

**CONTRACT FOR CONSULTING AND TECHNICAL ASSISTANCE
ENGAGEMENT BETWEEN THE CITY OF DURHAM AND
ENTERPRISE COMMUNITY PARTNERS, INC.**

This contract is made and entered into as of the _____ day of _____, 2015, by the City of Durham (“City”) and Enterprise Community Partners, Inc., (“Contractor”), a company organized and existing under the laws of Maryland.

Section. 1. Background and Purpose. The purpose of this contract is to retain the services of the Contractor for consulting and technical assistance engagement to define affordable housing goals and strategies, to increase departmental capacity to execute these goals; focusing on the transit corridors.

Section. 2. Scope of Work to be Performed. Presumption that Duty is Contractor’s.

Task 1: Goal Setting, Assessment and Outreach

- *Goal-setting.* The Contractor will work with Department of Community Development (DCD) leadership team and other key stakeholders, identified by DCD, to define measurable five-year goals for the department, which will include affordable housing production and preservation and neighborhood revitalization. These goals will specifically identify activities to be carried out in the transit corridors and will address DCD’s efforts Citywide. These goals will take into consideration, the City’s Strategic Plan priorities, and City Council’s guidance on affordability in transit corridors.
- *DCD assessment and recommendations.* The contractor will assess DCD’s current organizational structure, programs, resource allocation and staff capacity, in light of the five-year goals identified by the Contractor and will develop recommendations that will address:
 - Any changes to DCD organizational structure and programming to facilitate meeting the five-year goals. If needed, the changes could include the expansion, elimination or modification of current programs as well as the creation of new programs;
 - Utilization of current DCD resources to address the five-year goals, including an assessment of the adequacy of current resource for achieving the proposed five-year goals and suggestions for how additional resources could be implemented; and
 - Build the capacity of the current DCD staff to address capacity gaps to enable staff to execute on the five-year goals.
- *Outreach Strategy on Affordable Housing and Transit-Oriented Development (TOD).* The Contractor will make recommendations on outreach and communication strategies for internal and external stakeholders to educate them on affordable housing and DCD’s five-year goals and program plans.

Deliverables:

The Contractor will provide the following:

- A presentation and Options Memo summarizing assessment results and providing alternatives for potential areas for a second phase focused on: DCD organizational structure, programs, resource alignment and capacity building needs; and outreach strategy. This may be incorporated into the same memo and presentation prepared for Task 2, below.
- A draft of defined measurable five-year goals identified during the Goal Setting process for DCD, including affordable housing production and preservation and neighborhood revitalization.

Task 2: Policy and Regulatory Review

The Contractor will review the City of Durham’s policies and regulatory framework supporting affordable housing and neighborhood revitalization, focusing on current and future transit corridors. Building on the work that has been completed by the Durham City-County Planning Department, the Contractor will recommend policy, regulatory and financing tools, to advance the creation and preservation of affordable housing in transit corridors. The Contractor will also make recommendations around internal processes that could be implemented to coordinate housing and neighborhood revitalization efforts citywide, as needed.

Deliverables:

The Contractor will provide the following:

A presentation and Options Memo summarizing assessment results and providing alternatives for potential areas for a second phase focused on TOD policy and regulatory framework. This may be incorporated into the same memo and presentation prepared for Task 1 above.

Task 3: Downtown Durham Rental Assistance Program

The intent of this task is to provide DCD and city leaders with the information necessary to make a decision about moving forward with a downtown Durham rental assistance program. This high-level program design will have two primary components, described below:

- (1) *Data Analysis of the Downtown Durham Market:* The Contractor will assess current and in pipeline in the downtown market, based on the geographic boundaries provided by DCD. This assessment will take into account building type, unit size and rents, with the goal of identifying the characteristics of potential units for this program. In addition, the Contractor will assess the current downtown population, as compared with overall city population, to identify subgroups that may be currently underrepresented in the downtown market.
- (2) *High Level Program Design.* This high level program design will build on existing Durham Housing Authority rental assistance programs and best practices from other cities, and include options for:

- a. Potential target populations - Two to four potential target groups will be considered based on a city-wide housing need analysis, policy goals stated by Durham leadership and consultation with DCD.
- b. Tenants & landlords - Qualification standards, outreach & marketing, screening processes and entity(ies) responsible for screening, types of written agreement required.
- c. Payment parameters - Level and duration of subsidy, mechanics for making payments.
- d. Monitoring protocols for new leases and existing properties.
- e. Program management - how responsibilities will be divided between DCD other government departments and contractors.
- f. Estimated program costs for program start up, ongoing administration and subsidies; different estimates will be prepared for different scenarios.

Deliverables:

The Contractor will provide a memo and presentation laying out options for how to move forward with a downtown Durham rental assistance program.

Task 4: Outline of Second Phase

DCD anticipates that there will be a second phase of work focused on the execution of recommendations from this initial phase. Based on feedback from DCD and other city stakeholders to Tasks 1-3 above, the Contractor will prepare a proposed scope of work for a second phase focused on implementing recommendations from the phase one. At its discretion, DCD may choose to include a capacity assessment and capacity building recommendations for the Continuum of Care (“CoC”) in the scope and budget for a second phase of work.

Deliverables:

The Contractor will provide the following:

- A Scope of Work and Budget for Second Phase

Timeline

The timeline below assumes that work can begin by September 1, 2015.

Date	Activity
September 2015	Due Diligence <ul style="list-style-type: none"> ▪ Review of DCD plans, policies and program information Review of other background information, including demographic information, QAPs, etc. ▪ Preparation for assessment meetings, including identified of key stakeholders and preparation of interview protocols
October 2015	Priority Setting and Assessment Meetings <ul style="list-style-type: none"> ▪ Discussion with DCD leadership to define policy priorities that will inform five-year goals (e.g. target household types, income levels, geography, transformational projects) ▪ Discussion of existing programs, policies and issues identified in due diligence with staff

	<ul style="list-style-type: none"> ▪ Discussions with other key city stakeholders on larger policy and regulatory framework, specifically related to TOD ▪ Meetings with external stakeholders (developers, neighborhood organizations, advocates)
October – December 2015	<p>Development of Second Phase Options</p> <ul style="list-style-type: none"> ▪ Identification of potential approaches based on due diligence and assessment as well as best practice research ▪ Regular meetings DCD staff team to vet ideas and recommendations
Mid-January 2016	Completion of Task 3: High Level Program Design for Downtown Durham Rental Assistance Program, including delivery of task-specific presentation and memo
December 2015 – January 2016	<p>Options Presentation and Five-Year Goal Definition</p> <ul style="list-style-type: none"> ▪ Presentation of assessment results and second phase options ▪ Meetings with DCD leadership to define five-year goals and prioritize action items for second phase
Mid-February 2016	Development and Approval of Workplan and Budget for Second Phase

In this contract, “Work” means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor’s duties to the City that arise out of this contract. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

Section. 3. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Section. 4. Compensation. Contractor’s Billings to City.

The City shall pay the Contractor for the Work as follows: A flat fee of One hundred and one thousand dollars (\$101,000.00) for consulting and technical assistance engagement to define affordable housing goals and strategies, with a particular focus on transit corridors, and to increase departmental capacity to execute these goals in Phase 1.

The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section.

The Contractor shall submit two invoices to the City. The first invoice, in the amount of \$50,500.00, will be submitted upon delivery of the options memo described in the deliverables. The second invoice in the amount of \$50,500.00 shall be submitted upon completion of the Phase 2 scope of work and budget. Within fourteen (14) days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

Invoices shall be addressed to:

City of Durham
Department of Community Development
807 E. Main Street
Durham, North Carolina 27701
ATTN: Terri P. Holmes, Assistant Director
Fiscal Management & Planning Administration

Section. 5. Termination for Convenience (“TFC”). (a) *Procedure.* Without limiting any party’s right to terminate for breach, the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. The City Manager may terminate under this section without City Council action. (b) *Obligations.* Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work, which has been paid for. In case of TFC, the Contractor shall follow the City’s instructions as to which subcontracts to terminate. (c) *Payment.* The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City’s decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor a one hundred dollar TFC fee and for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment except as stated in this section because of TFC, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Section. 6. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule referred to in Section 2 above, the City may, in its discretion, in order to complete the Work, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City’s rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Section. 7. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:

Reginald J. Johnson, Director, Department of Community Development
City of Durham
807 E. Main Street, Building 2, Suite 200
Durham, NC 27701
The fax number is (919) 560-4090

To the Contractor:

Petra Montague, Vice President Enterprise Community Partners, Inc.
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia Maryland 21044
The fax number is (410) 772-3057

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

Section. 8. Indemnification. (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless the Indemnitees from and against all charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor 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 Contractor 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 contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.

(c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract.

(d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

(e) Limitations of the Contractor'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 Contractor

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.

Section. 9. 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 Contractor 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 Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(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 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.

(i) SDBE. The Contractor shall comply with all applicable provisions of Chapter 26 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that chapter 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 that chapter, this contract, and State law. The Participation Plan submitted in accordance with that chapter is binding on the Contractor. Section 26-10(f) of that chapter 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 Chapter 26 and not to the Contractor's alleged violations of other obligations.

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

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

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

(m) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

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

ATTEST:

CITY OF DURHAM

BY: _____
Thomas J. Bonfield, City Manager

**ENTERPRISE COMMUNITY
PARTNERS, INC.**

ATTEST:

By: _____

By: _____
Petra Montague, Vice President

(Affix corporate seal here)

Pre-Audit Certificate, if applicable

MARYLAND
_____ **COUNTY**

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 _____ President of Enterprise Community Partners, Inc., a company organized and existing under the laws of the State of Maryland, (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 _____, 2015.

Notary Public: _____
My Commission Expires: _____