

AGREEMENT TO FUND BULL CITY URBAN MARKET LLC, USING CITY OF DURHAM  
GRANT FUNDS

This contract (“Contract” or “Agreement”) is dated, made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2012 between the City of Durham, North Carolina (“City”) and Bull City Urban Market (hereinafter, the “Grantee”). The Grantee is a Limited Liability Company organized and existing under the laws of North Carolina.

**Sec. 1. Background and Purpose.**

The 800 Taylor Street project site is a part of a 175,000 square foot three-story industrial building that was originally constructed in 1901 as Golden Belt Manufacturing. The site has had a history of industrial/light-manufacturing uses and its current operations include industrial manufacturing, (constructed in the early 1970’s), and commercial office space (constructed in the early 1990’s).

The Grantee has proposed renovations for approximately 8,500 square feet of the 800 Taylor Street project site into a grocery store and urban market. The city grant will be used for the installation of bathrooms, electrical meters, front entrance door (front entrance sliding door), HVAC system, and architectural fees (drawing of plans for: bathroom, main entrance door, HVAC, acquire builder and oversee construction, take all plans thru the approval process with the City of Durham). This grant is made pursuant to NCGS 160A-456(a)(1) to provide financial assistance for the restoration or preservation of older neighborhoods and properties such as the 800 Taylor Street project site, which is located in the historic Golden Belt District. The realization of this project not only addresses the restoration of an older property but also the need for grocery store options in the community. The Grantee grocery store project is within the Community Development Area in the City of Durham (CDA). This project addresses the 2006 RKG economic assessment recommendation to provide grocery store options which could serve a large portion of the Northeast Central Durham neighborhood, including the residents of the Hope VI project, the Hosiery Mill and the new residents of Golden Belt.

**Sec. 2. Grantee Warranties and Representations. Term of Agreement and Annual Submittals.**

(a) During the term of this Agreement, the Grantee warrants, represents, and covenants that all information provided or submitted to the City regarding the proposed use of all the monies being granted by the City to the Grantee pursuant to this Agreement (hereinafter, “City Funds”) for described programs shall be accurate and true.

(b) The term of this Agreement shall be 1 year (“Term”) effective from the date provided above (hereinafter, “Effective Date”).

(c) To be eligible for the City Funds, Grantee shall provide documentation of its program and budget information in the form of Attachments A (“Program Scope and Description”) and Attachment B (“Budgeted City-Funded Expenditures”), which attachments are made a part of this Agreement, and references in this instrument to “this Agreement” include those attachments, unless the context requires otherwise. In case of conflict, this agreement form shall control the attachments.

Sec. 3. Services; Uses of Funds.

The Grantee affirmatively represents that it shall provide the program of services set forth in Attachment A during a period of one year from the Effective Date. By the end of the subject year, the Grantee shall use the City Funds paid to it by the City pursuant to this Agreement exclusively in the category of the programs identified in Attachment A. Grantee shall document the nature of expenditures of City funded expenditures in the form of Attachment B and as identified in Attachment A prior to the end of the Term. Grantee will invoice the City for the Budgeted City-Funded Expenditures. The Grantee will also provide to the City for payment, a copy of the invoice received from the service provider for each Budgeted City-Funded Expenditure. The maximum available funding amount for this grant is **\$47,740.00**.

Sec. 4. Deadline for Performance. The Grantee shall comply, by the end of the Term of the Agreement, with all of the requirements imposed on it by this Agreement, except to the extent, if any, that this Agreement indicates a different time for performance.

Sec. 5. Reporting Requirements.

(a) The Grantee, at the Grantee's sole expense, shall account for all City Funds received from the City under this Agreement and all expenditures made from City Funds. The Grantee shall submit a report of program activities and accomplishments associated with the expenditure of City Funds to the City's Office of Economic and Workforce Development (the "Implementing Department"). That report shall be submitted quarterly. The report shall be in such form and detail as the Implementing Department may require. If necessary, the Department may require additional detailed information (in addition to the required report), including but not limited to accounts, records, budget-to-actual statements, and other supporting documentation. Without limiting the preceding sentence, it is agreed that, if requested in writing by the City, the Grantee shall make all of that information available for inspection and audit by the City at any time during the workday of the Implementing Department or such other department of the City that the City Manager specifies in writing to the Grantee. If the City Funds are \$30,000 or more, the Grantee shall comply with section 5(b) and not with section 5(c). If the City Funds are under \$30,000, the Grantee shall comply with either section 5(b) or section 5(c).

(b) The Grantee, at the Grantee's sole expense, shall obtain an audit of its financial statements. The audit shall be performed by a Certified Public Accountant or a Certified Public Accounting firm. This audit shall be conducted in accordance with generally accepted auditing standards, and the financial statements shall be prepared in conformity with generally accepted accounting principles. The Grantee shall see that the City's Director of Audit Services receives the audit report within six months after the close of the Grantee's fiscal year.

(c) The Grantee, at the Grantee's sole expense, shall prepare a certified and sworn statement and a schedule of Grantee receipts and expenditures (cash basis) in a format prescribed by the City. The Grantee shall see that the City's Director of Audit Services receives the statement and schedule within six months after the close of the Grantee's fiscal year.

Sec. 6. Payment. The City shall make payments to the Grantee once it is in receipt of both an invoice and a copy of the invoice from the service provider of the Budgeted City-Funded Expenditure. The payments shall begin as early as 30 days after the Effective Date of this Agreement and within 30 days of receiving an invoice with work progress and expenditures

detail sufficient to determine the amount owed Grantee pursuant to Attachment A. Such payment schedule may be amended by written consent of the City and Grantee. The Director of the Implementing Department (the “Director”) shall have authority to give that consent on behalf of the City. The City, in its sole discretion, and without affecting its other rights and remedies, may delay or cancel any or all of those payments for failure by the Grantee to comply with any of the provisions of this Agreement, including deadlines for submitting any accounting, audit, statement, information, record, documentation, or report. The Director shall have the authority to decide whether the Grantee has complied with this Agreement, including the attachments. That determination shall include the authority to construe vague and/or ambiguous requirements, if any. That determination, unless it is unreasonable, shall be binding on the Grantee. Unless the City otherwise specifies, if the withholding is designated to be a delay of payment instead of a cancellation of payment, the payment so delayed shall be made when the Grantee has submitted the missing items, provided that such items are received by the City within 45 days after the date that they were due. If any of said missing items is not received by the City before the expiration of the additional 45-day period, then the amounts so withheld shall not be paid to the Grantee even if the missing items are later received by the City. If the City does not delay or cancel in one instance, the City shall still have the right to delay or cancel after any other instance of failure by the Grantee. In this section 6 (“Payment”), “include” in its various forms means include without limitation.

Sec. 7. Applicable Laws. In carrying out any services or activities funded in whole or part under this Agreement, the Grantee shall comply with all applicable federal, state, and local laws, regulations, and ordinances.

Sec. 8. Repayment of Funds. The Grantee shall repay to the City the full amount of any City Funds lost, misapplied, unaccounted for, or inadequately accounted for in violation of this Agreement.

Sec. 9. Indemnification.

(a) To the maximum extent allowed by law, the Grantee shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this Agreement as a result of acts or omissions of the Grantee or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection (a), the Grantee shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

(b) Definitions. As used in subsections (a) above and (c) below -- “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within “Charges” are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this Agreement). “Indemnities” means City and its officers, officials, independent contractors, agents, and employees, excluding the Grantee.

(c) Other Provisions Separate. Nothing in this section 9 (“Indemnification”) shall affect

any warranties in favor of the City that are otherwise provided in or arise out of this Agreement. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement.

(d) Survival. This section 9 (“Indemnification”) shall remain in force despite termination of this Agreement (whether by expiration of the Term or otherwise) and termination of the services of the Grantee under this Agreement.

(e) Limitations of the Grantee's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection (a) above shall not require the Grantee to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 10. Termination. The City, in its discretion and for its convenience, may terminate this Agreement at any time by giving written notice of termination to the Grantee. If termination is for convenience and not due to a breach of contract by the Grantee, then the City shall pay to the Grantee a share of the City Funds to reflect the services performed and authorized expenditures incurred, if any, by the Grantee in accordance with this Agreement prior to such termination. The Director shall have the authority to decide the appropriate amount to be paid pursuant to the preceding sentence, and that determination, unless it is unreasonable, shall be binding on the Grantee.

Sec. 11. Assignment. The Grantee may not assign, transfer, or delegate any of its duties under this Agreement without the prior written consent of the City. It shall be within the sole discretion of the City whether to consent to such assignment, transfer, or delegation. Nothing in this Agreement, including references to subcontracting and assignment, constitutes such consent.

Sec. 12. City Discrimination Policies; ADA Requirements. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS. The City likewise opposes discrimination on the basis of “disability,” as defined by the Americans with Disabilities Act of 1990 (“ADA”), prohibits Grantee from discriminating on the basis of disability in the use of the funds paid to it by the City pursuant to this Agreement, and advises Grantee that receipt of any of those funds may obligate the Grantee to provide the services identified in Attachment A in a manner that complies with Title II of the ADA, since Title II extends to all services, programs, and activities provided or made available by the City.

Sec. 13. EEO Provisions; SDBE. For purposes of this section 13 (“EEO Provisions; SDBE”), “Contractor” is the Grantee.

(a) EEO Provisions. During the performance of this contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age,

or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(b) SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunity Program), as amended from time to time. The failure of the Contractor to comply with Article III of Chapter 18 shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of Article III of Chapter 18, this contract, and State law. The Participation Plan submitted in accordance with that chapter is binding on the Contractor. Section 18-59(f) of Article III of Chapter 18 provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

#### Sec. 14. Miscellaneous.

(a) Choice of Law and Forum. This Agreement shall be deemed made in Durham County, North Carolina. This Agreement shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection.

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

(c) Performance of Government Functions. Nothing contained in this Agreement shall

be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

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

(e) No Third Party Rights Created. This Agreement is intended for the benefit of the City and the Grantee, and not any other person.

(f) Modification. A modification of this Agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a deputy or assistant City Manager or the Implementing Department Director signs it for the City.

(g) Entire Agreement. This Agreement contains the entire agreement between the parties pertaining to the subject matter of this Agreement. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings between the parties, written or oral, expressed or implied, other than as set forth or referenced in this Agreement.

(h) Headings. All headings that appear after section numbers and section letters in this Agreement are included for convenience only and shall not affect the interpretation of this Agreement.

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

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

ATTEST:

CITY OF DURHAM

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

Pre Audit Certificate

BULL CITY URBAN MARKET, LLC  
LLC

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

State of \_\_\_\_\_

ACKNOWLEDGMENT BY  
BULL CITY URBAN MARKET,  
LLC

County of \_\_\_\_\_

I, a notary public in and for said county and state, certify that  
\_\_\_\_\_ personally (1) appeared before me this day, (2)  
stated that he or she is a manager of BULL CITY URBAN MARKET, LLC, a limited  
liability company organized and existing under the laws of the State of  
\_\_\_\_\_, (3) acknowledged that the foregoing contract or  
agreement with the City of Durham carries on the company's business in the usual way, and  
(4) acknowledged the due execution of the contract on behalf of the company. This the  
\_\_\_\_\_ day of \_\_\_\_\_, 2012.

My commission expires:

\_\_\_\_\_

\_\_\_\_\_

Notary Public

**ATTACHMENT A**  
Program Scope and Description

Scope of Services

To make building renovations to the 8,500 square feet leased area for Bull City Urban Market at 800 Taylor Street, Durham NC to operate a neighborhood food market. The renovations include installation of bathrooms, electrical meter (electrical panel and (2) meters), a front entrance sliding door and a HVAC system.

Deliverables

1. Restore 8,500 square feet of an older property at 800 Taylor Street, Durham, NC and make it operational for an urban market which would provide grocery store options and access to nutritious and quality fresh foods for low and moderate income families, as well as downtown residents that earn higher than average incomes.
2. Install, make payments and submit receipts for the following items:

<b>Priority</b>	<b>Item</b>	<b>Estimated Cost</b>
1	Bathrooms	\$15,000.00
2	Electrical Meter (Electrical Panel plus (2) Meters)	\$8,000.00
3	Front Entrance Door ( Front Entrance Sliding Door plus Installation)	\$7,000.00
4	Architectural Fees	\$8,000.00
5	HVAC	\$9,740.00
Total Cost		\$47,740.00

3. All deliverables met 45 days upon receipt of grant funding. As items are completed, submit a copy of the attached Budgeted City-Funded Expenditure Reporting Form.

**ATTACHMENT B**  
 Budgeted City-Funded Expenditures Reporting Form

Item	Actual Invoiced Cost	Completion Date	Attached Receipt Copy including Work Detail
Bathrooms			
Electrical Meter (Electrical Panel plus (2) Meters)			
Front Entrance Door ( Front Entrance Sliding Door plus Installation)			
Architectural Fees			
HVAC			