

1 FY2015 AGREEMENT TO FUND ECONOMIC DEVELOPMENT PROGRAMS
2 OPERATED BY DOWNTOWN DURHAM, INC. USING CITY OF DURHAM GRANT
3 FUNDS
4

5 This contract is made and entered into as of the _____ day of
6 _____, 20_____, by the City of Durham ("City") and Downtown
7 Durham, Inc. ("Grantee"), a 501(c) (6) not-for-profit corporation organized and existing
8 under the laws of North Carolina.
9

10 Sec. 1. Background and Purpose. It is the intent of this contract to mirror the scope of
11 services provided by Downtown Durham, Inc. under its earlier Non-City-Agency contract
12 while defining expected goals and deliverables.
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14 Sec. 2. Grantee Warrantees and Representations. Term of Agreement and Annual
15 Submittals.

16 (a) During the term of this Agreement, the Grantee warrants, represents, and
17 covenants that all information provided or submitted to the City regarding the proposed
18 use of all the monies being granted by the City to the Grantee pursuant to this
19 Agreement (hereinafter, "City Funds") for described programs shall be accurate and true.
20

21 (b) The Grantee represents that it is an organization described by Section
22 501(c)(6) of the Internal Revenue Code and that it has provided the City with a valid, un-
23 revoked letter from the Internal Revenue Service that it is such an organization.

24 (c) The term of this Agreement shall be 1 year(s) ("Term") according to the City's
25 fiscal calendar, beginning with July 1, 2014 to June 30, 2015.

26 (d) To be eligible for the City Funds, Grantee shall deliver its program scope and
27 description according to Attachment 1 ("Program Scope and Description FY2015).
28 Grantee shall document quarterly deliverables according to Attachment 2 ("DDI
29 Quarterly Deliverable Report Form FY2015") which attachments are made a part of this
30 Agreement, and references in this instrument to "this Agreement" include those
31 attachments, unless the context requires otherwise. In case of conflict, this agreement
32 form shall control the attachments.

33 Sec. 3. Services; Uses of Funds.

34 (a) The Grantee affirmatively represents that it shall provide the program of
35 services set forth in Attachment 1 during the subject fiscal year. By the end of the
36 subject fiscal year, and before entering into an amendment for following fiscal year, the
37 Grantee shall use the City Funds paid to it by the City pursuant to this Agreement
38 exclusively in the category of the programs identified in Attachment 1. The maximum
39 amount to be paid by the City under this Agreement shall be based upon the City Funds
40 available for the subject fiscal year. The available funding amount for fiscal year 2015 is
41 not to exceed \$160,048.00
42

43 (b) (i) The Grantee shall include the City of Durham's name and/or logo in all
44 communications produced between during the Term of this Agreement in which the
45 Grantee identifies any person or entity as being a sponsor of, or donor or contributor to,
46 Grantee. The style of presentation (text and/or logo, font size, etc.) shall be determined
47 by the Grantee. It is generally expected that when another person or entity is identified
48 in the communication as a sponsor, donor, or contributor, and that person's or entity's
49 logo appears in the communication, the City's logo would also appear. When the style
50 of presentation is based on the amount of financial support provided, the City of
51 Durham's name and/or logo shall be treated equally with other supporters providing

52 similar financial support, and shall be based on the total amount of City funds received
53 and to be received pursuant to this Agreement by the Grantee.

54 (ii) In performing its obligations under subsection (i), the Grantee must
55 obtain the permission of the City before including the City's name or logo in any
56 communication that is:

- 57 • required to include the name or logo pursuant to subsection (i), or
- 58 • produced during the time period specified in subsection (i) if the
59 communication identifies the City as a sponsor, donor, or contributor.

60 Permission may be granted by the City's OEWD. If the City denies permission to place
61 the City's name and logo in a particular communication, this subsection (b) shall not
62 apply to that particular communication, and nothing in this section (b) shall prevent
63 Grantee from sending that communication out.

64
65 **Sec. 4. Deadline for Performance.** The Grantee shall comply, by June 30 of the year
66 during the Term of the Agreement, with all of the requirements imposed on it by this
67 Agreement, except to the extent, if any, that this Agreement indicates a different time for
68 performance.

69
70 **Sec. 5. Reporting Requirements.**

71 (a) The Grantee, at the Grantee's sole expense, shall account for all City Funds
72 received from the City under this Agreement and all expenditures made from City Funds.
73 The Grantee shall submit a report of program activities and accomplishments associated
74 with the expenditure of City Funds to the City's Office of Economic and Workforce
75 Development (the "Implementing Department"). That report shall be submitted quarterly
76 according to Attachment 2, "DDI Quarterly Deliverables Report Form FY 2015" and
77 shall be in such a form and detail as the Implementing Department may require. If
78 necessary, the Department may require additional detailed information (in addition to the
79 required report), including but not limited to accounts, records, budget-to-actual
80 statements, and other supporting documentation. Without limiting the preceding
81 sentence, it is agreed that, if requested in writing by the City, the Grantee shall make all
82 of that information available for inspection and audit by the City at any time during the
83 workday of the Implementing Department or such other department of the City that the
84 City Manager specifies in writing to the Grantee. If the City Funds are \$30,000 or more,
85 the Grantee shall comply with section 5(b) and not with section 5(c). If the City Funds
86 are under \$30,000, the Grantee shall comply with either section 5(b) or section 5(c).

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

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

99
100 **Sec. 6. Payment.** The City shall make payments to the Grantee as provided herein
101 after the start of the fiscal year and within 30 days after approval and execution of this
102 Agreement. The City shall pay the Grantee as follows: An amount not to exceed

103 \$160,048, to be paid in equal quarterly increments within 30 days after receipt of a
104 completed Attachment 2, "DDI Quarterly Deliverables Report Form FY 2015" for the
105 quarter for which the Grantee is invoicing. The City shall not be obligated to pay the
106 Grantee any payments, fees, expenses, or compensation other than those authorized by
107 this section. Such payment schedule may be amended by written consent of the City
108 and Grantee. The Director of the Implementing Department (the "Director") shall have
109 authority to give that consent on behalf of the City. The City, in its sole discretion, and
110 without affecting its other rights and remedies, may delay or cancel any or all of those
111 payments for failure by the Grantee to comply with any of the provisions of this
112 Agreement, including deadlines for submitting any accounting, audit, statement,
113 information, record, documentation, or report. The Director shall have the authority to
114 decide whether the Grantee has complied with this Agreement, including the
115 attachments. That determination shall include the authority to construe vague and/or
116 ambiguous requirements, if any. That determination, unless it is unreasonable, shall be
117 binding on the Grantee. Unless the City otherwise specifies, if the withholding is
118 designated to be a delay of payment instead of a cancellation of payment, the payment
119 so delayed shall be made when the Grantee has submitted the missing items, provided
120 that such items are received by the City within 45 days after the date that they were due.
121 If any of said missing items is not received by the City before the expiration of the
122 additional 45-day period, then the amounts so withheld shall not be paid to the Grantee
123 even if the missing items are later received by the City. If the City does not delay or
124 cancel in one instance, the City shall still have the right to delay or cancel after any other
125 instance of failure by the Grantee. In this section 6 ("Payment"), "include" in its various
126 forms means include without limitation.

127

128 Sec. 7. Insurance. Reference Attachment 3, "Insurance Requirements" which is made a
129 part of this contract.

130

131 Sec. 8. Attachments. The following attachments are made a part of this contract:
132 Attachment 1 "Program Scope and Description for FY2015" containing 2 pages;
133 Attachment 2 "DDI Quarterly Deliverables Report Form FY 2015" containing 1 page;
134 Attachment 3 "Insurance Requirements" containing 2 pages.

135

136 In case of conflict between an attachment and the text of this contract excluding the
137 attachment, the text of this contract shall control.

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139 Sec. 9. Notice. (a) All notices and other communications required or permitted by this
140 contract shall be in writing and shall be given either by personal delivery, fax, or certified
141 United States mail, return receipt requested, addressed as follows:

142

143 To the City:
144 Director
145 Office of Economic and Workforce Development
146 City of Durham
147 302 East Pettigrew Street, Suite 190
148 Durham, NC 27701
149 The fax number is (919) 560-4986

150

151 To the Grantee:
152 President
153 Downtown Durham, Inc.

154 15 Market Street, Suite 213
155 Durham, NC 27701
156 The fax number is (919) 682-1980
157

158 (b) Change of Address. Date Notice Deemed Given. A change of address, fax number,
159 or person to receive notice may be made by either party by notice given to the other
160 party. Any notice or other communication under this contract shall be deemed given at
161 the time of actual delivery, if it is personally delivered or sent by fax. If the notice or
162 other communication is sent by United States mail, it shall be deemed given upon the
163 third calendar day following the day on which such notice or other communication is
164 deposited with the United States Postal Service or upon actual delivery, whichever first
165 occurs.
166

167 Sec. 10. Indemnification. (a) To the maximum extent allowed by law, the Grantee shall
168 defend, indemnify, and save harmless Indemnitees from and against all Charges that
169 arise in any manner from, in connection with, or out of this contract as a result of acts or
170 omissions of the Grantee or subcontractors or anyone directly or indirectly employed by
171 any of them or anyone for whose acts any of them may be liable. In performing its
172 duties under this subsection "a," the Grantee shall at its sole expense defend
173 Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used
174 in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs,
175 damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties,
176 settlements, and expenses (included without limitation within "Charges" are (1) interest
177 and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for
178 alleged violations of sedimentation pollution, erosion control, pollution, or other
179 environmental laws, regulations, ordinances, rules, or orders -- including but not limited
180 to any such alleged violation that arises out of the handling, transportation, deposit, or
181 delivery of the items that are the subject of this contract). "Indemnitees" means City and
182 its officers, officials, independent contractors, agents, and employees, excluding the
183 Grantee. (c) Other Provisions Separate. Nothing in this section shall affect any
184 warranties in favor of the City that are otherwise provided in or arise out of this contract.
185 This section is in addition to and shall be construed separately from any other
186 indemnification provisions that may be in this contract. (d) Survival. This section shall
187 remain in force despite termination of this contract (whether by expiration of the term or
188 otherwise) and termination of the services of the Grantee under this contract. (e)
189 Limitations of the Grantee's Obligation. If this section is in, or is in connection with, a
190 contract relative to the design, planning, construction, alteration, repair or maintenance
191 of a building, structure, highway, road, appurtenance or appliance, including moving,
192 demolition and excavating connected therewith, then subsection "a" above shall not
193 require the Grantee to indemnify or hold harmless Indemnitees against liability for
194 damages arising out of bodily injury to persons or damage to property proximately
195 caused by or resulting from the negligence, in whole or in part, of Indemnitees.
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197 Sec. 11. Termination. The City, in its discretion and for its convenience, may terminate
198 this Agreement at any time by giving written notice of termination to the Grantee. If
199 termination is for convenience and not due to a breach of contract by the Grantee, then
200 the City shall pay to the Grantee a share of the City Funds to reflect the services
201 performed and authorized expenditures incurred, if any, by the Grantee in accordance
202 with this Agreement prior to such termination. The Director shall have the authority to
203 decide the appropriate amount to be paid pursuant to the preceding sentence, and that
204 determination, unless it is unreasonable, shall be binding on the Grantee.

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Sec. 12. 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. 13. Miscellaneous

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

(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 contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

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

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

(e) Assignment. Successors and Assigns. Without the City's written consent, the Grantee shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Grantee and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Grantee's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Grantee the right to assign, it is agreed that the duties of the Grantee that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. 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.

(g) City Policy. 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.

(h) EEO Provisions. During the performance of this Contract the Grantee agrees as follows: (1) The Grantee 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 Grantee 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 Grantee shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Grantee shall in all solicitations or advertisement for employees placed by or on

256 behalf of the Grantee, state that all qualified applicants will receive consideration for
257 employment without regard to race, color, religion, sex, national origin, political affiliation
258 or belief, age, or handicap. (3) The Grantee shall send a copy of the EEO provisions to
259 each labor union or representative of workers with which it has a collective bargaining
260 agreement or other contract or understanding. (4) In the event of the Grantee's
261 noncompliance with these EEO provisions, the City may cancel, terminate, or suspend
262 this contract, in whole or in part, and the City may declare the Grantee ineligible for
263 further City contracts. (5) Unless exempted by the City Council of the City of Durham,
264 the Grantee shall include these EEO provisions in every purchase order for goods to be
265 used in performing this contract and in every subcontract related to this contract so that
266 these EEO provisions will be binding upon such subcontractors and vendors.

267 (i) SDBE. The Grantee shall comply with all applicable provisions of Article III of
268 Chapter 18 of the Durham City Code (Equal Business Opportunity Program), as
269 amended from time to time. The failure of the Grantee to comply with Article III of
270 Chapter 18 shall be a material breach of contract which may result in the rescission or
271 termination of this contract and/or other appropriate remedies in accordance with the
272 provisions of Article III of Chapter 18, this contract, and State law. The Participation
273 Plan submitted in accordance with that chapter is binding on the Grantee. Section 18-
274 59(f) of Article III of Chapter 18 provides, in part, "If the City Manager determines that
275 the Contractor has failed to comply with the provisions of the Contract, the City Manager
276 shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14
277 days, or such time as specified in the Contract, to cure the deficiencies or establish that
278 there are no deficiencies." It is stipulated and agreed that those two quoted sentences
279 apply only to the Grantee's alleged violations of its obligations under Article III of Chapter
280 18 and not to the Grantee's alleged violations of other obligations.

281 (j) No Third Party Rights Created. This contract is intended for the benefit of the City
282 and the Grantee and not any other person.

283 (k) Principles of Interpretation and Definitions. In this contract, unless the context
284 requires otherwise: (1) The singular includes the plural and the plural the singular. The
285 pronouns "it" and "its" include the masculine and feminine. References to statutes or
286 regulations include all statutory or regulatory provisions consolidating, amending, or
287 replacing the statute or regulation. References to contracts and agreements shall be
288 deemed to include all amendments to them. The words "include," "including," etc. mean
289 include, including, etc. without limitation. (2) References to a "Section" or "section" shall
290 mean a section of this contract. (3) "Contract" and "Agreement," whether or not
291 capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are
292 for convenience only, and shall not be construed to affect the meaning of this contract.
293 (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms,
294 companies, associations, partnerships, trusts, corporations, governmental agencies and
295 units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day"
296 means calendar day.

297 (l) Modifications. Entire Agreement. A modification of this contract is not valid unless
298 signed by both parties and otherwise in accordance with requirements of law. Further, a
299 modification is not enforceable against the City unless the City Manager or a deputy or
300 assistant City Manager signs it for the City. This contract contains the entire agreement
301 between the parties pertaining to the subject matter of this contract. With respect to that
302 subject matter, there are no promises, agreements, conditions, inducements, warranties,
303 or understandings, written or oral, expressed or implied, between the parties, other than
304 as set forth or referenced in this contract.

305 (m) E-Verify Compliance. The contractor represents and covenants that the contractor
306 and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the

307 North Carolina General Statutes (NCGS). The City is relying on this E-Verify Compliance
308 section in entering into this contract. The parties agree to this section only to the extent
309 authorized by law. If this section is held to be unenforceable or invalid in whole or in part,
310 it shall be deemed amended to the extent necessary to make this contract comply with
311 NCGS 160A-20.1(b).

312 (n) City's Manager's Authority. To the extent, if any, the City has the power to suspend
313 or terminate this contract or the Grantee's obligations under this contract, that power
314 may be exercised by the City Manager or a deputy or assistant City Manager without
315 City Council action.

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[SIGNATURES ON FOLLOWING PAGE(S)]

*FY 2015 Agreement to Fund Economic Development Programs Operated by
Downtown Durham, Inc. Using City of Durham Grant Funds*

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

322
323 CITY OF DURHAM:

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329 _____ By: _____
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331
332 Preaudit Certification

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337 DOWNTOWN DURHAM, INC.
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341 By: _____
342
343 Title of officer: _____

344 (Affix corporate seal.)

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348 State of _____ ACKNOWLEDGMENT BY
349 DOWNTOWN DURHAM, INC.
350 County of _____

351 I, a notary public in and for the aforesaid county and state, certify that
352 _____ personally
353 appeared before me this day and stated that he or she is (strike through the
354 inapplicable:) chairperson/ president/ chief executive officer/ vice-president/ assistant
355 vice-president/ treasurer/ chief financial officer of DOWNTOWN DURHAM, INC., a
356 corporation, and that by authority duly given and as the act of the corporation, he or she
357 signed the foregoing contract or agreement with the City of Durham and the corporate
358 seal was affixed thereto. This the _____ day of _____, 20____.

359
360
361 _____
362 Notary Public

363 My commission expires:
364 _____
365