

**STATE OF NORTH CAROLINA
COUNTY OF DURHAM**

**SUBRECIPIENT
CONTRACT**

THIS CONTRACT is entered into as of the _____ day of _____, 2011, by the City of Durham (Grantee) and Habitat for Humanity of Durham, Inc. (Subrecipient") a non-profit corporation organized and existing under the laws of North Carolina.

WHEREAS, the Grantee desires to make available to the Subrecipient certain funds from the Community Development Block Grant (CDBG) program as prescribed under the Housing and Community Development Act of 1974, as amended, with said grant being made available to the Grantee by the U.S. Department of Housing and Urban Development (HUD) and being designated as grant number **B-11-MC-37-0004** and known as the "grant"; and

WHEREAS, the Subrecipient agrees to abide by each paragraph of this Contract and its attachments and all procedures, rules and regulations imposed upon the Grantee by HUD in connection with its receiving the federal grant referenced above; and

WHEREAS, the Subrecipient has been awarded CDBG funds by the Grantee for eligible construction activities as set forth in **24 CFR Part 570.201(m)** and to meet the National Objective of low- and moderate-income benefit activities as set forth in **24 CFR Part 570.208(a)(3)**, activities whose benefits are available to all the residents, where residents live in households with total annual incomes of less than 50% of the area median income as determined by HUD, as required by the Housing and Community Development Act of 1974; and

WHEREAS, the Subrecipient further agrees that all activities conducted under the Contract shall be of a type authorized by the provisions of Part 8, Article 19 of Chapter 160A of the General Statutes of North Carolina, as amended by Chapter 206 of the Session of laws of 1987.

NOW, THEREFORE, in consideration of the mutual promises herein exchanged by and between the parties, it is agreed as follows:

SECTION 1. SCOPE OF SERVICES.

The Subrecipient promises to perform, or cause to be performed, the services specified in *Attachment A: Scope of Services* which is made part of this Contract by reference. The services shall be completed within twenty-four (**24**) months of the date of the execution of this Contract.

Activities described in *Attachment A* must commence within 90 days of the execution date of this Contract. Failure to promptly provide the services specified in *Attachment A*, as determined solely by the Grantee, may result in the Grantee exercising its authority to deobligate the funds committed to the Grantee in accordance with Section 21, below.

Contract activities performed prior to the execution date or later than the termination date of this Contract are not considered a part of this Contract and are not billable.

SECTION 2. PAYMENT UNDER THE CONTRACT.

Payments by the Grantee under this Contract are limited to reimbursement of eligible expenditures made, or eligible expenses incurred, by the Subrecipient. Advance payments are explicitly prohibited unless otherwise stated elsewhere in this contract document.

All expenditures and expenses shall be incurred in accordance with the provisions of this Contract. Payments shall be made by the Grantee in accordance with the provisions of this Contract and only for activities specified in *Attachment A*.

A schedule of payments is included as a part of this Contract in *Attachment A*. Payments shall be made based upon this schedule and shall only be made after the Subrecipient has presented documentation of expenses that meets the approval of the Grantee. It is expressly understood and agreed by the Subrecipient that payment by the Grantee shall not exceed the maximum sum of **\$150,000.00** for all of the services specified in *Attachment A*.

Further, the Subrecipient understands and agrees that any payment made under this Contract by the Grantee is limited to funds available under the grant referenced above.

The Grantee shall make payments upon receipt of a request for check from the Subrecipient. The request shall include documentation of achievements, expenditures and expenses incurred and work undertaken by the Subrecipient, where applicable, and any other documentation that the Director of the Department of Community Development ("DCD"), acting for the Grantee, may require from the Subrecipient, not limited to the reports described in *Attachment A*, with all such documentation to be in the form and substance satisfactory to the DCD.

SECTION 3. BUDGET CHANGES AND UNREIMBURSABLE EXPENSES.

1. Except for changes made in accordance with subsection (2) below any and all alterations in the approved use of budgeted funds shall be subject to prior review and approval by the City.
2. Funds may be shifted between line items of the Project without prior approval of the City only to the extent that such action does not result in a change in the Project and so long as the amount shifted does not exceed ten percent (10%) of the line item total from which the funds are being removed or to which the funds are being added.
3. A report detailing those funds shifted without prior approval by the City shall be provided in writing to the Director of the Department of Community Development within three (3) working days after the date on which the expenditures could be *anticipated* to not comply with the original budget. Funds shall be considered to have been shifted within budget line items whenever the cumulative total of funds expended on a line item exceeds those appearing in the attached Project Budget.

4. Any costs and expenses not covered by the attached Project Budget, and hence not properly payable from Grant funds, shall be borne entirely by the Subrecipient.

SECTION 4. PROGRAM INCOME.

Any income earned or received by the Subrecipient as a direct result of an activity funded by this Contract is considered Program Income. Program Income shall only be expended by the Subrecipient on activities specified in *Attachment A*, and shall be expended by the Subrecipient prior to requesting additional reimbursements or payments. The Subrecipient shall report both the receipt and the expenditure of Program Income to the DCD during the month following the month in which the money was received and spent.

SECTION 5. APPLICABLE FEDERAL, STATE AND CITY REQUIREMENTS.

The Subrecipient shall perform within, and cause its subcontractors and any ultimate recipients of funds under this Contract to comply with, and to be eligible under, the same federal and state laws, regulations and administrative requirements which apply to the Grantee. A compilation of references which may apply to this Contract is included as *Attachment B: Certifications and Compliance Requirements*. The laws and regulations that are checked within *Attachment B* apply to this Contract and are hereby made an integral part of the contract by reference.

SECTION 6. ASSIGNMENT OF CONTRACT PROHIBITED.

The Subrecipient shall not use this Contract or its anticipated proceeds to borrow money. The Subrecipient shall not assign any interest in this Contract.

SECTION 7. CONFLICT OF INTEREST.

The Subrecipient shall permit no officer or employee of the Subrecipient, no member of the Grantee's governing body and no other public official of any governing body in the Durham metropolitan area to exercise any functions or responsibilities in the review or approval of the undertaking or carrying out of this project to (1) participate in any discussion relating to this Contract if it affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is directly or indirectly interested; or (2) have any interest, direct or indirect, in this Contract or the proceeds thereof.

The Subrecipient shall permit no members of or delegates to the Congress of the United States to be admitted to any share or part thereof or to any benefit that may arise herefrom. The Subrecipient covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required to be performed under this Contract. The Subrecipient further covenants that no person having any such interest shall be employed in the performance of this Contract. The Subrecipient shall make no loans to its directors or officers.

The Subrecipient shall be subject to and shall comply with the conflict of interest provisions of the federal regulations as published at 24 CFR Part 570.611, 24 CFR Part 84.42 and 24 CFR Part 85.36.

SECTION 8. POLITICAL ACTIVITY.

The Subrecipient shall not permit any of the funds, materials, property or services provided under this Contract to be used for any partisan political activity, or to further the election or defeat of any candidate for public office, or for publicity or propaganda purposes designed to support or defeat legislation pending before the United States Congress, the State of North Carolina, the County of Durham or the City of Durham.

SECTION 9. SUBRECIPIENT LIABLE FOR LEASES.

Prior to the Subrecipient entering into any lease arrangement that involves the use of funds from this Contract the Subrecipient shall submit a copy of the proposed lease to DCD for review and approval and shall not enter into any lease arrangement that is not pre-approved by DCD.

When any lease is paid for in whole or in part by funds from this Contract, the Subrecipient shall notify the lessor of the date that this Contract is to terminate, and the Subrecipient shall make provisions for payment of the lease from other funds should the Subrecipient desire to continue the lease after the date of termination of the Contract.

The Subrecipient assumes all liability for any damage that occurs to property, either real or personal, which it acquires or possesses under a lease.

SECTION 10. IDENTIFICATION OF DOCUMENTS.

All reports, maps and other documents completed as a product of this Contract, other than documents used in the administration of the Contract such as reports to the Grantee, shall have placed thereon by the Subrecipient the following statement:

NOTE:

"The preparation of this document was financed in part through funds from the City of Durham's Community Development Block Grant Program. This grant was made available to the City of Durham under provisions of Title I of the Housing and Community Development Act of 1974, as amended, and is referred to as grant number B-10-MC-37-0004."

SECTION 11. FINANCIAL RECORDS.

The Subrecipient shall establish and maintain a financial management system that will account for all funds received under this Contract and expenditures made in furtherance of the project activities, and such system shall be created and maintained in accordance with generally accepted accounting practices and procedures, (GAAP). The system shall include the following:

1. Accurate, current and complete disclosure of the financial results of activities under this Contract in accordance with GAAP. If the Subrecipient's accounting records are maintained on a cash basis, the Subrecipient must develop information of accounts payable and accounts receivable through an analysis of the documents in the file, or on the basis of its best estimates.
2. Records that identify in detail the source and application of funds under this Contract. These records shall contain information pertaining to Contract awards and authorizations, encumbrances and unencumbered balances, assets, liabilities, outlays and income.
3. Effective internal controls and accountability for all funds, property and other assets attributable to the Contract. The Subrecipient shall adequately safeguard all such assets and shall assure that they are used solely for the performance of this Contract.
4. Comparison of actual expenditures with budgeted amounts for those expenditures and comparison of financial information with performance or productivity data, including the production of unit cost information whenever required by the Grantee.
5. Procedures for determining the allowability and allocability of costs.
6. A general ledger in which a summary of all accounting transactions shall be maintained. In addition, the Subrecipient shall maintain a cash receipt and disbursement register in which receipts and disbursements will be documented. Funds disbursed by the Subrecipient shall be made by pre-numbered checks, used in numerical sequence and must be supported by appropriate, source documentation. Source documentation includes items such as payroll, time and attendance records, invoices, contracts, travel payments, information evidencing the nature and propriety of each payment, and notations showing the approval of an authorized official of the Subrecipient.
7. On request of the Grantee, the Subrecipient shall provide an accounting for all funds paid to it by the Grantee under this Contract.
8. The Subrecipient's financial records shall be audited by a certified public accountant, licensed in good standing to practice in the State of North Carolina, at least annually.
9. A copy of the certified audit of the funds received by the Subrecipient under this Contract, and an accompanying Management Letter, shall be provided to the Grantee for each year in which activities under this Contract were conducted. Should there be an exception taken during any audit, the Subrecipient shall resolve the findings and recommendations within thirty (30) days after completion of the audit.
10. The Subrecipient shall maintain such records and accounts, including property, personal and financial records so as to assure a proper accounting for all project funds, for five (5) years after the date of final payment under this Contract from the Grantee to the Subrecipient. However, at any time after completion and acceptance of required

audits and after the Contract termination, the Subrecipient may turn these records over to the Grantee for retention.

The Subrecipient shall provide any information that the DCD may reasonably request pertaining to the Subrecipient's financial management under this Contract.

SECTION 12. AUDITS AND INSPECTIONS.

At any time during normal business hours and as often as the Grantee, HUD or the Comptroller General of the United States may deem necessary, the Subrecipient shall make available to the Grantee, HUD, or representatives of the Comptroller General, for examination, all of the Subrecipient's records with respect to matters covered by this Contract. The Grantee, HUD or representatives of the Comptroller General shall be permitted to audit, examine and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials payable, records or personnel, and other data relative to all matters covered by this Contract.

SECTION 13. INSURANCE AND BUSINESS LICENSES

1. Fidelity Insurance is not applicable to the Contract. Payments will be made as reimbursements for the cost of pre-approved activities or expenditures.
2. Subrecipient shall maintain insurance not less than the following:
 - A. Commercial General Liability, with a combined single limit not less than \$1,000,000.00 per occurrence; and an aggregate limit of not less than \$2,000,000.00 per year, covering:
 - Premises / operations; and
 - Products / completed operations; and
 - Broad form property damage; and
 - Contractual liability; and
 - Independent contractors/subcontractors, if any are used in the performance of this contract.
 - B. Automobile Liability Insurance, with a combined single limit of not less than \$1,000,000.00 per occurrence, and an aggregate limit of not less than \$2,000,000.00 per year, covering:
 - Vehicles owned, hired, leased/rented or borrowed by the Subrecipient entity; and
 - Employee vehicles, if used in performance of this contract.
 - C. Workers' Compensation Insurance with employers' liability of not less than \$1,000,000.00, covering:
 - Statutory benefits, and
 - Employees, owners, partners, officers, and relatives who work on this contract.
 - D. Insurance shall be underwritten on the occurrence basis by:
 - Companies authorized to do business in the State of North Carolina; and
 - Companies with a Best rating of A or better

- E. Insurance shall be evidenced by an original, signed certificate:
- Ensuring that the City is provided not less than 30 days notice prior to cancellation or reduction of coverage; and
 - Listing the City of Durham as the Certificate Holder in the following manner:

City of Durham, North Carolina
Attn: Shepherd Smith, Department of Community Development
101 City Hall Plaza
Durham, NC 27701

- Certificates shall be delivered directly to the Department of Community Development, at 807 East Main Street, Suite #2-200, Durham, NC 27701
3. Both the insurance certificate and the additional insured endorsement must be original, signed documents, and must be approved by the City before the Subrecipient can begin work under this contract.
4. Subrecipient must also hold a valid Privilege License, in accordance with City of Durham contracting policies.

SECTION 14. REPORTING.

The Subrecipient shall submit monthly progress reports and invoices to the Grantee within fifteen (15) calendar days following the end of the prior month's reporting period.

Delays by the Subrecipient in making any report to the Grantee required by this Contract may, at the Grantee's sole discretion, result in delays in payment to the Subrecipient of part or all of the Subrecipient's requests for funds, and may be considered a breach of the terms of this Contract. A delay in making a disbursement by the Grantee to the Subrecipient does not change the time requirements of the Subrecipient to submit reports to the Grantee.

The Subrecipient shall provide to the Grantee any other information determined by the Grantee to be necessary or appropriate for the proper monitoring of this Contract.

SECTION 15. PROOF OF CONTRACTING REQUIREMENTS.

If the Subrecipient should choose to execute a subcontract in excess of \$10,000.00 of funds from this Contract, the Subrecipient shall, within fifteen (15) calendar days of execution of such subcontract, provide a copy of that document to the DCD.

Any such subcontracts shall require the subcontractor to comply with all of the terms of this Contract and all applicable federal, state and local laws and regulations. All subcontracts shall be in a form and substance acceptable to the DCD.

SECTION 16. PROHIBITION AGAINST SOLICITING AND ACCEPTING FAVORS AND PROCUREMENT.

Officials and employees of the Subrecipient shall neither solicit nor accept gratuities, favors or anything of monetary value from subcontractors or potential subcontractors. The Subrecipient further agrees that all procurement transactions that the Subrecipient may enter into as a result of this Contract shall be conducted in a manner so as to provide maximum open and free competition and in accordance with the provisions of all applicable Uniform Administrative Requirements as described in the CDBG regulations at 24 CFR Part 570.502.

Subrecipients engaged in procurement activities with CDBG funds are also required to maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders as described at 24 CFR Part 85.36.

SECTION 17. MAINTENANCE OF EFFORT.

The Subrecipient shall maintain a level of aggregate expenditures for its other projects or activities which is not less than the level of aggregate expenditures that existed prior to the execution of this Contract. The Subrecipient shall promptly notify the Grantee of any matters which have a material tendency to affect compliance with this requirement.

SECTION 18. EQUAL OPPORTUNITY.

The Subrecipient shall comply with the non-discrimination requirements as required by U.S. Executive Order 11246. Excerpts of Executive Order 11246 are attached to this Contract as *Attachment C*, and Executive Order 11246 is hereby made part of this Contract by reference.

SECTION 19. EMPLOYMENT OPPORTUNITIES FOR SMALL BUSINESSES AND LOWER INCOME PERSONS.

The Subrecipient shall take affirmative steps to assure that the small businesses and lower income persons of the project area (defined as the City of Durham) are utilized whenever possible as sources of supplies, equipment, construction and services.

SECTION 20. EQUAL BUSINESS OPPORTUNITY (EBO) ORDINANCE.

The Contractor/Subrecipient 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/Subrecipient 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/Subrecipient.

Section 26-10(f) of that Chapter provides, in part, "If the City Manager determines that the Contractor (Subrecipient) has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor (Subrecipient) in writing of the deficiencies. The Contractor (Subrecipient) 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/Subrecipient's alleged violations of its obligations under Chapter 26 and not to the Contractor's/Subrecipient's alleged violations of other obligations.

SECTION 21. RELIGIOUS ORGANIZATIONS.

The Subrecipient agrees and understands that no Community Development Block Grant funds provided under this Contract shall be used for any religious activities, to promote any religious interests, or for the benefit of a religious organization in accordance with the federal regulations as specified in 24 CFR 570.200(j).

SECTION 22. TERMINATION OF CONTRACT.

(1) For Cause:

If through any cause, the Subrecipient shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the Subrecipient shall violate any of the covenants, agreements or stipulations of the Contract; or if the grant from HUD under which this Contract is made is terminated, reduced, impounded, suspended or withheld by HUD, the Grantee shall thereupon have the right to terminate this Contract. Termination shall be accomplished by the Grantee giving written notice to the Subrecipient at least ten (10) days prior to the date that the Contract is to be terminated.

In the event that HUD reduces the amount of its grant, however, the parties hereto may amend this Contract so that it will accommodate and reflect the action taken by HUD.

(2) For Convenience:

The Contract may also be terminated by the Grantee without cause and independently from any action by HUD pertaining to the federal grant under which this Contract has been funded, at the convenience and the sole discretion of the Grantee.

The Grantee shall provide the Subrecipient with at least thirty (30) days written notice prior to the effective date of termination under this paragraph. In the event of termination for convenience, the Grantee shall make payment for the services performed and authorized expenditures incurred by the Subrecipient in accordance with the terms of this Contract, if any, prior to the termination date. In the event of termination, all property, finished or unfinished documents, data, studies and reports purchased or prepared by the Subrecipient under this Contract, shall become the property of the Grantee and shall be delivered to the Grantee within thirty (30) days of the completion of the certified audit of this Contract pursuant to Section 10, Part 10, above.

SECTION 23. HOLD HARMLESS PROVISION

The Subrecipient is an independent contractor with respect to the services to be performed under this Contract. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant or employee of the Grantee, nor shall any such person be entitled to any benefits available or granted to employees of the Grantee. The Grantee shall not be obligated to pay the Subrecipient any payments, fees, expenses, or compensation other than the Contract amount.

To the fullest extent permitted by law, the Subrecipient agrees to indemnify and hold harmless the Grantee and its agents, officers and employees from any and all costs, damages, claims, judgments and expenses, including attorney's fees, that may arise in any manner from, as a result of, relating to, or in connection with the Subrecipient's performance of this Contract.

SECTION 24. REVERSION OF ASSETS.

Upon the expiration of this Contract or termination with or without cause, the Subrecipient shall transfer to the Grantee within thirty (30) days of expiration or termination, any CDBG funds on hand at the time of expiration and any accounts receivable and/or Program Income attributable to the use of CDBG funds.

Any real property under the control of the Subrecipient, improved in whole or in part with CDBG funds, and using CDBG funds in excess of twenty-five thousand dollars (\$25,000), must continue to meet the National Objective described in this Contract until five (5) years after expiration or termination of this Contract, or such longer period of time as determined to be appropriate by the Grantee, or must be disposed of in a manner to cause the Grantee to be reimbursed in the amount of the current fair market value of the property less any portion thereof attributable to expenditure of non-CDBG and Non-City of Durham funds for acquisition of, or improvements to, the property.

The Subrecipient shall repay to the Grantee the full amount of any funds lost, misapplied, unaccounted for or inadequately accounted for, in violation of this Contract, within thirty (30) days of notification of the debt.

SECTION 25. CITY NON-DISCRIMINATION POLICY

The City of Durham opposes discrimination on the basis of race and gender, and urges all of its Subrecipients and Contractors to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under any City contract.

SECTION 26. ENVIRONMENTAL REVIEW REQUIREMENT.

An environmental review checklist shall be completed by the Subrecipient and approved by DCD in a timely manner, prior to the commencement of any activities/projects, and prior to the commitment of any funds. Contracts shall not be executed until an environmental review has been completed. 24 CFR 58.22(a) states

that a recipient may not commit HUD assistance funds under a program listed in 58.1(b) on any activity or project until HUD or the state has approved the recipient's Request for Release of Funds (RROF) and the related certification of the responsible entity.

In addition, until the RROF and related certification have been approved, the recipient may not commit non-HUD funds on an activity or project under a program listed in 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives. If an activity is exempt under 58.34, or not subject to 58.5 under 58.35(b), no RROF is required and a recipient may undertake the activity immediately after the award of the assistance.

SECTION 27. RECORDS TO BE MAINTAINED.

The Subrecipient shall maintain and make available for review upon request by Grantee, all records required by the Federal regulations specified in 24 CFR 507.506 that are pertinent to the activities to be funded under this Contract. These records shall be retained for a period of five (5) years from the date of the final payment from the Grantee to the Subrecipient. Such records shall include, but not be limited to:

1. This Contract and any amendments;
2. 24 CFR Part 570 CDBG regulations;
3. Records providing a full description of each activity undertaken;
4. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
5. Records documenting compliance with the Fair Housing and Equal Opportunity components of the CDBG Program;
6. Financial records as required by 24 CFR Part 570.502, OMB Circular A-110, and OMB Circular A-122;
7. Other records necessary to document compliance with Subpart K of 24 CFR 570.

SECTION 28. ATTACHMENTS.

The following documents are attached to this Contract and are hereby made an integral part of the Contract by reference:

- Attachment A - Scope of Work
- Attachment B - Certifications & Compliance Requirements
- Attachment C - Executive Order 11246 - Equal Employment Opportunity

SECTION 29. PRIMARY CONTACTS.

Unless otherwise required under this Contract, notices permitted or required to be given will be deemed sufficient if given by e-mail, fax, mail, or courier service, addressed to the individual specified below, or to such other individuals as the respective parties may

designate by notice from time to time. Notices so given shall be effective upon receipt by the party to whom the notice is given.

For the Grantee:

Director
Dept. of Community Development
City of Durham
807 E. Main Street, #2-200
Durham, NC 27701
Tel: 919-560-4570
Fax: 919-560-4090
E-mail: reginald.johnson@durhamnc.gov

For the Subrecipient:

Executive Director
Habitat for Humanity of Durham
215 N. Church Street
Durham, NC 27701
Tel: 919-682-0516
Fax: 919-682-0947
E-mail: sdeberry@durhamhabitat.org

SECTION 30. SOLE AGREEMENT.

This document contains the entire agreement between the parties with respect to the subject matter of this Contract. No statements, promises or inducements made by either party, or any representative of either party, with respect to the subject matter of this Contract, that is not contained in this document, shall be valid and/or binding. This Contract may not be enlarged, modified or altered except by written amendment signed by all parties.

SECTION 31. WARRANTY OF AUTHORITY.

Each individual signing below warrants that he or she has the power and authority to sign on behalf of the entity listed above their signature, that such signature alone is binding on such entity, and that the governing body of such entity has duly authorized the execution of this Contract.

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

CITY OF DURHAM

By: _____
Thomas J. Bonfield, City Manager

ATTEST: DURHAM

By: _____
City Clerk

HABITAT FOR HUMANITY OF DURHAM, INC.

By: _____
Satana Deberry, Interim Executive Director

ATTEST: Habitat for Humanity of Durham, Inc.

By: _____
Corporate Secretary
(Affix Corporate Seal Here)

**NORTH CAROLINA
DURHAM COUNTY**

I, a Notary Public in and for the aforesaid County and State certify that _____ personally appeared before me this day, and acknowledged that he or she is the _____ City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing contract or agreement was signed in its corporate name by Thomas J. Bonfield, its City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk. This the _____ day of _____, 2011.

Notary Public: _____
My Commission Expires: _____

**NORTH CAROLINA
DURHAM COUNTY**

I, a Notary Public in and for the aforesaid County and State, certify that _____ personally appeared before me this day and stated that he or she is the _____ Secretary for Habitat for Humanity of Durham, Inc., a non-profit corporation, and that by authority duly given and as the act of the corporation, the foregoing contract or agreement with the City of Durham was signed in its name by its Interim Executive Director, whose name is Satana Deberry, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the _____ day of _____, 2011.

Notary Public: _____

My Commission Expires: _____

Pre-Audit Certification

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act. This the ____ day of _____, 2011.

City of Durham, Finance Officer

SCOPE OF SERVICES **Attachment A**

Application:

The Scope of Services is based on the application prepared and submitted by the Subrecipient through the annual application for grant funding process approved by the Durham City Council in the City's 2011– 2012 Annual Action Plan on May 2, 2011. In the event of any conflict between the application and any provision contained herein, this Contract and all attachments shall control.

Subrecipient Performance Requirements:

Habitat is hereby granted \$150,000 to carry out the responsibilities of the Urgent Repair Program and the World Changers Programs, as further described below. Habitat will be responsible for marketing each program to Durham residents, receiving and reviewing applications for participant eligibility, qualifying each applicant, documenting program eligibility and coordinating completion of the agreed upon repairs using volunteers and paid contractors. Habitat will adhere to their Small Contracts Procedures for procurement with the addition that all contracts funded with any portion of this Contract, including those that are less than \$3,000.00 will require all bids to be in writing. In addition, Habitat shall verify and document that vendors are not disbarred from doing business with HUD (<http://epls.gov/>). Habitat will also ensure that all program guidelines specified in the Contract are adhered to. Habitat will be reimbursed for expenses paid to third parties (labor and materials) for work performed under this Contract. Habitat will also be paid for its time spent on actual documented construction supervision and program oversight at the rate of \$20.00 per hour. In addition, Habitat will earn a service delivery fee of 15% of all eligible expenses submitted, exclusive of any invoicing for construction supervision and program oversight. This fee will be added to each invoice that is submitted by Habitat for reimbursement, but not to invoices for Habitat's time.

Urgent Repair Program

The Urgent Repair program is available to any come owner-occupant on a city-wide basis whose income does not exceed 50% of Area Median Income. Total reimbursement to the Subrecipient, for the Urgent Repair Program, will not exceed \$85,000.00 (exclusive of service delivery fees). During the term of the agreement, Subrecipient will coordinate urgent home repairs for a minimum of 12 eligible applicants. Key elements of the proposed Urgent Repair program include the following:

1. Eligibility is limited to elderly (defined as at least one person in the household 62 years old) and disabled owner-occupants with incomes at or below 50% of Area Median Income as determined by HUD. Applicants whose income is in excess of 50% but not exceeding 80% may be considered on a case by case basis, and may be approved only with written permission from the DDCD.
2. Proof of homeownership.
3. Property taxes must be current
4. Improvements are limited to conditions which pose an imminent threat to the health or safety of the occupants or to accessibility or other handicap modifications to enable residents to remain in the home and avoid institutionalization. Conditions which pose an imminent threat are generally limited to the following:

- a. Repair or replacement of dangerous electrical systems.
 - b. Repair or replacement of dangerous or inadequate heating systems or installation of adequate heating system if none is present.
 - c. Repair, replacement or installation of air conditioning systems if medical necessity is documented.
 - d. Roof repair or replacement when significant water penetration to interior ceiling has been established.
 - e. Repair or replacement of deteriorated foundations or porch structural members such as steps, landing, decking and hand or guard rails.
 - f. Replacement of deteriorated water or sewer lines which are broken or leaking severely and represent a health hazard to the occupants or general public.
 - g. Repair or replacement of interior floors or floor systems which are structurally unsound and present a threat to the safety of the occupants.
 - h. Any other condition deemed by the rehabilitation specialist to represent an imminent threat and approved in writing by the Director of Department of Community Development (DDCD).
5. The maximum expenditure amount (exclusive of service delivery fees) is to be \$10,000 per unit and will be provided in the form of a grant.

World Changers Program

Habitat will develop and coordinate a program for using volunteers and others to perform minor repairs on residential units in the City. Repairs will include activities such as replacing floors, constructing handicapped ramps, repairing or replacing roofing, and others that do not require significant structural work or specialized trade certifications. The volunteers will be drawn from local and/or national groups that operate such programs. Total reimbursement to the Subrecipient will not exceed \$42,500 for materials, supplies, port-a-johns, dumpsters, etc. In addition, Subrecipient will be paid a 15% service delivery fee.

Activities to be performed by Habitat include the recruiting of volunteer groups to perform the repairs, helping eligible homeowners apply for assistance, preparing written descriptions of work to be performed at each location, coordinating delivery of materials needed to complete repairs, and arranging for the completions of any work not finished by volunteer groups.

During the term of the agreement, Subrecipient will coordinate minor home repairs for a minimum of 20 eligible applicants if the total collective cost of these repairs does not exceed the total reimbursement of \$42,500.00. Eligibility criteria include:

- Elderly, disabled or handicap homeowners whose incomes is at or below 80% of the HUD-determined area median income (low-mod income persons)
- Proof of homeownership
- Property taxes must be current
- Repair needs that are minor (estimated cost of material up to \$3,000 per unit), and within the abilities of the volunteers (Previously assisted units are not eligible).

Eligible applicants who are elderly and/or disabled having household incomes lower than 50% of the HUD-determined area median will receive priority consideration.

Potential applicants will be selected from Habitat's urgent repair list along with referrals from other public agencies. Once the applicant is determined eligible by Habitat, they will prepare a written description of the work to be performed, along with an estimate of the costs and quantities of materials needed to complete the work. The Subrecipient will schedule the work and acquire the necessary materials to be on-site when volunteers arrive. DCD will monitor the construction process and will certify that the work is completed in an acceptable manner before the individual job is closed out.

Budget:

It is expressly agreed and understood that the maximum amount to be paid by the Grantee to the Subrecipient under this Contract shall not exceed \$150,000.00 for both the Urgent Repair Program and the World Changers Program.

Monthly Progress Reports / Pay Requests:

- Subrecipient shall submit a request for payment to the Grantee every month, within fifteen (15) days of the end of the month in which the reported activities took place.
- The Subrecipient shall document demographic information, including race, Hispanic/Latino status, age, gender, date of birth and family status for each individual who participated in or benefitted from the program during the activity period being reported on the client intake application and monthly beneficiary matrix..
- Each monthly progress report and or invoice shall be signed by either the Executive Director or the Financial Director for Habitat.
- In addition, the Subrecipient shall provide any other information or reports requested by the Grantee in support of the Subrecipient's eligibility for reimbursement.

Final Draw & Close-Out

It is anticipated that a minimum of 8 eligible applicants will receive services under the Urgent Repair Program and 20 eligible applicants will receive services under the World Changers Program, and all progress reports and invoices for payments must be completed, no later than twenty-four (24) months after the execution date of the grant contract.

With the last invoice for reimbursement, Subrecipient shall submit a summary list of unduplicated beneficiaries with demographic data on each individual or head of household served during the entire grant period. Final payment shall not be issued until all documentation is complete and correct satisfactory to the Grantee..

**ATTACHMENT B:
CERTIFICATIONS AND COMPLIANCE REQUIREMENTS**

1. ___ 24 CFR Part 84 Uniform Administrative Requirements for Grants and Cooperative Agreements to Hospitals, Institutes of Higher Education and Non-profit Organizations, which sets forth rules for administering all federal grant funds.
2. ___ Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-7), and as supplemented by Department of Labor regulations (29 CFR, Part 5), which requires fair wages be paid to construction workers on any project that funded in whole or in part with federal dollars.
3. ___ Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by the Department of Labor regulations (29CFR, Part 5), which requires affirmative nondiscrimination against workers and applicants for work on construction projects funded in whole or in part with federal dollars.
4. ___ Title VI of the Civil Rights Act of 1964 (PL88-352) and regulations issued pursuant thereto (24 CFR Part 1) on nondiscrimination in federally assisted programs.
5. Section 109 of the Housing and Community Development Act of 1974 and regulations issued pursuant thereto (24 CFR Part 570.602 et seq., known as subpart K), which requires that no person in the United States shall, on the grounds of age, race, color, national origin, religion, disability or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance
6. ___ Executive Order 11246 and the regulations issued pursuant thereto (41 CFR Chapter 60) on nondiscrimination in employment.
7. ___ Copeland "Anti-Kick Back" Act (18 U.S.C. 874), which protects workers wages on projects funded in whole or in part by federal funds.
8. ___ Section 3 of the Housing and Urban Development Act of 1968, as amended, and implementing regulations at 24 CFR Part 135 that sets guidelines for training and employment of lower-income residents of project areas and for awarding of contracts within the project area.
9. Lead Based Paint Poisoning Prohibition (Public Law 91-695), which requires that hazards posed by the presence of lead be addressed and made safe.
10. North Carolina General Statute 143-128 et seq. which proscribes procedures for bidding and structuring contracts on publicly funded construction projects.
11. Hatch Act (5 U.S.C. 1501-1508) prohibiting federal, state and local government employees from benefiting from federal grants.
12. ___ Building design, construction or alteration must comply with "American Standard

Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped" (#A-117.1-R 1971).

13. ___ Executive Order 11296 relating to evaluation of flood hazards in areas where construction or rehabilitation will be funded in whole or in part by federal funds.
14. ___ Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), as amended Fair Housing Policy, which requires that no person shall be prohibited from purchasing or renting a home based on age, race, color, national origin, religion, disability or sex.
15. ___ Executive Order 11063 which addresses equal opportunity in housing and non-discrimination.
16. ___ Section 306 of the Clean Air Act (42 U.S.C. 1857(h)) which sets forth monitoring and reporting procedures for any program that affects air quality.
17. ___ Environmental Protection Agency regulations (40 CFR, Part 15), which sets requirements for protecting the environment on federally funded projects.
18. Age Discrimination Act of 1967, as amended.
19. The Rehabilitation Act of 1973, as amended, Sections 503 and 504, which prohibit discrimination against the handicapped.
20. ___ City of Durham's Disadvantaged Business Enterprise Plan, which requires that opportunities for contracts to provide goods and services be made available to small and disadvantaged businesses in Durham.
21. ___ OMB Circular A-122: Cost Principles for Non-Profit Organizations, which sets forth parameters for expenditures made with federal grant money.
22. ___ Treasury Circular 1075 relating to the use of Community Development funds within 72 hours after drawdown, which requires that the Grantee manage the grant funds on a specific timetable.
23. Community Development Block Grant regulations at 24 CFR 570, which describes all requirements and prohibitions for the administration of a program funded in whole or in part with federal Community Development Block Grant money.
24. ___ N. C. Fair Housing Law, which prohibits discrimination against any person for reasons of age, race, color, national origin, religion, disability or sex in all transactions relating to buying, selling, or renting housing units.
25. ___ City of Durham Fair Housing Ordinance, which prohibits discrimination against any person for reasons of age, race, color, national origin, religion, disability or sex in all transactions relating to buying, selling, or renting housing in Durham.

26. _____ OMB Circular A-133: Audits of States, Local Governments and Nonprofit Organizations, which sets forth requirements and methodologies for auditing programs funded in whole or in part with federal grant money.

**ATTACHMENT C:
U. S. EXECUTIVE ORDER 11246 (excerpts)
EQUAL EMPLOYMENT OPPORTUNITY**

"During the performance of this Contract, the contractor agrees as follows:"

1. " The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause."
2. "The contractor will, in all solicitations or advertisements 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, or national origin."
3. "The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract officer, advising the labor union or workers' representative of the contractor's commitments under Section 2020 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment."
4. "The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor."
5. "The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and, by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders."
6. "In the event of the contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965 or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by Law."

7. "The contractor will include the provisions of Paragraphs 1 through 7 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interest of the United States."