

FINANCIAL ASSISTANCE CONTRACT

2010-2011

Between

DURHAM'S PARTNERSHIP FOR CHILDREN

And

(LEGAL NAME OF CONTRACTOR)

FEDERAL TAX ID # _____

1. Parties to the Contract:

This Contract is hereby entered into by and between the **(Local Partnership Name)**, (the "Local Partnership") and **(Direct Service Provider Name)**, (the "Contractor") (referred to collectively as the "Parties").

2. Effective Period:

This Contract shall be effective on **July 1, 2010** and shall terminate on **June 30, 2011**.

3. Independent Contractor:

The Contractor is and shall be deemed to be an independent contractor in the performance of this Contract and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Contractor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this Contract. Such employees shall not be employees of, or have any individual contractual relationship with, the Local Partnership.

4. Subcontracting:

The Contractor shall not subcontract any of the work contemplated under this Contract without prior written approval from the Local Partnership. Any approved subcontract shall be subject to all conditions of this Contract. The Local Partnership shall not be obligated to pay for work performed by any unapproved subcontractor. The Contractor shall be responsible for the performance of all of its subcontractors.

5. Assignment:

No assignment of the Contractor's obligations or the Contractor's right to receive payment hereunder shall be permitted.

6. Beneficiaries:

Except as herein specifically provided otherwise, this Contract shall inure to the benefit of and be binding upon the Parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, shall be strictly reserved to the Local Partnership and the named Contractor. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Local Partnership and Contractor that any such person or entity, other than the Local Partnership or the Contractor, receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.

7. Key Personnel:

The Contractor shall not replace any of the key personnel assigned to the performance of this Contract without written approval of the Local Partnership. The individuals designated as “key personnel” for purposes of this Contract are those specified the Contractor’s proposal, Pre-Contracting Information Form and such others as the Parties may agree.

8. Indemnification:

The Contractor agrees to indemnify and hold harmless the State of North Carolina (the “State”), the Division of Child Development of the North Carolina Department of Health and Human Services (the “Division”), The North Carolina Partnership for Children, Inc. (“NCPC”), the Local Partnership and any of their officers, agents and employees, from any claims of third parties arising out of any act or omission of the Contractor in connection with the performance of this Contract.

This Section shall not apply to state agencies.

9. Contract Administrators:

All notices permitted or required to be given by one Party to the other and all questions about the Contract from one Party to the other shall be addressed and delivered to the other Party’s Contract Administrator. The name, post office address, street address, telephone number, fax number, and email address of the Parties’ respective initial Contract Administrators are set out below. Either Party may change the name, post office address, street address, telephone number, fax number, or email address of its Contract Administrator by giving timely written notice to the other Party.

For the Local Partnership:

Marsha Basloe, Executive Director
Durham’s Partnership for Children
1201 S. Briggs Avenue, Suite 210
Durham, NC 27703
Telephone: 919-403-6960 Fax: 919-403-6963
Email: marsha@dpfc.ne

For the Contractor:

(Name & Title)
(Name of Direct Service Provider)
(Street Address)
(City), NC (Zip Code)
Telephone: Fax:
Email:

10. Choice of Law:

The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the Parties to this Contract, are governed by the laws of North Carolina. The Contractor, by signing this Contract, agrees and submits, solely for matters concerning this Contract, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be Durham County, North Carolina. The place of this Contract, and all transactions and agreements relating to it, and their situs and forum, shall be Durham County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

11. Precedence Among Contract Documents:

This Contract and any documents incorporated herein by reference represent the entire agreement between the Parties and supersede all prior oral or written statements or agreements. In the event of a conflict between or among the terms in the Contract Documents, the terms in the Contract Document with the highest relative precedence shall prevail. The Contract Documents include this Contract, any amendments thereto, and the Attachments. The Contract Documents have the highest precedence, followed by the Contractor’s proposal. If there are multiple Contract Amendments, the most recent amendment shall have the highest precedence and the oldest amendment shall have the lowest precedence.

12. Survival of Promises:

All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the Contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statutes of limitation.

13. Availability of Funds:

The Parties to this Contract agree and understand that the payment of the sums specified in this Contract is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the Local Partnership. In the event funds are unavailable, the Local Partnership may terminate this Contract by giving written notice to the Contractor specifying the effective date of termination.

14. Authorized Use of Funds:

The Contractor shall use or expend the funds provided by this Contract only for the purposes for which they were appropriated by the North Carolina General Assembly and as defined in the Early Childhood legislation. Further, the funds provided by the Local Partnership shall be used by the Contractor only for the purposes and activities specified in Attachment I, which is attached hereto; any amendments or additions to Attachment I; and in the Contractor's proposal, which is incorporated by reference as if fully set forth herein.

15. Responsibilities of the Local Partnership:

The Local Partnership shall perform the following:

- A. Reimburse the Contractor for its allowable costs of services incurred in providing the activities described in Attachment I in accordance with the approved budget in Attachment II and subsequent amendments to these Attachments;
- B. Perform on-site financial and programmatic monitoring of the Contractor for compliance with the terms of this Contract; and
- C. Specify reports and other deliverables required from the Contractor.

16. Responsibilities of the Contractor:

The Contractor shall perform the following:

- A. Provide the services described in Attachment I in accordance with the terms of this Contract and in accordance with the approved budget in Attachment II; and in compliance with the Smart Start Cost Principles in Attachment III; and in compliance with the Communications Standards in Attachment IV and subsequent amendments to the Attachments and in the project proposal submitted by the Contractor which is incorporated herein by reference as if fully set forth herein. Any portion of payment under this Contract not used for these purposes must revert to the Local Partnership and thereafter to the funding source as appropriate. Any condition or purpose set forth in this Contract shall take precedence over any conflicting provision in the proposal submitted by the Contractor.
- B. Receive approval from the Local Partnership of any activity changes by the Contractor prior to implementation. Budget amendments must also receive advance approval from the Local Partnership.

- C. Report all expenditures on the cash basis of accounting. The Contractor will submit to the Local Partnership, in such form and by such date as specified by the Local Partnership, a financial status report for each activity in order to claim reimbursement for allowable costs incurred under the Contract.

The certified expenditure report must be submitted no less frequently than **monthly** to the Local Partnership.

- D. Make available all records, including general and subsidiary ledgers, reports, vouchers, books, program documentation, correspondence, or other documentation or evidence at reasonable times for review, inspection or audit by duly authorized officials of the Local Partnership, NCPC, the Division, or the North Carolina Office of State Auditor or applicable federal agencies. The Contractor agrees that the Local Partnership or its agent has the right to audit the records of the Contractor pertaining to this Contract both during performance and after completion.
- E. Submit to the Local Partnership any other plans, reports, documents or other products that the Local Partnership may require in the form specified by the Local Partnership.
- F. Attend scheduled meetings with the Local Partnership and/or NCPC as requested.
- G. Use Program Income earned under this Contract, with written permission of the Local Partnership, only to enhance the activities performed under this Contract or to decrease the cost to the Local Partnership of performing those activities. Program income includes, but is not limited to, income from services rendered, the use or rental of personal property acquired with State funds, sales of commodities acquired with State funds, and interest earnings on State-funded deposits.
- H. Submit to the Local Partnership with the final report of expenditures, in such form as specified by the Local Partnership, an accounting of all program income earned and expended.
- I. Publicize the activities performed under this Contract as being funded by the Local Partnership and Smart Start.
- J. Maximize the use of in-kind (volunteers, goods, services, facilities) and cash contributions, maintaining written documentation of cash and in-kind contributions, and quantify and report to the Local Partnership on a quarterly basis (or as required by the Local Partnership) these contributions and any other direct or indirect funding the Local Partnership funds have leveraged.
- K. Report suspected child abuse, neglect, or dependency as defined in N.C.G.S. §7B-101.
- L. Ensure that no funds from this Contract will be used to carry on propaganda or otherwise to attempt to influence legislation, to influence the outcome of any public election, or to carry on directly or indirectly any voter registration drive.
- M. Ensure adherence to N.C.G.S. §143B-168.10.-143B-168.16. and as modified by 2010 Session Law.
- N. Participate in the Local Partnership's evaluation process and develop measurable outcomes for evaluating the funded activities.
- O. Ensure that this Contract and all referenced attachments and subsequent amendments thereto have been reviewed.

17. Compliance with Cost Principles:

The Contractor will not be reimbursed for expenditures incurred under this Contract that do not comply with the Smart Start Cost Principles, which are incorporated herein as Attachment III, and North Carolina State cost principles, as applicable.

18. Amount of Reimbursement:

The Local Partnership shall reimburse the Contractor in the manner and in the amount specified in the Contract Documents. The amount paid by the Local Partnership for provision of services under the Contract shall not exceed \$ (_____).

19. Payment Provisions:

A. Payment Procedure

1. **Monthly** reimbursements shall be made for actual expenditures made in accordance with the approved budget on file with both Parties and reported in the **monthly** expenditure report submitted by the Contractor.
2. Upon execution of this Contract, the Contractor may request and, upon approval by the Local Partnership, receive an initial, one-time advance **not to exceed the actual expenses anticipated for the specific upcoming 30-day period.**

B. Withholding of Payment:

The Local Partnership has the authority to withhold payment if the Contractor fails to make significant progress toward achieving outcomes as defined in the project proposal as approved by the Local Partnership, or if the quality of services provided fails to meet Local Partnership standards and expectations for any reason, or if the Contractor fails to submit required reports.

C. Reimbursements:

Reimbursements for expenditures under this Contract will not occur subsequent to **June 30, 2011.**

20. Reversion of Unexpended Funds:

Any unexpended funds held by the Contractor upon termination or completion of the Contract shall be reported and reverted to the Local Partnership with the final report of expenditures.

21. Reporting and Audit Requirements:

The Contractor shall comply with all rules and reporting requirements established by statute or administrative rules.

NCAC Title 09 NCAC 03M, "Uniform Administration of State Grants," establishes reporting thresholds and requirements for nongovernmental grantees and subgrantees of State funds. The three reporting thresholds are:

- A. A grantee that receives, uses, or expends State funds in an amount less than \$25,000 within its fiscal year must, within six months after the end of its fiscal year, submit to the Local Partnership:
 - 1) A certification completed by the grantee Board and management stating that the State funds were received, used, or expended for the purposes for which they were granted; and

- 2) An accounting of the State funds received, used, or expended.
- B. A grantee that receives, uses, or expends State funds in an amount of at least \$25,000 and up to and including \$500,000 within its fiscal year must, within six months after the end of its fiscal year, submit to the Local Partnership:
 - 1) A certification completed by the grantee Board and management stating that the State funds were received, used, or expended for the purposes for which they were granted;
 - 2) An accounting of the State funds received, used, or expended; and
 - 3) A description of activities and accomplishments undertaken by the grantee with the State funds.
- C. A grantee that receives, uses, or expends State funds in the amount greater than \$500,000 within its fiscal year must, within nine months after the end of its fiscal year, submit to the Local Partnership:
 - 1) A certification completed by the grantee Board and management stating that the State funds were received, used, or expended for the purposes for which they were granted;
 - 2) An audit prepared and completed by a licensed Certified Public Accountant; and
 - 3) A description of activities and accomplishments undertaken by the grantee with the State funds.

The Contractor shall use the forms specified by the Local Partnership in making reports to the Local Partnership.

The Contractor's fiscal year runs from **July 1** to **June 30**.

22. Subgrantees:

The Contractor has the responsibility to ensure that all subgrantees, if any, provide all information necessary to permit the Contractor to comply with the standards set forth in this Contract.

23. Sales/Use Tax Refunds:

If eligible, the Contractor and all subgrantees shall (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this Contract, pursuant to N.C.G.S. §105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in the reimbursement reports.

24. Care of Property:

The Contractor agrees that it shall be responsible for the proper custody and care of any property furnished to it for use in connection with the performance of this Contract and will reimburse the Local Partnership for loss of, or damage to, such property. When the property provided or purchased is no longer needed or used for the performance of services under this Contract, or at the termination of this Contract, the Contractor shall contact the Local Partnership for instructions as to the disposition of such property and shall comply with these instructions.

25. Personal Property Purchased with Contract Funds:

Personal property includes, but is not limited to furniture, equipment and materials. Title to personal property costing in excess of \$500 per item acquired by the Contractor with funds from this Contract shall vest in the Contractor, subject to the following conditions:

- A. When personal property is no longer needed for the project or program, or if operations are discontinued, or at the termination of this Contract, the Contractor shall notify the Local Partnership and receive written instructions regarding disposition of the personal property. With written approval

from the Local Partnership, the Contractor may use the personal property in the project or program for which it was acquired as long as needed.

- B. A control system shall be in place to ensure adequate safeguards to prevent loss, damage, or theft of personal property.
- C. Any unused or unneeded personal property held by the Contractor shall be reported to the Local Partnership and used or returned in accordance with Local Partnership instructions.

26. Access to Persons and Records:

The State Auditor shall have access to persons and records as a result of this Contract in accordance with N.C.G.S. §147-64.7. Additionally, as funding authorities, the State, the Division, NCPC, and the Local Partnership shall have access to persons and records as a result of this Contract.

The Office of State Auditor has audit oversight for all organizations that receive, use or expend State funds. The Contractor shall, upon request, furnish to the Office of State Auditor, the Division, the Local Partnership, and NCPC all financial books, records, and other information requested by them to provide full accountability for the use and expenditure of State funds. In addition, the Office of State Auditor, the Division, NCPC, and the Local Partnership shall have access to the working papers of the Contractor's independent auditor for review as considered necessary.

27. Record Retention:

The State's basic records retention policy requires all grant records to be retained for a minimum of five years following completion or termination of the Contract or until all audit exceptions have been resolved, whichever is longer. If any litigation, claim, negotiation, audit, disallowance action, or other action involving this Contract has been started before expiration of the five-year retention period described above, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five-year period described above, whichever is later.

28. Conflict of Interest Policy:

The Contractor expressly asserts 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 of services required to be performed under this Contract. The Contractor shall not employ any person having such interest during the performance of this Contract. The Contractor further agrees to notify the Local Partnership in writing of any instances that might have the appearance of a conflict of interest.

The Local Partnership shall not be required to make any payments until it has received a notarized copy of the Contractor's policy addressing conflict of interest. The policy shall address situations in which the Contractor's employees and the members of its board of directors or other governing body may directly or indirectly benefit from the Contractor's disbursing of funds under this Contract and shall include actions to be taken by the Contractor or the individual, or both, to avoid conflicts of interest and the appearance of impropriety.

29. Insurance:

Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any

such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract.

During the term of this Contract, the Contractor shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. At a minimum, the Contractor shall provide and maintain Workers' Compensation, Commercial General Liability, and Automobile Liability Insurance covering all owned, hired and non-owned vehicles used in the performance of the Contract as required to protect the State, the Division, NCPC, and the Local Partnership against claims that may arise from the Contractor's performance.

For nongovernmental contractors with contract(s) that total \$100,000 or more or are expected to exceed \$100,000, this clause is required:

Pursuant to N.C.G.S. §143B-168.12(8)(c), the Contractor shall:

- A. Obtain and maintain in effect a Fidelity Bond insurance policy in an amount of at least 50% of the total grant funds provided by the Local Partnership. The policy must be kept current through June 30, 2012.
- B. Name the Local Partnership as an additional insured or joint loss payee.
- C. Provide the Local Partnership with certificate holder status and proof of coverage.

For nongovernmental contractors with contract(s) that are expected to be less than \$100,000, this clause is required:

The Contractor shall:

- A. Obtain and maintain in effect a Fidelity Bond insurance policy in an amount of at least 50% of the total grant funds provided by the Local Partnership.
- B. Name the Local Partnership as an additional insured or joint loss payee.
- C. Provide the Local Partnership with proof of coverage.

30. Confidentiality:

Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Contractor under this Contract shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the Local Partnership. The Contractor acknowledges that in receiving, storing, processing or otherwise dealing with any confidential information it will safeguard and not further disclose the information except as otherwise provided in this Contract.

31. Copyrights and Ownership of Deliverables:

All deliverable items produced pursuant to this Contract are the exclusive property of the Local Partnership. The Contractor shall not assert a claim of copyright or other property interest in such deliverables.

32. Equal Employment Opportunity:

The Contractor shall comply with all federal and State laws relating to equal employment opportunity.

33. Compliance with Laws:

The Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and/or authority.

34. Advertising:

The Contractor shall not use the award of this Contract as a part of any news release or commercial advertising.

35. Statement of No Overdue Tax Debts:

The Contractor certifies that it does not have any overdue tax debts, as defined by N.C.G.S. §105-243.1, at the federal, State, or local level. The Contractor understands that any person who makes a false statement in violation of N.C.G.S. §143C-6-23(c) is guilty of a criminal offense punishable as provided by N.C.G.S. §143C-10-1.

36. Supplementation of Expenditure of Public Funds:

The Contractor assures that funds received pursuant to this Contract shall be used only to supplement, not supplant, the total amount of federal, State, and local public funds that the Contractor otherwise expends for services on behalf of young children and their families. Funds received pursuant to this Contract shall be used to provide additional public funding for such services; the funds shall not be used to reduce the Contractor's total expenditure of other public funds for such services. In the event of supplantation, the Local Partnership may immediately reduce or terminate funding under this Contract.

37. Disbursements:

As a condition of this Contract, the Contractor acknowledges and agrees to make disbursements in accordance with the following requirements:

- A. Implement adequate internal controls over disbursements;
- B. Pre-audit all vouchers presented for payment to determine:
 - 1) Validity and accuracy of payment
 - 2) Payment due date
 - 3) Adequacy of documentation supporting payment
 - 4) Legality of disbursement;
- C. Assure adequate control of signature stamps/plates;
- D. Assure that an individual does not sign a check payable to himself/herself or to an organization for which there is a real or perceived conflict of interest; and,
- E. Implement accounting procedures to ensure that expenditures incurred under this Contract may be readily identified and reported.

38. Health Insurance Portability and Accountability Act (HIPAA):

The Contractor agrees that, if the Local Partnership determines that some or all of the activities within the scope of this Contract are subject to the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, as amended (“HIPAA”), or its implementing regulations, it will comply with the HIPAA requirements and will execute such agreements and practices as the Local Partnership may require to ensure compliance.

39. Amendment:

This Contract may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of the Local Partnership and the Contractor.

40. Force Majeure:

Neither Party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

41. Suspension:

This Contract may be suspended in whole or in part upon 10 days written notice, to the Contract Administrator noted in Section 9, by the Local Partnership if the Contractor has materially failed to comply with the terms and conditions of the Contract, including all attachments and amendments.

Suspension shall remain in effect until:

- A. the Contractor has taken corrective action as approved by the Local Partnership; or
- B. the Contractor has given written assurances satisfactory to the Local Partnership that corrective action will be taken; or
- C. the Contract is terminated by either Party or by mutual consent of both Parties.

42. Default and Termination:

- A. The Parties may terminate this Contract by mutual consent with 10 days notice to the other Party.
- B. This Contract may be terminated in whole or in part by either Party, with 30 days written notice to the other Party’s Contract Administrator as noted in Section 9, delivered by certified mail with return receipt requested, or in person.
- C. If, through any cause, the Contractor shall fail to fulfill its obligations under this Contract in a timely and proper manner, the Local Partnership shall have the right to terminate this Contract by giving written notice to the Contractor’s Contract Administrator as noted in Section 9, delivered by certified mail with return receipt requested, or in person and specifying the effective date thereof.

After receipt of a notice of termination and except as otherwise directed by the Local Partnership, the Contractor shall cease work under the Contract on the date and to the extent specified in the notice of termination. In the event of termination in part, both Parties shall continue the performance of this Contract to the extent not terminated.

In that event, all finished or unfinished deliverable items prepared by the Contractor under this Contract shall, at the option of the Local Partnership, become its property, and the Contractor shall be entitled to

receive just and equitable compensation for any satisfactory work completed on such materials, minus any payment or compensation previously made. Notwithstanding the foregoing provision, the Contractor shall not be relieved of liability to the Local Partnership for damages sustained by the Local Partnership by virtue of the Contractor's breach of this agreement, and the Local Partnership may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the Local Partnership from such breach can be determined. The filing of a petition for bankruptcy by the Contractor shall be an act of default under this Contract.

D. The Local Partnership may terminate the Contract on any date specified by the Local Partnership if funds are no longer available.

43. Waiver of Default:

Waiver by the Local Partnership of any default or breach in compliance with the terms of this Contract by the Contractor shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be modification of the terms of this Contract unless stated to be such in writing, signed by an authorized representative of the Local Partnership and the Contractor and attached to the Contract.

44. Severability:

In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect.

45. Time of the Essence:

Time is of the essence in the performance of this Contract.

Signature Warranty:

The undersigned represent and warrant that they are authorized to bind their principals to the terms of this Contract.

In Witness Whereof, the Contractor and Local Partnership have executed this Contract in duplicate originals, with one original being retained by each Party.

DURHAM'S PARTNERSHIP FOR CHILDREN

BY: _____
Marsha Basloe, Executive Director _____
Date

(CONTRACTOR LEGAL NAME)

BY: _____
(Name of Authorized Official & Title) _____
Date