

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: March 2, 2009

SUBJECT: Habitat for Humanity HOME Fund Contract

ATTACHMENTS:

1. Letter from City of Asheville
2. Proposed Contract with Habitat for Humanity

SUMMARY OF REQUEST:

In FY 2008-2009, Habitat for Humanity applied for, and received, HOME funding for the Shuey Knolls project. They applied for this funding as a subrecipient agency of Henderson County, as approved by the Board of Commissioners at the January 17, 2008 meeting.

The City of Asheville administers the HOME funds, and during a recent review of the project determined a need for Henderson County to execute an administrative services contract with Habitat for Humanity, as a subrecipient agency. Habitat for Humanity will continue to own and manage the development, and submit draw requests for this project directly to the City of Asheville for reimbursement. The HOME program requires no County funding, and has no monetary impact.

BOARD ACTION REQUESTED:

The Board of Commissioners is requested to authorize the Chairman to execute the proposed contract as attached.

Suggested Motion:

I move the Board authorize the Chairman to execute the proposed contract as attached.

**AGREEMENT FOR THE EXECUTION OF A
HOME INVESTMENT PARTNERSHIPS PROGRAM**

This Agreement, made and entered into this 2nd day of March, 2009, by and between the **County of Henderson**, a body politic and corporate, under the laws of the State of North Carolina (hereinafter "County"), and **Habitat for Humanity** (hereinafter "Agency").

-W -I -T -N -E -S S- E- T- H- :

WHEREAS, the County has entered into an Agreement for a Home Investment Partnerships Program (hereinafter "Funding Agreement") with the City of Asheville (hereinafter the "City") to utilize the U. S. Department of Housing and Urban Development (hereinafter "HUD") funds in Henderson County;

WHEREAS, it is the purpose of this agreement to effect a specified portion of the program approved by the Funding Agreement in accordance with the policies expressed by and declared in Title II of the National Affordable Housing Act of 1990, as amended (hereinafter "Act"); and

WHEREAS, pursuant to said purpose the Agency is undertaking certain activities and desires to engage the County to render certain assistance in such undertakings;

NOW, THEREFORE, for valuable consideration and mutual promises exchanged between the County and the Agency hereto, it is agreed as follows:

A. SCOPE OF SERVICES:

1. The services to be performed pursuant to this Agreement (hereinafter "Project"), shall be those specified in the Scope of Services (attached hereto as Attachment A) and under the Project Title: **"Henderson County Habitat for Humanity Shuey Knolls – Phase II & III"**.
2. The County may, from time to time, request changes in the scope of service of the Agency to be performed hereunder. Such changes, including any increase or decrease in the amount of the Agency's compensation which is mutually agreed upon by and between the County and the Agency, shall be incorporated in written amendments to this Agreement.

B. DURATION OF AGREEMENT:

This Agreement shall be effective as of July 1, 2008 and shall remain in effect during the period of affordability required by the Act under 24 CFR Part 92.254.

C. TERMS AND CONDITIONS:

1. The Agency shall enforce this agreement through a promissory note and deed of trust on all real properties receiving an investment of HOME funds which shall require compliance with all applicable HOME Program requirements. This Agreement shall be considered breached if the Agency materially fails to comply with any term in this Agreement or fails to perform satisfactorily on the Project as incorporated or amended, and shall result in the termination of this Agreement and the recapture of all HOME funds disbursed to the Agency.
2. Funds will be dispersed to the Agency according to the agreement and will be received directly from the City of Asheville.

3. The Agency shall be responsible for fulfilling all the responsibilities and objectives established for HOME funds.
4. The Agency shall assume responsibility for managing the day-to-day operations of its HOME program, to assure compliance with program requirements outlined in 24 CFR Part 92, and for taking appropriate action when performance problems arise. When appropriate the Agency must notify the County of performance problems with three (3) business days of identifying any problems.
5. The Agency shall take full responsibility for ensuring that housing it has assisted with HOME funds meets the affordability and resale requirements of 24 CFR 92.254 as applicable, and shall repay its award of HOME funds in full if the housing does not meet the affordability requirements for the specified time period. Each review must include an annual on-site inspection to determine compliance with housing codes and the HOME Program requirements. These inspections shall be conducted for each unit in a project during the project's period of affordability to ensure all its activities and all homeowners receiving HOME funds shall comply with the terms of 24 CFR Part 92. Where appropriate, the Agency shall conduct a follow-up review on the properties no less than annually on-site to determine compliance with housing codes and HOME program requirements. These inspections shall be conducted annually for the project's period of affordability. The Agency must conduct an audit of funded housing projects to ensure these requirements and provide Henderson County with this information in the Project Completion Report concurrent with the final draw down. These annual inspections must be done until the time of close-out at which point the housing will only be subject to any local, state or federal regulations.
6. The Agency shall require all owners of housing assisted with HOME funds to maintain the housing in compliance with applicable Housing Quality Standards and local housing code requirements for the duration of the agreement. The Agency must educate HOME fund recipients of the Standard and local housing codes prior to the expenditure of HOME funds and where possible must provide assistance and education to recipients to enable them to meet these standards.
7. The County shall hold the Agency responsible for complying with the provisions of this agreement. The Agency shall not be permitted to assign this Agreement or designate a third party to undertake any part of this program without the express written permission of the County. In such an instance where a third party is permitted, said third party must be bound in writing to the same provisions as required in this Agreement.
8. None of the following or their immediate family members, during the tenure of the subject person or for one year thereafter, shall have any direct or indirect financial interest in any contract, subcontract or the proceeds thereof for work to be performed in connection with the program assisted under this agreement: employees, agents, or officials of the Agency, including members of the governing body, who exercise any function or responsibility with respect to the program. The same prohibition shall be incorporated in all such contracts and subcontracts.
9. The assistance provided under this agreement shall not be used by the Agency to pay a third party to lobby the United States government for funding approval, approval of applications for additional assistance, or any other approval or concurrence of HUD required under this agreement. However, HOME funds may be used to pay reasonable fees for services that are eligible as a program cost.
10. The Agency shall complete and comply with all assurances, certifications, and agreements required under federal law to accept and use federal HOME funds including

but not limited to all assurances, certifications, and agreements the City required of the County in their agreement regarding HOME funds.

11. The Agency shall allow the County to carry out monitoring and evaluation activities as determined necessary by the County, City, and HUD.
12. In the event of termination, all property and finished or unfinished documents, data, studies, and reports purchased or prepared by the Agency under this Agreement shall, at the option of the County, become the property of the County.

D. FUNDING AND PAYMENT:

1. The County shall not be financially obligated to the Agency or responsible for the distribution of any HOME funds to the Agency. The Agency shall contract with the City directly regarding the disbursement of funds.

E. RECORDS AND REPORTS:

1. The Agency shall maintain and shall make available at reasonable times and places to the County such records and accounts, including property, personnel, and financial records, as are deemed necessary by the County and/or State and federal agencies in order to assure a proper accounting for all Project funds.
2. The Agency shall provide any duly authorized County representative, representative of the City, representative of HUD 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 funds and the fulfillment of this agreement for a period of three (3) years following the completion of all close-out procedures respecting HOME funds, and the final settlement and conclusion of all issues arising out of the HOME loan.
3. The Agency shall provide a monthly report to the City and County which notes accomplishments, beneficiaries, problems encountered and changes in work schedule and any other information needed by the County to complete the Annual Performance Report and other reports required by HUD. This monthly report shall also include an accounting of all program income received and/or expended during the month and year to date.
4. The Agency shall provide an Annual Audit Report performed in compliance with Office of Management and Budget Circular A-128.

F. FINANCIAL ACCOUNTING:

1. The Agency shall establish and maintain fiscal and accounting records in accordance with generally accepted accounting principles and practices.
2. The Agency shall not commingle accounts to an extent that prevents the accounting and auditing of the funds provided hereunder: Provided, however, the Agency may supplement the funds provided hereunder from other fund sources.
3. Funds provided hereunder are exclusively for the purposes of this Agreement under the terms and conditions of the Agreement, and the Agency shall not temporarily or permanently shift such funds to other programs or for other purposes for any reason.

G. INSURANCE AND LIABILITY:

1. Work to be performed as provided herein shall be done by the Agency as an Independent Contractor. The County shall not be liable for claims for damages or losses arising out of the performance of this Agreement by the Agency, its employees, officers or agents and the Agency shall indemnify and hold harmless the County, its officers, agents and employees from all such claims arising under this agreement.

H. RESIDENT ECONOMIC OPPORTUNITY:

1. The Agency shall encourage opportunities for residents in the project area for training, employment and business opportunities.
2. When qualified applicants are available, preference shall be given to residents of the project area in filling all training, business opportunities and jobs generated by the Project even where employment results outside the geographic boundary of the project area.

I. PUBLICITY:

The Agency shall make every effort in its publicity and in other ways, to fully inform the public concerning the Project. Any publicity given to the Project must recognize the Asheville Regional Housing Consortium as the sponsor and the Project being funded by HUD through the HOME Investment Partnerships Program. The County will, in all publicity originated by it concerning the Project, recognize the Agency as the Agency responsible for carrying out the Project.

J. SUSPENSION OR TERMINATION FOR CAUSE:

1. The County, upon written notice to the Agency, may suspend or terminate this Agreement and the payment of HOME funds to the Agency in whole or in part for cause which shall include, but not limited to, the following:
 - (a) Ineffective or improper use of Grant funds;
 - (b) Failure to comply with the terms and conditions of this Agreement;
 - (c) Submission to the County of reports which are incorrect or incomplete in any material respect;
 - (d) Suspension of the Grant from HUD to the County in whole or part for any reason.
2. Termination of this Agreement by either party must be in writing and shall extinguish the contractual relationship between the Agency and the County regarding the use of HOME funds.

K. ASSIGNABILITY:

This agreement is expressly non-assignable without the prior written consent and approval of the County; nor may the Project be continued by a successor to the Agency herein named without the prior written consent of the County. Any work or services subcontracted hereunder shall be specified by written contract or agreement.

L. DOCUMENTS OF INCORPORATION:

This Agreement is expressly made subject to all Attachments hereto, to all of the attachments, provisions, requirements; federal, state and local laws, rules and regulations of the June 30, 2004,

Asheville Regional Housing Consortium Joint Cooperation Agreement and of the Funding Agreement between the County and the City and to any and all requirements, whether federal, state or local, verbal or written, placed upon the City as lead entity of the Asheville Regional Housing Consortium or placed on the use of the funds upon the City or County by HUD. All of the foregoing are hereby made a part of this Agreement and incorporated herein by reference. Examples of documents incorporated herein by reference include, but are not limited to, those set forth in Attachment C.

M. MISCELLANEOUS PROVISIONS:

1. The singular of any term used in this Agreement shall include the plural, and the masculine shall include the feminine, and vice versa.
2. A signed copy of this Agreement shall be considered as an original.
3. Service of all notices under this Agreement shall be sufficient if given personally, by registered or certified mail, returned receipt requested, and mailed to the party involved at the address and to the attention of the person set forth below, or to such other person or address as said party may provide in writing from time to time. Any such notice mailed to such address shall be effective upon the date received as shown by the returned receipt or otherwise:

COUNTY OF HENDERSON
Steve Wyatt, County Manager
Henderson County
1 Historic Courthouse Square #2
Hendersonville, NC 28792

HABITAT FOR HUMANITY
Michael Tate, Board President
Habitat for Humanity
PO Box 2564
Hendersonville, NC 28793-2564

IN WITNESS WHEREOF, each party has caused this Agreement to be duly executed on this the 2nd day of March, 2009 and if corporate, by their duly authorized representative.

FOR HENDERSON COUNTY:

WILLIAM MOYER, Chairman

[Seal]

ELIZABETH CORN, Clerk to the Board

FOR HABITAT FOR HUMANITY:

Michael Tate, Board President
Habitat for Humanity

ATTEST:

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, Notary Public of the County and State aforesaid certify that **ELIZABETH CORN**, personally came before me this day and acknowledged that she is the Clerk for the Henderson County Board of Commissioners, a body politic and corporate, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by the Chairman of the Board of Commissioners and attested by herself as its Clerk.

WITNESS my hand and notarial seal this _____ day of _____, 200__.

Notary Public
Print or type name: _____
My Commission Expires: _____

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, Notary Public of the County and State aforesaid certify that _____, personally came before me this day and acknowledged that he is the Board President of **Habitat for Humanity**, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by himself as its President.

WITNESS my hand and notarial seal this _____ day of _____, 200__.

Notary Public
Print or type name: _____
My Commission Expires: _____

This document has been pre-audited in the manner required by the North Carolina Government Budget and Fiscal Control Act.

J. Carey McLelland, Finance Director

Date:

ATTACHMENT A

HENDERSON COUNTY HABITAT FOR HUMANITY NEW CONSTRUCTION HOUSING AT SHUEY KNOLLS 2008 SCOPE OF SERVICES PHASE II & III

Henderson County will contract with Henderson County Habitat for Humanity (Habitat) to carry out the New Construction Housing program at Shuey Knolls and will make the following scope of services, timetable, and budget a part of that contract.

1. Habitat will utilize \$107,000 of 2008 HOME funds for infrastructure construction and road construction costs at Shuey Knolls Subdivision in Henderson County.
2. Habitat will construct sixteen (16) housing units to be occupied by families with incomes between 31 and 60 percent of the Annual Median Income for Henderson County. These housing units will be constructed on lots in both Phase II & III. These units are in addition to the twenty (20) units committed under the 2005, 2006 and 2007 HOME funding agreements. No Asheville Regional Housing Consortium HOME funds will be expended for housing construction. HOME funds will be used, to the greatest extent possible, to (1) complete construction of the road, and, secondly, (2) pay for septic systems, building permits and engineering costs associated with the housing units.
3. Habitat will complete construction of the sixteen (16) HOME-assisted units at Shuey Knolls by September 2009, using homebuyer sweat equity, volunteer labor, and other financial and in-kind resources.
4. Using standard underwriting criteria, Habitat will ensure that first mortgages will be maximized according to each homeowner's financial capacity. If there is a financing gap between the first mortgage and the purchase price, Habitat will use HOME funds to fill the shortfall. HOME funds will be secured as a second mortgage, with principal deferred. Interest rate may be as low as zero percent, if necessary. However, under no circumstances will the HOME investment, during construction or as a second mortgage, be less than \$1,000 per unit or exceed the maximum per-unit subsidy amount established at Part 92.250(a) of the HOME Final Rule. The City of Asheville Community Development Division will provide these amounts, as needed.
5. In the event all HOME funds invested during infrastructure construction and lot development are not used in mortgages, Habitat may, at Henderson County's discretion, retain the balance of funds subject to the provisions of Sections C.4 and F.3 of this funding agreement.
6. No later than 20 days after occupancy of each completed housing unit, Habitat will submit to the City of Asheville Community Development Division a HOME Completion Report. Habitat will continue this procedure until all 16 housing units are completed and occupied. The City will retain a minimum of \$1,000 of HOME program funds until all Completion Reports are satisfactorily submitted.
7. In determining the qualifying income of homebuyers, Habitat will utilize the annual income as defined in 24 CFR Part 5. This is the annual income used by such Federal programs as Section 8, public housing and the Low Income Housing Tax Credit Program.
8. Habitat will ensure that all HOME-assisted units will remain as affordable owner-occupied housing units for at least 20 years, pursuant to deed restrictions, covenants running with the land, or other mechanisms approved by HUD that will ensure that these properties will remain affordable.

9. Habitat will carry out the following additional work tasks:

- a. Maintain all casefiles;
- b. Ensure homeowners document applicable amount of sweat equity during construction phase;
- c. Provide Asheville Community Development Division with copies of a Promissory Note and Deed of Trust for each occupied house;
- d. Provide Asheville Community Development Division with details of each loan closed so that match credits can be calculated;
- e. Complete all required paperwork and reports, perform final inspections, and ensure a satisfactory completed project;
- f. Report monthly to Henderson County and the City of Asheville on program progress.
- g. Submit Davis -Bacon wage documentation if necessary.

10. In accepting the Asheville Regional Housing Consortium's HOME program funds, Habitat for Humanity hereby agrees to the following time schedule:

<u>Item</u>	<u>Schedule</u>
1. Complete road construction for Phase I11	Dec 2008
2. Expend no less than 100 percent of 2007 & 2008 HOME funds	Jan 2009
3. Complete construction and occupancy of first 5 houses of Phase I1	Jun 2008
4. Submit Completion Reports and loan information for below market interest rate calculation for match credit for first 6 houses	Aug 2008
5. Complete construction and occupancy of second 7 houses of Phase I1 & I11	Jan 2009
6. Submit Completion Reports and loan information for below market interest rate calculation for match credit for second 6 houses	Feb 2009
7. Complete construction and occupancy of third 6 houses of Phase I11	Sep 2009
8. Submit Completion Reports and loan information for below market interest rate calculation for match credit for third 6 houses	Oct 2009

ATTACHMENT B

**HENDERSON COUNTY HABITAT FOR HUMANITY
NEW CONSTRUCTION HOUSING AT SHUEY KNOLLS
FY 2008-09 PROJECT BUDGET
PHASE II & III**

Revenues	Total	HOME
HOME Program 2007 (Balance of \$12,195.87as of 7/17/08)	56,920	56,920
HOME Program 2008	107,000	107,000
N. C. Housing Finance Agency	300,000	
	36,000	
<i>Federal Home Loan Bank</i>		
Support from Public(*)	140,693	
Recycle of Mortgages(*)	217,695	
Resale Store(*)	300,000	
SHOP Funds	56,792	
Sweat Equity and Volunteer Labor	35,600	
CBDG Grant	221,500	
Total Revenues	<u>1,472,200</u>	<u>163,920</u>
Expenditures		
Site Improvements/Infrastructure Construction	391,200	163,920
Housing Construction (building materials, site prep construction, etc.)	720,000	
Engineer/Architect Fees	25,000	
Construction Overhead	240,000	
Land Acquisition	96,000	
Total Expenditures	<u>1,472,200</u>	<u>163,920</u>

(*) Matching funds sources

Additional match to be reported:

- Volunteer labor at \$10/hour
- Sweat equity at \$10/hour
- Donated materials and professional services
- Net present value of below market interest rate loans made by Habitat to homeowners (to be calculated by City of Asheville)

ATTACHMENT C

CERTIFICATIONS

The following are made a part of this contract:

1. Office of Management and Budget Circular A-87 as applied to cost principles for State and local governments;
2. 24 CFR Part 85 as applied to Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments;
3. Title VI of the Civil Rights Act of 1964;
4. Title VIII of the Civil Rights Act of 1968, known as the Fair Housing Act;
5. Drug Free Workplace Act;
6. Provisions of 24 Code of Federal Regulations Part 92.357 as related to debarred, suspended or ineligible contractors;
7. National Historic Preservation Act of 1966;
8. 24 Code of Federal Regulations Part 92 containing regulations for the HOME Investment Partnerships Program;
9. Furthering fair housing; and Executive Order 1 1063;
10. Section 109 of the Housing and Community Development Act of 1974 (the Act), as amended; and regulations issued pursuant thereto regarding prohibited discriminatory actions;
11. Requirements as set forth in 24 CFR Part 92.354;
12. The National Environmental Policy Act, as related to environmental standards and regulations contained in 24 CFR Part 58;
13. Section 202(a) of the Flood Disaster Protection Act of 1973, as amended, relating to the National Flood Insurance Program in accordance with 44 CFR Parts 59 - 79 and 24 CFR Part 92.358;
14. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and HUD implementing regulations in 24 CFR Part 92.353;
15. Executive Order 11246, as amended by Executive Order 112086 and regulations issued pursuant thereto (41 CFR Chapter 60), relating to employment and contracting opportunities;
16. Section 401 (b) of the Lead-Based Paint Poisoning Prevention Act and implementing regulations contained in 24 CFR Part 35, Subpart B and 24 CFR 92.355 prohibiting the use of lead-based paint in residential structures;
17. The prohibition against employing, awarding of contracts to, or engaging the services of any contractor or subcontractor debarred, suspended or ineligible for federal -funds under 24 CFR Part 24 and 24 CFR Part 92.357;

18. The conflict of interest provisions contained in 24 CFR Part 85.36 and 24 CFR Part 92.356 in the procurement of supplies, equipment, construction and services;
19. Executive Order 12372 concerning intergovernmental review of federal programs, including implementing regulations contained in 24 CFR Part 52;
20. Section 3 of the Housing and Urban Development Act of 1968, as amended, concerning Affirmative Action in the provision of training, employment and business opportunities;
21. Americans with Disabilities Act (ADA).