

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.  
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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.  
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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  
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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.

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

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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.  
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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: \_\_\_\_\_  
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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