

NORTH CAROLINA
ORANGE COUNTY

2002-2003
PERFORMANCE AGREEMENT

THIS AGREEMENT, made and entered into the 12th day of February 2003 by and between the TOWN OF CHAPEL HILL, a North Carolina Municipal Corporation, 306 North Columbia Street, Chapel Hill, North Carolina, hereinafter referred to as "Town" and HABITAT FOR HUMANITY OF ORANGE COUNTY, P.O. Box 459, Hillsborough, North Carolina, 27278, hereinafter referred to as "Habitat."

WITNESSETH

WHEREAS, the Town has made commitments to the promotion of affordable housing opportunities for low- and moderate-income residents in its Consolidated Plan; and

WHEREAS, Habitat works to create owner-occupied housing for low- and moderate-income families; and

WHEREAS, by Resolution 2002-11-25/R-4b, the Town Council budgeted \$50,000 from the Housing Loan Trust Fund to Habitat for an extended option on the Sunrise Road Property or a loan to assist with the acquisition of the 16-acre parcel of property; and

WHEREAS, by Ordinance 2002-11-25/O-4, the Town Council budgeted \$50,000 from the Housing Loan Trust Fund for this purpose; and

NOW THEREFORE, in consideration of the above and mutual covenants and conditions hereinafter set forth, the Town and Habitat agree as follows:

1. Town Support

The Town will provide \$50,000 of from the Housing Loan Trust Fund to Habitat for either an extended option on the Sunrise Road property or a loan to assist with the acquisition of the 16-acre parcel of property.

The Town does not obligate itself to provide any other support to Habitat this fiscal year or continued support in succeeding years. The Town further does not obligate itself or make any comment whatsoever with respect to its position in the future as to any development applications for this property and expressly reserves all its legislative and quasi-judicial discretion and authority as to any such applications that may be submitted for the development of this site.

2. Time of Performance

Habitat shall acquire the property by February 28, 2003.

3. Terms

Habitat may have use of this loan for a period of up to two years from the date of this Performance Agreement. On Feb. 28, ~~2004~~, 2005, the loan will be repaid in full to the Town of Chapel Hill.

The loan may be extended in whole or in part for additional periods upon written request to and agreement by the Town Manager. The Town Manager may approve of the request if it conforms to Habitat's plans for developing this property, or the Manager may refer the request to the Town Council, at his discretion.

There will be no interest charged on the loan.

The Town's loan is for the purpose of acquisition of property. Subordination of this loan is subject to approval by the Town Manager.

4. Documentation

Prior to purchase of the property, Habitat will provide the Town for its approval the closing statement for the acquisition of the property. Habitat shall provide Promissory Notes and Deeds of Trust to the Town for \$50,000 as security for the Town's investment as part of the closing on the property.

5. Financial Records

Habitat agrees to allow the Town to inspect its financial books and records upon reasonable notice during normal working hours. Habitat shall submit a copy of its annual audit to the Town.

6. Work Statement

Habitat agrees to provide these services as described in the Work Statement attached hereto and incorporated herein by reference and to maintain a high level of professionalism in the provision of these services.

7. Termination for Convenience or Cause

Either the Town or Habitat may terminate this contract at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination. In the event of any

termination for convenience, all unfinished documents, data, reports, or other materials prepared by Habitat under this Agreement shall, at the option of the Town, become the property of the Town and Habitat shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

In the event that Habitat shall cease to exist as an organization or shall enter bankruptcy proceedings, or be declared insolvent, or liquidate all or substantially all of its assets, or shall significantly reduce its services during the term of this Agreement, or in the event that Habitat shall fail to render a satisfactory accounting as provided herein, then and in that event the Town may terminate this Agreement, and may require Habitat to return all payments already made to it by the Town for services which have not been provided or for which no satisfactory accounting has been rendered.

8. Nondiscrimination

Habitat will not discriminate against any employee, applicant for employment, or beneficiary of program services because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age marital/familial status, affectional preference, or status with regard to public assistance. Habitat will take affirmative action to ensure that all employment and beneficiary selection practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Habitat agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

9. Severability

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

IN WITNESS WHEREOF, the parties hereunto cause this Agreement to be executed in their respective names.

This the 12th day of February, 2002.

TOWN OF CHAPEL HILL
A Municipal Corporation

HABITAT FOR HUMANITY OF
ORANGE

BY: W. Calvin Horton
Town Manager

By: Rubel A. Kiri
Chair of the Board



Jay A. Smith
Town Clerk (Seal)
2-26-03

Attest: Susan Lury
Executive Director (Seal)

Witnessed as to form: Ralph D. Karpino
Town Attorney

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

James M. Baker
Town Finance Director

R. S. Weldon
Planning Director

WORK STATEMENT

1. The Town will provide \$50,000 to Habitat to purchase a 16-acre lot located on Sunrise Road (Tax Map Number 7.17..22). Habitat will purchase the property in accordance with the attached proposal dated October 31, 2002.
2. Prior to acquiring the property, Habitat will provide the Town with a closing statement for review by the Town Attorney.
3. Habitat will execute Promissory Note and Deed of Trust to the Town for \$50,000.

