing and absolute guaranty and shall remain in full force and effect without regard to, and shall not be affected or impaired by, any amendment of the CPA, any sale or transfer of all or any part of the Guarantor's ownership interest in the Company, any voluntary or involuntary liquidation, dissolution, merger, sale of assets, insolvency, reorganization, bankruptcy or filing for bankruptcy of the Company or the Guarantor or any subsidiary, any rescission of a payment made hereunder, or any extension of time or other

*One NC Company Performance Agreement
Nutec Inc. / Town of Huntersville
New Jobs Only; Company+Guarantor
Form 9-1-12*

forbearance, compromise, adjustment, modification or indulgence granted to the Company by the DOC, the State, or the Local Government. The Guaranty shall remain in full force and effect until termination of the CPA; provided, however, that the Guarantor shall not be released from its obligation hereunder so long as there is any claim of DOC or the Local Government against the Company, which claim arises out of, or related to, directly, or indirectly, this CPA, that is not settled or discharged in full.

- 7.4 The DOC and the Local Government may exercise their rights against the Guarantor without first having to take action or exhaust remedies against the Company. The Guarantor expressly waives notice of non-performance, in any respect, by Company of any of its duties and obligations. The Guarantor unconditionally waives any defense available to it, including all suretyship defenses or defenses in the nature thereof; all requirements of notice, demand, presentment or protest in case of any default by the Company, as well as rights of set-off, redemption, and counterclaim which may be alleged to exist in favor of the Company.
- 7.5 This Guaranty shall inure to the benefit of the DOC and the Local Government and their respective successor and assigns, and shall be binding on the Guarantor, and its successors and assigns, and shall not be discharged or affected by the death of any party.

IN WITNESS WHEREOF, the Company, the Guarantor, and the Local Government have executed this Company Performance Agreement effective as of the day and year first written above. This CPA is intended to be under seal for purposes of any statute of limitations.

Approved and Accepted:

(Official Seal)

ATTEST:

_____, Clerk

**Town of Huntersville
(Local Government)**

By: _____

Name: _____

Title: _____

Authorized Official

Date: _____

Signature Pages Follow

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Nutec Inc.
(Company)

(Corporate Seal)

By: [Signature]
Name: GERARDO MURRAY
Title: COO
Authorized Corporate Officer

ATTEST:

_____, Secretary

Date: 09/29/15

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

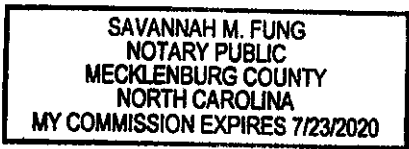
I, Savannah M. Fung, a Notary Public of said State and County, do hereby certify that Gerardo Murray (the "principal") personally appeared before me this day, and/or (i) I have personal knowledge of the identity of the principal, and/or (ii) I have seen satisfactory evidence of the principal's identity, by current State or Federal identification with the principal's photograph, and such principal acknowledged to me that he or she voluntarily signed the foregoing document for the purpose therein and in the capacity indicated.

[Signature]
Notary Public Signature
Savannah M. Fung
Notary Printed or Typed Name

Witness my hand and official seal or stamp, this 29 day of October 2015

(Official Seal or Stamp)

My Commission expires on 1/23, 2020



Signature Page Follows

One NC Company Performance Agreement
Nutec Inc. / Town of Huntersville
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Grupo Nutec, S.A. de C.V.
(Guarantor)

(Corporate Seal)

By: [Signature]
Name: Genaro F. Cueva D.
Title: PRESIDENT.
Authorized Corporate Officer
Date: 29/SEP/2015

ATTEST:

_____, Secretary

STATE OF North Carolina
COUNTY OF Mecklenburg

I, Savannah M. Fung, a Notary Public of said State and County, do hereby certify that Genaro F. Cueva D. (the "principal") personally appeared before me this day, and/or (i) I have personal knowledge of the identity of the principal, and/or (ii) I have seen satisfactory evidence of the principal's identity, by current State or Federal identification with the principal's photograph, and such principal acknowledged to me that he or she voluntarily signed the foregoing document for the purpose therein and in the capacity indicated.

[Signature]
Notary Public Signature
Savannah M. Fung
Notary Printed or Typed Name

Witness my hand and official seal or stamp, this 29 day of October, 20 15

(Official Seal or Stamp)

My Commission expires on 7/23, 20 20

SAVANNAH M. FUNG
NOTARY PUBLIC
MECKLENBURG COUNTY
NORTH CAROLINA
MY COMMISSION EXPIRES 7/23/2020

One NC Company Performance Agreement
Nutec Inc. / Town of Huntersville
New Jobs Only; Company+Guarantor
Form 9-1-12

EXHIBIT A
TO COMPANY PERFORMANCE AGREEMENT

COMPANY DISBURSEMENT REQUEST AND CERTIFICATION

Project No. 2013-13643

Nutec Inc. (the “**Company**”) hereby requests that a disbursement in the amount of _____ [spell out dollar amount]

(\$ _____) be made by the North Carolina Department of Commerce (the “**DOC**”) to the Town of Huntersville (the “**Local Government**”), pursuant to that certain Company Performance Agreement between the Company, Grupo Nutec, S.A. de C.V. (the “**Guarantor**”), and the Local Government, dated as of July 9, 2015 (the “**CPA**”) and that certain Local Government Grant Agreement between the Local Government and the DOC, dated as of July 9, 2015 (the “**LGGA**,” and, together with the CPA, the “**Agreements**”). All capitalized terms not otherwise defined herein have the meaning ascribed to them in the Agreements.

The Company hereby certifies that:

- (i) attached hereto is a true and correct copy of the Company’s latest NCUI 101 form (or Multiple Worksite Report Form 3020, if applicable) filed with the State;
- (ii) it has created and retained _____ New Jobs,¹ which are net new positions for the Company’s operations in the state, and no New Job (or employee) has been transferred from any existing North Carolina operations of the Company or any of its affiliates;
- (iii) it has obtained all required environmental permits for the Project;
- (iv) it makes available health insurance to all permanent full-time employees at the Facility in the amount required for eligibility for tax credits under the Article 3J (House Bill 2170 § 105-129.83);

¹ This is determined by obtaining the average number of new employees over the quarter reported. The company should add the three figures that represent NEW JOBS ONLY during each of the three months of the quarter reported in the NCUI 101, and divide that number by three. DO NOT INCLUDE PART-TIME, TEMPORARY OR SEASONAL JOBS, OR JOBS THAT EXISTED PRIOR TO THE GRANT AWARD. BE PREPARED TO SUPPORT THIS NUMBER WITH ADDITIONAL DOCUMENTATION, INCLUDING IDENTIFICATION OF INDIVIDUAL FULL-TIME EMPLOYEES AND THEIR WAGES. See Paragraph 6.1 of the CPA for guidance.

- (v) attached hereto is a true and correct copy of the Company's fixed asset report showing a description, acquisition date and cost for each asset acquired, disposed of, or transferred from the date of the Grant;
- (vi) it has made some or all of the Target Investment in the amount of _____;
- (vii) the proceeds of this disbursement shall be used only to offset statutorily qualifying expenses as set out in N.C. Gen. Stat. § 143B-437.71(b) which have already been incurred by the company in the form of _____, and evidence of such expenditures is attached;
- (viii) the average weekly wage of all employees in New Jobs, is \$ _____;²
- (ix) it is in compliance with all of the terms and conditions of the CPA and affirms the representations, warranties and covenants contained therein;
- (x) by not later than February 1 of each year during the Grant Period, and through the February 1 following the date established pursuant to Paragraph 5.0 of the CPA, it shall submit to the DOC an annual report in the form of Exhibit B to the CPA;
- (xi) it understands that if any of the certifications provided herein prove to be false or misleading in any respect, it shall reimburse the DOC in the amount of this disbursement, and the DOC may pursue such other legal action as it deems appropriate;
- (xii) it has received _____ [*specify amount*] from the Local Government in the form of _____, representing the Local Government's Match required for this disbursement, under the Agreements;
- (xiii) it is not liable for any Overdue Tax Debt, as defined in N.C. Gen. Stat. §105-243.1 (a tax debt that remains unpaid 90 days or more after final assessment notice is sent); and
- (xiv) there is no fact or circumstance or interest about which the Company has knowledge that would conflict in any manner or degree with the performance of its obligations under the CPA.

² This is determined by dividing the gross wages paid during the quarter to employees in New Jobs, by the average number of full-time jobs (see footnote 1) and then converting that number to a per week average, which must equal or exceed the wage standard, if any, set in the CPA.

The Company represents, warrants, and certifies the truth and accuracy of the statements made herein. These certifications shall be deemed to be made a part of the CPA and are incorporated therein, and governed by its terms and conditions.

**Nutec Inc.
(Company)**

By: _____

Print Name: _____

Title: _____

Authorized Corporate Officer

Date: _____

(Corporate Seal)

ATTEST:

_____, Secretary

Signature page follows

Guarantor's Certification

The undersigned Guarantor affirms the Company's representations, warranties, and certifications made in this Company Disbursement Request and Certification. In addition, as to itself, the Guarantor represents, warrants, and certifies that (i) it is in compliance with all of the terms and conditions of the CPA and it affirms the representations, warranties and covenants contained therein, (ii) it is not liable for any Overdue Tax Debt, as defined in N.C. Gen. Stat. §105-243.1 (a tax debt that remains unpaid 90 days or more after final assessment notice is sent); and (iii) there is no fact or circumstance or interest about which the Company has knowledge that would conflict in any manner or degree with the performance of its obligations under the CPA.

Grupo Nutec, S.A. de C.V.
(Guarantor)

By: _____
Print Name: _____
Title: _____
Authorized Corporate Officer

Date: _____

(Corporate Seal)

ATTEST:

_____, Secretary

EXHIBIT B
TO COMPANY PERFORMANCE AGREEMENT

FEBRUARY 1 COMPANY REPORT TO DOC

Project No. 2014-13643

Date of Report: _____

Calendar Year Reported: 20__

Fiscal Year Performance/Disbursement Projection: July 1, 20__ through June 30, 20__ (the "Upcoming Fiscal Year")

Nutec Inc. (the "Company") hereby submits this report pursuant to that certain Company Performance Agreement between the Company, Grupo Nutec, S.A. de C.V. (the "Guarantor"), and the Local Government dated as of July 9, 2015 (the "CPA") and that certain Local Government Grant Agreement between the Local Government and the DOC, dated as of July 9, 2015 (the "LGGA," and, together with the CPA, the "Agreements"). All capitalized terms not otherwise defined herein have the meaning ascribed to them in the Agreements.

The Company and Guarantor hereby certifies that:

- (i) attached hereto is a true and correct copy of the Company's NCUI 101 for the quarter ending December 31, 20__ [prior year];
- (ii) the Company has created and retained _____ a total of New Jobs,¹ as of December 31, 20__, which are net new positions for the Company's operations in the state, and no New Job (or employee) has been transferred from any existing North Carolina operations of the Company or any of its affiliates;
- (iii) the Company has made some or all of the Target Investment in the amount of _____ Dollars (\$ _____);
- (iv) the average weekly wage of all permanent full-time jobs at the Facility, including the New Jobs, is \$ _____;²

¹ This is determined by obtaining the average number of new employees over the quarter reported. The company should add the three figures that represent NEW JOBS ONLY during each of the three months of the quarter reported in the NCUI 101, and divide that number by three. DO NOT INCLUDE PART-TIME, TEMPORARY OR SEASONAL JOBS, OR JOBS THAT EXISTED PRIOR TO THE GRANT AWARD. BE PREPARED TO SUPPORT THIS NUMBER WITH ADDITIONAL DOCUMENTATION, INCLUDING IDENTIFICATION OF INDIVIDUAL FULL-TIME EMPLOYEES AND THEIR WAGES. Refer to Paragraph 6.1 of the CPA for guidance.

² This is determined by dividing the gross wages paid during the quarter to employees in New Jobs, by the average number of full-time jobs (see footnote 1) and then converting that number to a per week average, which must equal or exceed the wage standard, if any, set in the CPA.

- (v) the Company and Guarantor is in compliance with all of the terms and conditions of the CPA and affirms the representations, warranties and covenants contained therein;
- (vi) as of December 31, ___ it had received _____ Dollars (\$ _____) [*specify amount*] from the Local Government in the form of _____, representing the Local Government's Match, which brings the total Local Government Match the Company has received as of December 31, ___, to _____ Dollars (\$ _____);
- (vii) during the Upcoming Fiscal Year, the Company expects to:
 - (a) make some or all of the Target Investment in the amount of _____ Dollars (\$ _____), which, together with prior qualifying Target Investment made, would bring the total Target Investment made to _____ Dollars (\$ _____);
 - (b) create and retain ___ New Jobs (which together with prior New Jobs created, would bring the total New Jobs created and retained, to ___ New Jobs;
 - (c) be in compliance with the CPA;
 - (d) based on the foregoing, be eligible under the CPA, to request a disbursement(s) prior to June 30 of the Upcoming Fiscal Year, in the amount of _____ Dollars (\$ _____).

The Company represents, warrants, and certifies the truth and accuracy of the statements made herein. These certifications shall be deemed to be made a part of the CPA and are incorporated therein, and governed by its terms and conditions.

**Nutec Inc.
(Company)**

By: _____
 Print Name: _____
 Title: _____
Authorized Corporate Officer

Date: _____

(Corporate Seal)

ATTEST:

_____, Secretary

Signature page follows

Guarantor's Certification

The undersigned Guarantor affirms the Company's representations, warranties, and certifications made in Exhibit B to the Company Performance Agreement, February 1 Report to DOC (the "Report"). In addition, as to itself, the Guarantor represents, warrants, and certifies that (i) it is in compliance with all of the terms and conditions of the CPA and it affirms the representations, warranties and covenants contained therein, (ii) it is not liable for any Overdue Tax Debt, as defined in N.C. Gen. Stat. §105-243.1 (a tax debt that remains unpaid 90 days or more after final assessment notice is sent); and (iii) there is no fact or circumstance or interest about which the Guarantor has knowledge that would conflict in any manner or degree with the performance of the Company's, the Related Member Party's (if applicable), or the Guarantor's obligations under the CPA.

**Grupo Nutec, S.A. de C.V.
(Guarantor)**

By: _____

Print Name: _____

Title: _____

Authorized Corporate Officer

Date: _____

(Corporate Seal)

ATTEST:

_____, Secretary

Exhibit C
Provisions of North Carolina General Statutes Addressing Public Records,
Confidential Information, and Economic Development Projects

§ 132-1. "Public records" defined

(a) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.

(b) The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. . .

§ 132-1.1. State tax information

(b) **State and Local Tax Information.** – Tax information may not be disclosed except as provided in G.S. 105-259. As used in this subsection, "tax information" has the same meaning as in G.S. 105-259. Local tax records that contain information about a taxpayer's income or receipts may not be disclosed except as provided in G.S. 153A-148.1 and G.S. 160A-208.1.

§ 132-1.2. Confidential information.

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

- (1) Meets all of the following conditions:
 - a. Constitutes a "trade secret" as defined in G.S. 66-152(3).
 - b. Is the property of a private "person" as defined in G.S. 66-152(2).
 - c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.
 - d. Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.

§ 66-152. Definitions (Trade Secrets Protection Act)

As used in this Article, unless the context requires otherwise:

- . . .
- (2) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, joint venture, or any other legal or commercial entity.
 - (3) "Trade secret" means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:
 - a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and
 - b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The existence of a trade secret shall not be negated merely because the information comprising the trade secret has also been developed, used, or owned independently by more than one person, or licensed to other persons.

§ 132-1.8. Economic development incentives

(a) **Assumptions and Methodologies.** – Subject to the provisions of this Chapter regarding confidential information and the withholding of public records relating to the proposed expansion or location of specific business or industrial projects when the release of those records would frustrate the purpose for which they were created, whenever a public agency or its subdivision performs a cost-benefit analysis or similar assessment with respect to economic development incentives offered to a specific business or industrial project, the agency or its subdivision must describe in detail the assumptions and methodologies used in completing the analysis or assessment. This description is a public record and is subject to all provisions of this Chapter and other law regarding public records.

(b) **Disclosure of Public Records Requirements.** – Whenever an agency or its subdivision first proposes, negotiates, or accepts an application for economic development incentives with respect to a specific industrial or business project, the agency must disclose

**Provisions of North Carolina General Statutes Addressing Public Records,
Confidential Information, and Economic Development Projects**

that any information obtained by the agency or subdivision is subject to laws regarding disclosure of public records. In addition, the agency or subdivision must fully and accurately describe the instances in which confidential information may be withheld from disclosure, the types of information that qualify as confidential information, and the methods for ensuring that confidential information is not disclosed."

§ 132-6. Inspection and examination of records

(a) Every custodian of public records shall permit any record in the custodian's custody to be inspected and examined at reasonable times and under reasonable supervision by any person, and shall, as promptly as possible, furnish copies thereof upon payment of any fees as may be prescribed by law. . .

(c) No request to inspect, examine, or obtain copies of public records shall be denied on the grounds that confidential information is commingled with the requested nonconfidential information. If it is necessary to separate confidential from nonconfidential information in order to permit the inspection, examination, or copying of the public records, the public agency shall bear the cost of such separation. . .

(d) Notwithstanding the provisions of subsections (a) and (b) of this section, public records relating to the proposed expansion or location of specific business or industrial projects may be withheld so long as their inspection, examination or copying would frustrate the purpose for which such public records were created; provided, however, that nothing herein shall be construed to permit the withholding of public records relating to general economic development policies or activities. Once the State, a local government, or the specific business has announced a commitment by the business to expand or locate a specific project in this State or the business has made a final decision not to do so, of which the State or local government agency involved with the project knows or should know, the provisions of this subsection allowing public records to be withheld by the agency no longer apply. Once the provisions of this subsection no longer apply, the agency shall disclose as soon as practicable, and within 25 business days, public records requested for the announced project that are not otherwise made confidential by law. An announcement that a business or industrial project has committed to expand or locate in the State shall not require disclosure of local government records relating to the project if the business has not selected a specific location within the State for the project.

Once a specific location for the project has been determined, local government records must be disclosed, upon request, in accordance with the provisions of this section. For purposes of this section, "local government records" include records maintained by the State that relate to a local government's efforts to attract the project.

Records relating to the proposed expansion or location of specific business or industrial projects that are in the custody of the Department of Commerce or an entity with which the Department contracts pursuant to G.S. 143B-431A shall be treated as follows:

(1) Unless controlled by another subdivision of this subsection, the records may be withheld if their inspection, examination, or copying would frustrate the purpose for which the records were created.

(2) If no discretionary incentives pursuant to Chapter 143B of the General Statutes are requested for a project and if the specific business decides to expand or locate the project in the State, then the records relating to the project shall not be disclosed.

(3) If the specific business has requested discretionary incentives for a project pursuant to Chapter 143B of the General Statutes and if either the business decides not to expand or locate the project in the State or the project does not receive the discretionary incentives, then the only records relating to the project that may be disclosed are the requests for discretionary incentives pursuant to Chapter 143B of the General Statutes and any information submitted to the Department by the contracted entity.

(4) If the specific business receives a discretionary incentive for a project pursuant to Chapter 143B of the General Statutes and the State or the specific business announces a commitment to expand or locate the project in this State, all records requested for the announced project, not otherwise made confidential by law, shall be disclosed as soon as practicable and within 25 days from the date of announcement."

§ 132-9. Access to records

(b) In an action to compel disclosure of public records which have been withheld pursuant to the provisions of G.S. 132-6 concerning public records relating to the proposed expansion or location of particular businesses and industrial projects, the burden shall be on the custodian withholding the records to show that disclosure would frustrate the purpose of attracting that particular business or industrial project.

§ 143B-43. Department of Commerce – functions

(f) Financial statements submitted to the Department by a private company or an individual seeking assistance from the Department are not public records as defined in G.S. 132-1.

LOCAL GOVERNMENT GRANT AGREEMENT

THE ONE NORTH CAROLINA FUND

Local Government Name: **Town of Huntersville** Grant No. **2014-13643**

Project Name: **Nutec Inc. (with Grupo Nutec, S.A. de C.V. as Guarantor)**

STATE OF NORTH CAROLINA

GRANT AGREEMENT

COUNTY OF WAKE

This Local Government Grant Agreement (the "LGG") is effective the 29th day of July, 2015 (the "Effective Date") by and between the **Town of Huntersville, North Carolina** (hereinafter referred to as the "Local Government"), and the **North Carolina Department of Commerce** (hereinafter referred to as "DOC");

WITNESSETH:

WHEREAS; the Local Government desires to stimulate and develop the local economy of its region, alleviate the problems of unemployment and underemployment by creating and/or retaining jobs for its citizens, and develop its local tax base; and

WHEREAS; the General Assembly has created the One North Carolina Fund (the "Program") to make funding available within North Carolina "to secure commitments for the recruitment, expansion or retention of new or existing businesses"; and

WHEREAS; the General Assembly has authorized Program funds to be used for installation or purchase of equipment; structural repairs, improvements, or renovations to existing buildings to be used for expansion; construction of or improvements to new or existing water, sewer, gas or electric utility distribution lines or equipment for existing buildings; and construction of or improvements to new or existing water, sewer, gas or electric utility distribution lines or equipment for new or proposed buildings to be used for manufacturing and industrial operations; and

WHEREAS; the Local Government has applied for funds in connection with activity to be undertaken by Nutec Inc. (the "Company"), a business that has competitively chosen to locate or expand operations for the following project (the "Project") in North Carolina:

A location of a manufacturing plant (the "Facility") at which the company will manufacture ceramic fiber in or around 11810 Mt. Holly-Huntersville Road, Town of Huntersville, Mecklenburg County, North Carolina.

WHEREAS; the Local Government has committed to provide matching funds and resources for the Project equal to at least the amount of any funds awarded from the Program (the “**Match**”); and

WHEREAS; the Local Government’s application (the “**Local Government Application**”) has been approved by DOC for funding, based on the Local Government’s commitments, and the commitments made by the Company in its Program application (the “**Company Application**”);

WHEREAS, the Company has executed an agreement (the “**Company Performance Agreement**” or “**CPA**”) with the Local Government reflecting the Company’s commitments to expand, create and/or retain jobs and to take other actions that will support North Carolina’s economic development, and the terms on which funds will be made available for such activity from the Program;

NOW THEREFORE, in consideration of the mutual covenants and promises set forth below, the Local Government and DOC hereby agree as follows:

I. DOC COMMITMENTS AND GRANT CONDITIONS

(a) DOC agrees to provide Program fund in the maximum amount of One Hundred Thousand Dollars (\$100,000) for the Project (the “**Grant**”), in accordance with the terms of this LGGA and the CPA.

(b) Grant payments disbursed under this LGGA will be disbursed to the Local Government pursuant to N.C. Gen. Stat. § 143B-437.70 *et seq.*, the terms of the Program Guidelines and Procedures for Commitment of Funds from the One North Carolina Fund, established pursuant to N.C. Gen. Stat. § 143B-437.73 and in effect as of the effective date of this LGGA (the “**Program Guidelines**”), consistent with the terms and schedule established in the CPA.

(c) Grant disbursements are conditioned upon the execution of the CPA between the Local Government and the Company, and any other required parties thereto, in a form acceptable to DOC. In addition to the Company and the Local Government, the following is a required party to the CPA: Grupo Nutec, S.A. de C.V. (the “**Guarantor**”).

(d) To receive a Grant disbursement, the Local Government must provide or cause to be provided to DOC a properly executed CPA, proof that the Company has performed its obligations under the CPA, proof that the Local Government has met its obligation to provide the Match, a duly executed completed disbursement request and certification in the form of Exhibit A hereof (the “**Local Government Disbursement Request**”), and a duly executed completed Company’s disbursement request and certification in the form of Exhibit A to the CPA (the “**Company Disbursement Request**”).

II. LOCAL GOVERNMENT’S COMMITMENTS

(a) The Local Government agrees to perform the Program and to abide by all commitments, terms and representations in the Local Government Application.

(b) The Local Government agrees to provide the Match in a manner consistent with N.C. Gen. Stat. § 143B-437.72(c)(1), the Program Guidelines and Procedures, and the Local Government Application. The Local Government will provide to the DOC a copy of the duly executed agreement between the Local Government (or other local entity) and the Company governing the local incentives that will be provided to the Company for the Project (the “**Local Incentive Agreement**”), at the time the Local Government returns the executed LGGA. The Company will be ineligible for a Grant disbursement until the Local Incentive Agreement is provided to the DOC. The Local Government will report to the DOC the amount of each incentive payment that is provided to the Company under the Local Incentive Agreement, within thirty (30) days of the date on which it is provided, whether or not the CPA remains in effect.

- (c) The Local Government agrees to take all steps reasonably necessary to ensure and to establish to DOC that the required levels of jobs are created and/or retained, the required salary levels are achieved, the required levels of investments are made, statutorily qualifying expenses are incurred, any required environmental permits are obtained, and any other required performance criteria are satisfied, and that no Grant funds are disbursed until the performance criteria in the CPA have been met.
- (d) The Local Government agrees to take whatever steps may be reasonably necessary to ensure and to establish to DOC that Grant funds disbursed by the Local Government are used only for purposes allowed under the statutory authority creating the Program.
- (e) The Local Government agrees to take whatever steps may reasonably be required, after consultation with the Secretary of DOC (the "Secretary") and not inconsistent with the Secretary's authority under the CPA, to recapture all disbursed funds for which the Local Government and DOC have a right to be reimbursed.
- (f) The Local Government acknowledges that DOC has a right to recapture funds under the CPA and that such right does not relieve the Local Government of its own responsibility to recapture funds.
- (g) The Local Government agrees to otherwise reimburse DOC for any funds improperly disbursed, provided, however, that Local Government is under no obligation to reimburse DOC for any improperly disbursed funds that were disbursed with DOC's prior permission.
- (h) The Local Government agrees to keep and maintain books, records, and other documents relating to the receipt and disbursement of the Grant and the fulfillment of this LGGA. The Local Government shall provide any information DOC requests in order to produce reports or compile data required by the General Assembly. If the Local Government fails to keep and maintain books and records necessary for verifying fulfillment of this LGGA, the Secretary may in his discretion declare this LGGA to be in default, withhold payments for or under this LGGA, and/or require reimbursement of all or any portion of Grant funds previously paid. Prior to taking such action, the Secretary will endeavor to communicate with the Local Government and the Company to discuss the circumstances and the actions being contemplated.
- (i) The Local Government agrees to provide any duly authorized representative of DOC or the State of North Carolina at all reasonable times access to and the right to inspect, copy, monitor, and examine all of the books, papers, records, and other documents relating to the Grant for a period of three years following the last payment of Grant funds or for the inspection period specified in the CPA, whichever is longer. To the extent any information or documents gathered pursuant to this section would be regarded as confidential or not subject to disclosure under federal law or the North Carolina General Statutes (to include, without limitation, N.C. Gen. Stat. §§ 132-1 *et seq.*, commonly referred to as the "Public Records Act"), the Local Government shall clearly identify and mark them as such and that information will, to the extent allowed by law, be treated as confidential and not subject to disclosure by DOC and its authorized representatives. If the Local Government fails to provide such access and right of inspection, the Secretary may exercise discretion to declare this LGGA in default, to withhold payments under this LGGA and/or require reimbursement of all or any portion of the Grant paid.
- (j) The Local Government shall comply with all lawful requirements of DOC, all applicable requirements of the General Statutes of the State of North Carolina, and any other applicable laws and/or Executive Orders currently or hereafter in force.
- (k) In the event that the Company or Guarantor fail to fulfill their responsibilities under the Company Application and/or CPA, including their responsibilities to create and/or retain jobs, make investments, and incur statutorily qualifying expenses, the Local Government, after consultation with the Secretary and not inconsistent with the Secretary's authority under the CPA, shall promptly exercise its rights and remedies to require repayment of funds, or to assess such other penalties as may be provided for in the CPA.

(l) In addition, in the event that the Company or Guarantor fail to fulfill their responsibilities under the Company Application and/or CPA, including their responsibilities to create and/or retain jobs, make investments, and incur statutorily qualifying expenses, and the Local Government recaptures funds from the Company or Guarantor, the Local Government shall promptly pay to DOC the Grant amounts which it is able to collect.

(m) By not later than January 31 of each year following a calendar year until the full Match has been disbursed to the Company, the Local Government shall submit to the DOC a report detailing Match payments made during the calendar year just ended, together with a cumulative tally of all Match payments made through the end of that calendar year. In addition, the Local Government shall report all other Local Government financial contributions made for the Project. This is required in order to comply with N.C. Gen. Stat. §143B-437.07. Failure to timely file this report will result in ineligibility for Grant payments.

III. GENERAL PROVISIONS

(a) The parties to this LGGA agree and understand that the payment of all sums specified in this LGGA is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds to DOC for this purpose.

(b) Failure of DOC at any time to require performance of any term or provision of this LGGA shall in no manner affect the rights of DOC at a later date to enforce the same or to enforce any future compliance with or performance of any of the terms or provisions hereof. No waiver of DOC of any condition or the breach of any term, provision or representation contained in this LGGA, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of that or any other term, provision or representation.

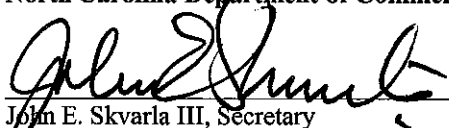
(c) The recitals are an integral part of this LGGA.

(d) This LGGA constitutes a legally enforceable contract and shall be governed and construed in accordance with the laws of the State of North Carolina. The parties agree and submit, solely for matters concerning this LGGA, to the exclusive jurisdiction of the courts of North Carolina and agree, solely for such purpose, that the only venue for any legal proceedings shall be Wake County, North Carolina. The place of this LGGA, 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 its validity, construction, interpretation, and enforcement, shall be determined.

(e) This Grant award shall terminate and be null and void on November 30, 2015 if by that date the Local Government has not delivered back to the DOC, an original of this LGGA and of the CPA, duly executed by an authorized official of the Local Government, and attested in the manner provided below, together with a copy of the Local Incentive Agreement.

Upon execution of this LGGA by DOC and the Local Government in the spaces below, the Local Government hereby accepts the Grant on the terms of this LGGA, effective on the date indicated above, and further certifies that the official signing below has been duly authorized by the Local Government's governing body to execute this LGGA.

Date: 10-1-15

North Carolina Department of Commerce
By: 
John E. Skvarla III, Secretary
North Carolina Department of Commerce

Signature Page Follows

**Town of Huntersville
(Local Government)**

Date: _____

(Official Seal)

By:



Name: _____

Title: _____

Authorized Official

Date: _____

ATTEST:

_____, Clerk

**EXHIBIT A
TO LOCAL GOVERNMENT GRANT AGREEMENT**

LOCAL GOVERNMENT DISBURSEMENT REQUEST AND CERTIFICATION

Project No. 2013-13643

Town of Huntersville (the "Local Government") hereby requests a disbursement in the amount of _____ [spell out dollar amount] (\$) from the North Carolina Department of Commerce (the "DOC"), pursuant to that certain Company Performance Agreement between the Local Government, Nutec Inc. (the "Company"), and Grupo Nutec, S.A. de C.V. (the "Guarantor"), dated as of July 9, 2015 (the "CPA"), and that certain Local Government Grant Agreement between the Local Government and the DOC, dated as of July 9, 2015 (the "LGGA," and, together with the CPA, the "Agreements"). All capitalized terms not otherwise defined herein have the meaning ascribed to them in the Agreements.

The Local Government hereby certifies to the DOC that it:

- (i) has provided funds and/or resources for the Project pursuant to the Local Government application to the DOC and the terms of the LGGA, in the amount of _____ (\$ _____), an amount that is at least equal to the amount of the disbursements that have been requested under the LGGA;
- (ii) has provided such funds and/or resources in the following form: _____

_____;
- (iii) has attached true and correct copy of documents evidencing its expenditure of the amount specified in (ii) above for the purposes specified above;
- (iv) will submit proof of receipt, deposit, and proper disbursement of the disbursed DOC funds, to the DOC, within thirty (30) days;
- (v) it is in compliance with all of the terms and conditions of the LGGA, and affirms the representations, warranties, and covenants contained therein; and

- (vi) to its best knowledge and belief, the Company's Disbursement Request accompanying this certification is accurate, the Company is eligible to receive funds from the Grant in the amount specified herein, under the terms of the CPA, and the Local Government is not aware of anything that would make the Company ineligible for these funds.

This certification shall be deemed to be made a part of the LGGA and is incorporated therein, and governed by its terms and conditions. Upon execution of this certification, the Local Government accepts its terms, effective on the date indicated above, and further certifies that the official signing below has been duly authorized to execute this certification by the Local Government's governing body, and the agreements and certifications contained herein are legally valid and binding on the Local Government.

**Town of Huntersville
(Local Government)**

Date: _____

By: _____

Name: _____

Title: _____

Authorized Official

(Official Seal)

ATTEST:

_____, Clerk