

NORTH CAROLINA

GRANT AGREEMENT

DURHAM COUNTY

This Grant Agreement ("Agreement") is made and entered into this the _____ day of _____, 2011 between the City of Durham, North Carolina, a municipal corporation, organized and existing under the laws of the State of North Carolina, whose address is 101 City Hall Plaza, Durham, North Carolina (the "City") and the Center for Community Self-Help, a non-profit corporation incorporated in North Carolina and having an office at 301 W. Main Street, Durham, NC 27701 ("Self-Help").

WHEREAS, the City has entered into an Agreement to receive funds under the HOME Investment Partnerships Program (hereinafter called the "HOME" Program) from the US Department of Housing and Urban Development (hereinafter called "HUD"); and

WHEREAS, the City and Self-Help have entered into this Agreement in order to provide Self-Help with funding for the purpose of securing pre-construction architectural and engineering services for Phase I of the Southside neighborhood, as such funding is permissible under 24 CFR 92.206(d)1;

WHEREAS, the City desires to provide financing to Self-Help to assist it with its efforts of providing affordable housing to low and moderate income families throughout the City of Durham;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

A. DEFINITIONS:

Except to the extent modified or supplemented by this Agreement, any term defined in 24 CFR Part 92 shall have the same meaning when used herein.

- (1) "Agreement" means this agreement, the approved application for HOME assistance (including cover letters, maps, schedules, award letters prior and subsequent to this funding agreement, and other submissions in the approved application), and any subsequent amendments to this Agreement.
- (2) "Assistance" or "Grant" means the funds provided under this Agreement.
- (3) "Program" or "Project" means the affordable housing program or project, including the administration thereof, for which assistance is being provided under this Agreement.

B. USE OF HOME FUNDS:

- (1) Self-Help shall perform the projects or tasks related to its allocation of HOME funds according to the schedule and within the budget outlined in Attachment A, entitled, "Scope of Services." Attachment A is hereby made a part of this Agreement.

C. DURATION OF THE AGREEMENT:

The City agrees to provide to Self-Help HOME Investment Partnerships Program ("HOME") Assistance under Title II of the National Affordable Housing Act of 1990 as described in this Agreement. This Agreement will remain in effect until April 15, 2013.

D. SCOPE OF SERVICES:

Project funds will be used for the services as specified in Attachment A.

E. AMOUNT OF ASSISTANCE:

The City shall make available to Self-Help up to the maximum amount of **One Hundred Thirty Eight Thousand Five Hundred (\$138,500.00) Dollars** pursuant to this Agreement. Said funds shall be disbursed by the City to Self-Help for performance of the services specified in Attachment A.

F. OBLIGATIONS OF SELF-HELP

- (1) Self-Help shall comply with all applicable regulations outlined in 24 CFR Part 92, and all applicable lawful requirements of the City, all applicable requirements of the General Statutes of the State of North Carolina and any other applicable statutes, laws and Executive Orders currently or hereafter in force.
- (2) Self-Help shall assume responsibility for: (i) managing the day-to-day operations of its HOME program to assure compliance with program requirements outlined in 24 CFR Part 92; and (ii) taking appropriate action when performance problems arise.
- (3) Self-Help shall take full responsibility for ensuring that housing it has assisted with HOME funds meets the affordability requirements of 24 CFR Part 92.252 or 92.254 as applicable, and agrees to repay the outstanding balance of its HOME funds remaining to the City if the housing does not meet the affordability requirements for the specified time period.
- (4) Self-Help shall spend its total allocation of HOME funds under this Agreement on eligible activities by April 15, 2013.

- (5) Self-Help shall submit a Project Completion report to the City no later than 60 days after the final drawdown request for HOME funds under this Agreement.
- (6) Self-Help shall comply with all applicable uniform administrative requirements as described in 24 CFR Part 92.505.
- (7) Self-Help shall carry out each activity in compliance with all federal laws and regulations described in 24 CFR Subpart H, including the environmental review in 92.352.
- (8) Self-Help shall assume affirmative marketing responsibilities in accordance with 24 CFR Part 92.351.
- (9) Self-Help shall return to the City any unobligated HOME funds on hand at the expiration of the Agreement.
- (10) Self-Help shall be responsible for complying with the provisions of this Agreement even when Self-Help designates a third party or parties to undertake all or any part of the program. All third parties must be bound in writing to the same provisions as required by this Agreement, and any such assignment or contracting of third parties to perform all or any portion of this Agreement's responsibilities shall be approved in writing and in advance by the City's Director of the Department of Community Development ("DDCD").
- (11) Self-Help shall comply with all lawful requirements of the City necessary to insure that the program is carried out in accordance with Self-Help's certifications including the certifications of assumption of environmental and labor standard responsibilities outlined in 24 CFR Part 92.
- (12) The assistance provided under this Agreement shall not be used by Self-Help to pay a third party to lobby the City for funding approval, approval of applications for additional assistance, or any other approval or concurrence of the City required under this Agreement. HOME funds may be used to pay reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitations, if these services are eligible as program costs, and in accordance with Attachment A.
- (13) Self-Help shall reimburse the City for any amount of HOME funds determined by the City to have been improperly expended.
- (14) If applicable, Self-Help shall abide by the conditions prescribed in 24 CFR Part 92.257 for the use of HOME funds by religious organizations.

G. RECORDS AND REPORTS:

- (1) Self-Help shall maintain and make available at reasonable times and places all records, information and reports necessary to assist the City in meeting its internal and federally mandated record keeping and reporting requirements in accordance with 24 CFR Part 92.508. Such records and accounts shall include all property, personnel, and financial records the City and Federal agencies deem necessary to assure a proper accounting for all HOME Program funds.
- (2) Self-Help shall provide the City with information necessary for it to complete the Consolidated Annual Performance and Evaluation Report (“CAPER”) and other reports required by HUD.
- (3) Self-Help shall provide an annual audit report performed in compliance with OMB Circular A-133.
- (4) Self-Help shall allow the City to conduct monitoring and evaluation activities as determined necessary by the City and HUD.
- (5) Self-Help shall keep a fully executed copy of this Agreement and a copy of the HOME regulations on file in their place of business at all times.
- (6) The Self-Help agrees to repay, remit or return to the City any amount of remaining HOME funds provided under this Agreement, if the City determines that Self-Help does not have the capacity to carry out its HOME program on schedule or in a timely manner. The City shall provide a written determination of its finding to Self-Help ten (10) days prior to the request to remit, return or repay the HOME funds.
- (7) Self-Help shall provide any duly authorized representative of the City, the Department of Housing and Urban Development and the Comptroller General of the United States, at all reasonable times, access to and the right to inspect, copy, monitor and examine all of the books, papers, records, and other documents relating to the HOME grant and the fulfillment of this Agreement for a period of five years following the completion of all closeout procedures with respect to HOME funds, and the final settlement and conclusion of all issues arising out of the HOME grant.

H. PAYMENT:

- (1) Self-Help shall request disbursement of HOME funds only for reimbursement of eligible expenditures made or eligible expenses incurred by Self-Help, except where advance payments are explicitly authorized in writing by the City at the sole discretion of the City.

All expenditures and expenses shall be incurred in accordance with the

provisions of the Agreement. Payments shall only be made after Self-Help has presented documentation of expenses that meet City approval. It is expressly understood and agreed by Self-Help that payment by the Grantee will not exceed the maximum sum of **\$138,500.00** for services specified in Attachment A. Self-Help agrees that additional payments of up to **\$50,000.00** to fulfill payment for the services specified in Attachment A are the sole responsibility of Self-Help. Further, Self-Help understands and agrees that any payment made under this Agreement by the City is limited to funds made available under the grant referenced above. The City shall make payments upon receipt of a request for check from Self-Help, documentation of expenditures and any other documentation that the DDCD may reasonably require from Self-Help. All documentation required of Self-Help under this Agreement shall be in such form and substance as is satisfactory to the DDCD. Payments shall be made only for the activities specified in Attachment A. Check requests for reimbursable expenses will be processed by the City for payment no more often than monthly, until all such grant funds have been expended or until this Agreement has expired, whichever shall come first.

- (2) The sum total of Self-Help reimbursement requests during a given year shall not exceed the amount of the agreed upon budget appearing in Attachment A.
- (3) Self-Help shall submit monthly reports to the City within seven (7) business days following the closure of the month for which the activity is being reported. Self-Help shall provide to the City any other information determined by the City to be necessary or appropriate for the proper monitoring of this Agreement. Delays by Self-Help in making any report to the City required by this Agreement may, at the City's sole discretion, result in delays in payment to Self-Help of part or all of Self-Help's request for funds. A delay in making a disbursement by the City to Self-Help does not change the time required of Self-Help to submit reports to the City.

I. CONFLICT OF INTEREST:

- (1) No employee, agent, consultant, officer, elected official or appointed official of the City of Durham who has responsibilities related to the HOME Program or access to information concerning said program shall obtain a financial benefit or interest from any HOME Program activity for themselves or those with whom they have family or business ties during their tenure, and for one year thereafter.
- (2) Self-Help shall make a good faith effort to enforce this provision with regard to its employees and ensure that its employees do not participate in conflicts of interest or self-dealing as defined by applicable HUD regulations and the provisions of this subsection I. Any suspected violations shall be promptly

reported to the DDCD.

J. DEFAULT:

- (1) Self-Help shall have sixty (60) days after receipt of the written notice of default within which to cure such default.
- (2) Self-Help agrees to repay, remit or return to the City any amount of unspent HOME funds provided to Self-Help in the event of a default under the terms of this Agreement.

K. SUSPENSION OR TERMINATION:

- (1) The City may suspend or terminate this Agreement, in whole or in part, if Self-Help materially fails to comply with any term of this Agreement, or with any of the laws, regulations or provisions referenced herein, and as they may be amended from time-to-time during the term of this Agreement.
- (2) In the event there is probable cause to believe Self-Help is in noncompliance with any applicable laws or regulations, the City may withhold HOME funds until such time as Self-Help is found to be in compliance by the City, or is otherwise determined to be in compliance.
- (3) The City shall advise Self-Help in writing of what actions must be taken for resumption of payments, if the non-compliance or breach may be remedied by actions by Self-Help.
- (4) Termination due to adverse environmental impact. This Agreement is conditioned on the City's determination to proceed with, modify or cancel its Grant based on the results of a subsequent environmental review. This Agreement may be terminated by the City or Self-Help at the conclusion of the environmental review process if the results of the review indicate that the project could have a significant adverse impact on the environment, or if preexisting environmental contamination is found, and this impact or contamination cannot be feasibly and cost-effectively eliminated or mitigated.

L. INDEMNIFICATION:

To the fullest extent permitted by law, Self-Help releases the City from, agrees that the City shall not be liable for and agrees to hold the City and its officers, employees and agents harmless against: (a) any and all claims by or on behalf of any person arising in any manner whatsoever from or out of (1) any condition of the Property, (2) the construction, reconstruction,

improvement, use, occupancy, conduct or management of or in any work or anything whatsoever done in or about the Property, (3) any accident, injury or damage occurring in or about the Property, (4) any breach or default by Self-Help of or in any of its obligations hereunder, (5) any environmental contamination of the Property where such liability arises under any applicable federal, state or local statute, rule, or ordinance including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, or (6) any act or omission of Self-Help or any of its agents, contractors, servants, employees or licensees; and (b) any and all costs, counsel fees, expenses, liabilities, obligations, losses or damages incurred in connection with any such claim or any action or proceeding brought thereon. In case any action or proceeding which is brought against the City or any such officer, employee or agent by reason of any such claim, Self-Help, upon notice from the affected party, shall resist or defend such action or proceeding. Subject to the foregoing, the City shall cooperate and join with Self-Help at the expense of Self-Help as may be reasonably required in connection with any action taken or defended by Self-Help. In the event of a conflict between the provisions of this section and any other section of this Agreement, this section shall be deemed to be controlling. Provided, however, Self-Help shall not be required to reimburse the City for costs, liabilities or other expenses arising out of the negligence or intentional misconduct of the City.

N. MISCELLANEOUS PROVISIONS:

- (1) When any notice or consent is required or permitted to be given under the terms of this Agreement or under applicable law, such notice or consent shall be in writing and shall be effective only upon the earlier of (i) actual receipt by the party to whom notice is given or (ii) 48 hours after deposit in registered or certified United States mail. Such notice shall be given by personal delivery or sent by certified mail, return receipt requested, and addressed as follows:

To City:

Director, Department of Community Development
City of Durham
101 City Hall Plaza
Durham, NC 27701
919-560-4570
919-560-4090 fax

To Grantee:

Director of Residential Development
Center for Community Self-Help
301 W. Main Street
Durham, NC 27701
919-956-4476
919-956-4605 fax

IN WITNESS WHEREOF, the City of Durham and the Center for Community Self-Help have caused this Grant Agreement to be duly executed all as of the day and year first above written.

City of Durham

By: _____

Thomas J. Bonfield, City Manager

ATTEST:

City of Durham

City Clerk

Center for Community Self-Help

BY: _____

Stephanie Barnes-Simms, President

ATTEST:

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 its City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk. This the _____ day of _____, 2011.

My Commission Expires: _____

Notary Public

**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 of the Center for Community Self-Help, 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 President, whose name is Stephanie Barnes-Simms, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the _____ day of _____, 2011.

My Commission Expires: _____

Notary Public

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

City's Finance Officer

Date

ATTACHMENT A

Scope of Services

Progress Payments in each phase shall not exceed the following amounts:

1) Research & Site Analysis

Research and a full audit of available information pertaining to the development area as specified in Attachment "B", map of Phase Phase 1, including but not limited to the owner-approved Design Guidelines and Durham Regulatory Ordinances, will be performed. Based on available GIS data and information provided by the owner, Designer will provide an in-depth inventory and analysis of the site to include, but not be limited to, the following: existing conditions, zoning and potential zoning options, Unified Development Ordinance requirements, submittals, approvals and permitting, utility infrastructure, stormwater considerations, topography, vegetation, slopes, and Lot buildability. This information will be synthesized into a report to be used for further study and concepts.

Fee for Service 1: \$9,500.00

2) Building Programming and Evaluations of Existing Houses

Provide evaluations of ten existing houses to determine suitability for rehabilitation. Facilitate meetings with local Realtors and with Self-Help and partners to determine building program and design parameters and present design concepts.

Fee for Service 2: \$11,000.00

3) Detailed Plan

While it is understood that the existing street pattern will remain along with the majority of existing lots, the architect to be hired by Self-Help will develop a detailed plan that will address the following: sidewalks, street trees, gateway locations, landscape and signage, gateway entrances, potential stormwater treatment locations, potential lot reconfigurations based on architecture, phasing plans and presentation graphics. Renderings shall include streetscape, house illustrations, plans, sections and elevations as required for a minimum of six single family detached home floorplans and three townhome/multifamily floorplans

Fee for Service 3: \$33,500.00

4) Neighborhood Meetings

Organize and facilitate one or two neighborhood meetings with stakeholders to present master plan and to explain the development process and schedules. This

includes presenting a preliminary development plan at a major public meeting. Included is a \$500.00 allowance for special color printing, needed for presentation materials.

Fee for Service 4: \$10,000.00

5) Housing Design and Construction Documents

Provide construction drawings, including architectural and engineering documents, for a minimum of six single family home designs and three townhome and /or multifamily designs, suitable for construction on 45 parcels which are part of the Project.

Schematic Design	20,000.00
Design Development	20,000.00
Construction Documents	40,000.00
Cost Estimating	5,000.00

Fee for Service 5: \$85,000.00

6) Housing Permitting and Bidding

Creation of building specifications in preparation of receiving bids on construction of the six single family home designs. Coordination of bid process to include pre-bid meeting, receipt of bids, review and analysis of bids and recommendation of general contractor. Architect will work with approved general contractor to obtain building permit.

Fee for Service 6: \$8,000.00

7) Construction Documents

Construction drawings and permitting documents to include: Streetscape Amenity Package and Utility Package. Individual Residential Lot Landscape and Grading Plans will be provided for each redeveloped lot. Included is coordination of government approval of construction documents. Provide cost estimation of infrastructure work for the owner's use.

Fee for Service 7: \$28,000.00

8) Infrastructure Bid Assistance

Assistance with bidding and award phase of the project infrastructure work. This includes attending a pre-bid conference, bid opening, and the contract award. (Two meetings included).

Fee for Service 8: \$3,500.00

Total Fee \$188,500.00