

CITY CLERK ORIGINAL

C-8524
06/25/2013

AGREEMENT FOR NSP 3 ACQUISITION, REHABILITATION AND RESALE OF FORECLOSED HOMES City of Glendale Solicitation No. 12-05

This Agreement for NSP 3 Acquisition, Rehabilitation, and Resale of Foreclosed Homes ("Agreement") is effective and entered into between CITY OF GLENDALE, an Arizona municipal corporation ("City"), and Habitat for Humanity Central Arizona, an Arizona non-profit corporation, authorized to do business in Arizona, (the "Contractor"), as of the 25 day of June, 2013.

RECITALS

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A**, pursuant to Solicitation No. 12-05, NSP 3 Acquisition, Rehabilitation and Resale of Foreclosed Homes (the "Project");
- B. City desires to retain the services of Contractor to perform those specific duties and produce the specific work as set forth in the Project attached hereto;
- C. City and Contractor desire to memorialize their agreement with this document.

AGREEMENT

In consideration of the Recitals, which are confirmed as true and correct and incorporated by this reference, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, City and Contractor agree as follows:

1. Key Personnel; Sub-contractors.

- 1.1 Services. Contractor will provide all services necessary to assure the Project is completed timely and efficiently consistent with Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other contractors or consultants, retained by City.
- 1.2 Project Team.
 - a. Project Manager.
 - (1) Contractor will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's option, complete the Project and handle all aspects of the Project such that the work produced by Contractor is consistent with applicable standards as detailed in this Agreement;
 - (2) The City must approve the designated Project Manager; and
 - (3) To assure the Project schedule is met, Project Manager may be required to devote no less than a specific amount of time as set out in Exhibit A.
 - b. Project Team.
 - (1) The Project manager and all other employees assigned to the project by Contractor will comprise the "Project Team."
 - (2) Project Manager will have responsibility for and will supervise all other employees assigned to the project by Contractor.
 - c. Discharge, Reassign, Replacement.
 - (1) Contractor acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in the response to the Project's solicitation.

- (2) Contractor will not discharge, reassign or replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City without City's prior written consent unless that person leaves the employment of Contractor, in which event the substitute must first be approved in writing by City.
- (3) Contractor will change any of the members of the Project Team at the City's request if an employee's performance does not equal or exceed the level of competence that the City may reasonably expect of a person performing those duties or if the acts or omissions of that person are detrimental to the development of the Project.

d. Sub-contractors.

- (1) Contractor may engage specific technical contractor (each a "Sub-contractor") to furnish certain service functions.
- (2) Contractor will remain fully responsible for Sub-contractor's services.
- (3) Sub-contractors must be approved by the City, unless the Sub-contractor was previously mentioned in the response to the solicitation.
- (4) Contractor shall certify by letter that contracts with Sub-contractors have been executed incorporating requirements and standards as set forth in this Agreement.

2. **Schedule.** The services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project.

3. **Contractor's Work.**

3.1 Standard. Contractor must perform services in accordance with the standards of due diligence, care, and quality prevailing among contractors having substantial experience with the successful furnishing of services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.

3.2 Licensing. Contractor warrants that:

- a. Contractor and Sub-contractors will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of services ("Approvals"); and
- b. Neither Contractor nor any Sub-contractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
 - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments or to examine Contractor's contracting ability.
 - (2) Contractor must notify City immediately if any Approvals or Debarment changes during the Agreement's duration and the failure of the Contractor to notify City as required will constitute a material default under the Agreement.

3.3 Compliance. Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.

3.4 Coordination; Interaction.

- a. For projects that the City believes requires the coordination of various professional services, Contractor will work in close consultation with City to proactively interact with any other professionals retained by City on the Project ("Coordinating Project Professionals").
- b. Subject to any limitations expressly stated in the Project Budget, Contractor will meet to review the Project, Schedule, Project Budget, and in-progress work with Coordinating

Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.

- c. For projects not involving Coordinating Project Professionals, Contractor will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

3.5 Work Product.

- a. Ownership. Upon receipt of payment for services furnished, Contractor grants to City, and will cause its Sub-contractors to grant to the City, the exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").
 - (1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.
 - (2) Contractor warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.
- b. Delivery. Contractor will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.
- c. City Use.
 - (1) City may reuse the Work Product at its sole discretion.
 - (2) In the event the Work Product is used for another project without further consultations with Contractor, the City agrees to indemnify and hold Contractor harmless from any claim arising out of the Work Product.
 - (3) In such case, City shall also remove any seal and title block from the Work Product.

4. **Compensation for the Project.**

- 4.1 Compensation. Contractor's compensation for the Project, including those furnished by its Sub-contractors will not exceed \$2,500,000, as specifically detailed in **Exhibit B** (the "Compensation").
- 4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated scope of services as outlined in the Project is significantly modified.
 - a. Adjustments to the Compensation require a written amendment to this Agreement and may require City Council approval.
 - b. Additional services which are outside the scope of the Project contained in this Agreement may not be performed by the Contractor without prior written authorization from the City.
 - c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.

5. **Billings and Payment.**

5.1 Applications.

- a. Contractor will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.

- b. The period covered by each Payment Application will be one calendar month ending on the last day of the month or as specified in the solicitation.

5.2 Payment.

- a. After a full and complete Payment Application is received, City will process and remit payment within 30 days.
- b. Payment may be subject to or conditioned upon City's receipt of:
 - (1) Completed work generated by Contractor and its Sub-contractors; and
 - (2) Unconditional waivers and releases on final payment from Sub-contractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

5.3 Review and Withholding. City's Project Manager will timely review and certify Payment Applications.

- a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.
- b. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

6. **Termination.**

6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 30 days following the date of delivery.

- a. Contractor will be equitably compensated for Service and Repair furnished prior to receipt of the termination notice and for reasonable costs incurred.
- b. Contractor will also be similarly compensated for any approved effort expended and approved costs incurred that are directly associated with project closeout and delivery of the required items to the City.

6.2 For Cause. City may terminate this Agreement for cause if Contractor fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- a. Contractor will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Contractor for Service and Repair furnished, City will pay the amount due to Contractor, less City's damages, in accordance with the provision of § 5.
- b. If City's direct damages exceed amounts otherwise due to Contractor, Contractor must pay the difference to City immediately upon demand; however, Contractor will not be subject to consequential damages of more than \$1,000,000 or the amount of this Agreement, whichever is greater.

7. **Conflict.** Contractor acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

8. **Insurance.**

8.1 Requirements. Contractor must obtain and maintain the following insurance ("Required Insurance"):

- a. Contractor and Sub-contractors. Contractor, and each Sub-contractor performing work or providing materials related to this Agreement must procure and maintain the insurance

coverages described below (collectively referred to herein as the "Contractor's Policies"), until each Party's obligations under this Agreement are completed.

- b. General Liability.
 - (1) Contractor must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$1,000,000 per occurrence and \$1,000,000, annual aggregate for each property damage and contractual property damage.
 - (2) Sub-contractors must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$1,000,000 per occurrence.
 - (3) This commercial general liability insurance must include independent contractors' liability, contractual liability, broad form property coverage, XCU hazards if requested by the City, and a separation of insurance provision.
 - (4) These limits may be met through a combination of primary and excess liability coverage.
- c. Auto. A business auto policy providing a liability limit of at least \$1,000,000 per accident for Contractor and \$1,000,000 per accident for Sub-contractors and covering owned, non-owned and hired automobiles.
- d. Workers' Compensation and Employer's Liability. A workers' compensation and employer's liability policy providing at least the minimum benefits required by Arizona law.
- e. Notice of Changes. Contractor's Policies must provide for not less than 30 days' advance written notice to City Representative of:
 - (1) Cancellation or termination of Contractor or Sub-contractor's Policies;
 - (2) Reduction of the coverage limits of any of Contractor or and Sub-contractor's Policies; and
 - (3) Any other material modification of Contractor or Sub-contractor's Policies related to this Agreement.
- f. Certificates of Insurance.
 - (1) Within 10 business days after the execution of the Agreement, Contractor must deliver to City Representative certificates of insurance for each of Contractor and Sub-contractor's Policies, which will confirm the existence or issuance of Contractor and Sub-contractor's Policies in accordance with the provisions of this section, and copies of the endorsements of Contractor and Sub-contractor's Policies in accordance with the provisions of this section.
 - (2) City is and will be under no obligation either to ascertain or confirm the existence or issuance of Contractor and Sub-contractor's Policies, or to examine Contractor and Sub-contractor's Policies, or to inform Contractor or Sub-contractor in the event that any coverage does not comply with the requirements of this section.
 - (3) Contractor's failure to secure and maintain Contractor Policies and to assure Sub-contractor policies as required will constitute a material default under the Agreement.
- g. Other Contractors or Vendors.
 - (1) Other contractors or vendors that may be contracted with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular contract.

- (2) This insurance coverage must comply with the requirements set forth above for Contractor's Policies (e.g., the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance).
- h. Policies. Except with respect to workers' compensation and employer's liability coverages, City must be named and properly endorsed as additional insureds on all liability policies required by this section.
 - (1) The coverage extended to additional insureds must be primary and must not contribute with any insurance or self insurance policies or programs maintained by the additional insureds.
 - (2) All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and reasonably acceptable to all parties.

8.2 Sub-contractors.

- a. Contractor must also cause its Sub-contractors to obtain and maintain the Required Insurance.
- b. City may consider waiving these insurance requirements for a specific Sub-contractor if City is satisfied the amounts required are not commercially available to the Sub-contractor and the insurance the Sub-contractor does have is appropriate for the Sub-contractor's work under this Agreement.
- c. Contractor and Sub-contractors must provide to the City proof of the Required Insurance whenever requested.

8.3 Indemnification.

- a. To the fullest extent permitted by law, Contractor must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties"), for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense"; collectively, "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Contractor) and that arises out of or results from the breach of this Agreement by the Contractor or the Contractor's negligent actions, errors or omissions (including any Sub-contractor or other person or firm employed by Contractor), whether sustained before or after completion of the Project.
- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Contractor shall be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Contractor or of any person or entity for whom Contractor is responsible.
- c. Contractor is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

9. **Immigration Law Compliance.**

- 9.1 Contractor, and on behalf of any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

- 9.2 Any breach of warranty under subsection 9.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 9.3 City retains the legal right to inspect the papers of any Contractor or subcontractor employee who performs work under this Agreement to ensure that the Contractor or any subcontractor is compliant with the warranty under subsection 9.1 above.
- 9.4 City may conduct random inspections, and upon request of City, Contractor shall provide copies of papers and records of Contractor demonstrating continued compliance with the warranty under subsection 9.1 above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.
- 9.5 Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Contractor and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- 9.6 Contractor's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 9.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

10. Foreign Prohibitions. Contractor certifies under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutes, in the countries of Sudan or Iran.

11. Notices.

- 11.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:
- a. The Notice is in writing; and
 - b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested); and
 - c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
 - (1) Received on a business day, or before 5:00 p.m., at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service on or before 5:00 p.m.; or
 - (2) As of the next business day after receipt, if received after 5:00 p.m.
 - d. The burden of proof of the place and time of delivery is upon the Party giving the Notice; and
 - e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

11.2 Representatives.

- a. Contractor. Contractor's representative (the "Contractor's Representative") authorized to act on Contractor's behalf with respect to the Project, and his or her address for Notice delivery is:

Lisa Weide
c/o Habitat for Humanity Central Arizona
9133 NW Grand Avenue, Suite 1
Peoria, Arizona 85345

- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale
c/o Charyn Eirich-Palmisano
5850 West Glendale Avenue, Suite 107
Glendale, Arizona 85301
623-930-3670

With required copy to:

City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

- c. Concurrent Notices.

- (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
- (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by City Manager and City Attorney.
- (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Contractor identifying the designee(s) and their respective addresses for notices.

- d. Changes. Contractor or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

12. **Financing Assignment.** City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.

13. **Entire Agreement; Survival; Counterparts; Signatures.**

13.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Contractor and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
- c. The solicitation, any addendums and the response submitted by the Contractor are incorporated into this Agreement as if attached hereto. Any Contractor response modifies the original solicitation as stated. Inconsistencies between the solicitation, any addendums

and the response or any excerpts attached as Exhibit A and this Agreement will be resolved by the terms and conditions stated in this Agreement.

13.2 Interpretation.

- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
- c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.

13.3 Survival. Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.

13.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties. Any amendment may be subject to City Council approval. Electronic signature blocks do not constitute execution.

13.5 Remedies. All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.

13.6 Severability. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be deemed reformed to conform to applicable law.

13.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

14. **Term.** The term of this Agreement commences upon the effective date and continues for a one year initial period. The City may, at its option and with the approval of the Contractor, extend the term of this Agreement an additional four years, renewable on an annual basis. Contractor will be notified in writing by the City of its intent to extend the Agreement period at least 30 calendar days prior to the expiration of the original or any renewal Agreement period. Price adjustments will only be reviewed during the Agreement renewal period. There are no automatic renewals of this Agreement.

15. **Dispute Resolution.** Each claim, controversy and dispute (each a "Dispute") between Contractor and City will be resolved in accordance with Exhibit C. The final determination will be made by the City.

16. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

| | |
|-----------|--------------------|
| Exhibit A | Project |
| Exhibit B | Compensation |
| Exhibit C | Dispute Resolution |

(Signatures appear on the following page.)

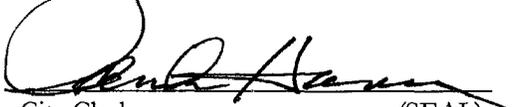
The parties enter into this Agreement as of the effective date shown above.

City of Glendale,
an Arizona municipal corporation



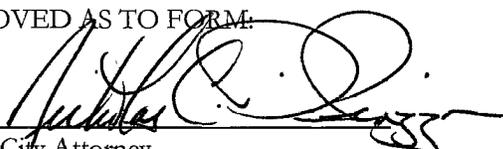
By: Richard A. Bowers
Its: Acting City Manager

ATTEST:



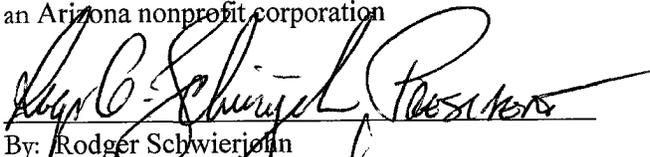
City Clerk (SEAL)

APPROVED AS TO FORM:



Acting City Attorney

Habitat for Humanity Central Arizona,
an Arizona nonprofit corporation



By: Rodger Schwierjohn
Its: President

EXHIBIT A
NSP 3 ACQUISITION, REHABILITATION AND RESALE OF FORECLOSED HOMES
PROJECT

1. Neighborhood Stabilization Program 3 ("NSP 3") funds will be used to purchase and renovate foreclosed single-family homes in the zip codes of 85301, 85302 and 85303 of the City of Glendale ("City"). Once the renovation is complete, Habitat for Humanity Central Arizona ("Contractor") will resell each single-family home to an income qualified first time home buyer.
2. Contractor will acquire and rehabilitate up to twelve (12) single-family, vacant, foreclosed homes within the City's NSP3 targeted areas. The homes will then be re-sold at or below the total cost of acquisition and rehabilitation, to income qualified residents at or below 120% AMI. Six (6) of the homes will utilize the traditional contractor financing model of 0% percent mortgages for the qualified homeowners. Mortgage payments are placed in a "Fund for Humanity" and used to purchase land and build/rehabilitate more homes.
3. Contractor has confirmed with the City, that the Davis Bacon Act of 1931 ("Davis Bacon") requirements will not be triggered, if the scattered sites purchased are more than 2,000 feet in distance from each other. Davis Bacon can be triggered, if more than seven (7) sites are located within 2,000 feet of each other.
4. Contractor will manage all aspects of home building including land purchase, infrastructure development, fund raising, partner family selection and support, house construction and mortgage servicing in conjunction with City staff. Of the potential twelve (12) houses to be acquired, six (6) of the homes will be rehabilitated by the City, and sold by the Contractor. All net proceeds from these sales will be returned to the City.
5. During the acquisition phase, the Contractor's Director of Land Development, Tana Nichols, will consult with local realtors to identify vacant, foreclosed properties in the City's targeted district. Ms. Nichols will work with the City to obtain the required environmental assessments and clearances. Contractor will utilize Environmental Consulting Services, Inc. to complete the asbestos and lead based paint inspections.
6. Maribel Saucedo is the Contractor's Director of Family Services and is a U.S. Department of Housing and Urban Development ("HUD")-certified housing and credit counselor with eight (8) years of experience in the affordable housing market. Contractor's Family Services Department will be conducting outreach to schools, neighborhoods, community groups, churches, housing shelters, etc., to advertise our mission and the family orientation sessions. The marketing materials are available in both English and Spanish. Contractor has bi-lingual staff available to serve the Spanish-speaking population.
7. Families will receive the HUD-required eight (8) hours of certified pre- and post-homeowner counseling in the areas of budgeting, credit, delinquency and foreclosure prevention, refinance, anti-predatory lending counseling and financial literacy training to strengthen money management and financial planning skills. These services are provided by HUD-approved counselors in partnership with Neighborhood Housing Services of Phoenix, Inc.
8. Contractor will seek to acquire vacant, foreclosed properties at a minimum of 1% less than market or appraised value. In the current environment, Consultant will conduct all the background research on the properties prior to submitting the offer. Consultant will attempt to make an offer to purchase qualified properties within two to three days of the listing of a new property.
9. Contractor will partner with the Sustainable Home Ownership Coalition and/or a real estate broker already known to the Contractor. Contractor will utilize brokers that have demonstrated that they have strong relationships with mortgage lenders. Contractor will complete all of its due diligence including

utilities, boundary surveys, environmental clearances, asbestos and lead paint inspections and testing within approximately twenty-one (21) days.

10. During the construction rehabilitation phase, it may be necessary to sub-contract a portion of the activities. In the event sub-contractors are needed, Contractor will solicit them according to the rules and regulations of the City and the Federal Procurement Standards, including but not limited to ensuring that the sub-contractor carry appropriate licenses and insurance, is not listed on the Excluded Party Listing System, and is willing to comply with Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u and the implementing regulation 24CFR Part 135 (Section 3) and vicinity hiring requirements for NSP 3.
11. Contractor will be cognizant of utilizing tools for cost savings on labor. Contractor will utilize one highly trained site supervisor to engage a host of volunteers who are all donating their time to rehabilitate the homes. It is anticipated that contractor volunteers will donate 864 hours of time on each of the twelve (12) homes rehabilitated. That is a labor savings of \$10,749 per home. For the Project, it means 10,368 hours of volunteer labor, or One Hundred Seventy Thousand Dollars and 00/100 (\$170,000) of in-kind labor. Contractor will leverage the funds saved to be able to incorporate as many energy efficient and green building features into the homes as possible and still have the home be affordable.
12. Contractor will create an individual scope of work, budget and schedule of activities for each rehabilitation. Rehabilitation of a home typically takes six weeks. The condition of the properties will determine the extent of the rehabilitation required. A restrictive covenant will be placed on the property to ensure that it remains an affordable home for low, moderate and middle income households ("LMMI") for a prescribed period of time. The restrictive covenant shall be in effect for an affordability period based on the level of disposition assistance as set forth in the table below. The covenant and restrictions shall run with the land and be binding on future owners of the property for the affordability period. The property shall at all times be occupied as the principal residence of the owner and shall not be rented or leased. If the property is initially sold to a LMMI buyer, the property must be resold only to another LMMI buyer. The restrictive covenant shall run with the land; however, the restrictions shall terminate in the event of foreclosure, transfer in lieu of foreclosure, or assignment of an FHA insured mortgage to HUD.

| LONG TERM AFFORDABILITY TABLE | |
|----------------------------------|----------------------|
| Amount of Disposition Assistance | Years of Restriction |
| \$0 00 to \$15,000 | 5 years |
| \$15,000.01 to \$40,000 | 10 years |
| More than \$40,000 | 15 years |

13. In addition to Section 3 requirements, NSP 3, unlike under previous NSP programs, has a requirement for vicinity hiring. The purpose of vicinity hiring is to ensure that employment and other economic opportunities generated by HUD financial assistance shall, to the greatest extent feasible, and consistent with existing federal, state and local laws and regulations, be directed to low and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low and very low-income persons residing or located within the NSP 3 Target Area of zip codes 85301, 85302, and 85303. Activities may include, but are not limited to, some or all of the following activities:
 - 13.1 Advertise the availability of jobs through notices in prominent locations within the NSP 3.
 - 13.2 Target Area and surrounding areas. In addition, advertise in the local electronic or print media in languages spoken by NSP 3 Target Area residents.
 - 13.3 Distribute information door-to-door to residents and any businesses in the NSP 3 Target Area.

- 13.4 Contact public housing developments within the NSP 3 Target Area to provide information about hiring to public housing residents.
- 13.5 Provide contact information via telephone, e-mail or social media for residents and businesses within the NSP 3 Target Area to make inquiries or have questions answered.
- 13.6 Maintain a log of NSP 3 Target Area applicants who apply for jobs whether they are hired or not. If they are not hired, provide the reason(s) why they were not hired.
- 13.7 Contact labor organizations or representatives in or near the NSP 3 Target Area and inform their members of employment opportunities.
- 13.8 Create monthly reports to be delivered to the City that detail contractor's efforts in hiring low-income individuals and businesses from the NSP 3 Target Areas.
- 13.9 Notify Section 3 businesses of potential contract opportunities.
14. Copies shall be maintained of all employment applications, including, but not limited to, applications of public housing residents, Section 8 certificate or voucher holders, and other Section 3 residents.
15. A monthly report will be required to provide to the City summarizing NSP 3 activities. The report should provide a status of each NSP 3 project, the use of funds, and a report of client information. The monthly reports shall include, but not be limited to, the following information:
 - 15.1 Project Name;
 - 15.2 Activity;
 - 15.3 Location of the acquired home(s), including parcel identification number and address;
 - 15.4 Purchase amount for each home;
 - 15.5 Appraised amount for each home;
 - 15.6 Discount amount for each home;
 - 15.7 Funds budgeted and expended for each home;
 - 15.8 Development schedule at each home;
 - 15.9 Source and Use statement of non-NSP 3 funds;
 - 15.10 Number of LMMI persons or households benefiting from the NSP3 activity; and
 - 15.11 Section 3 and Vicinity Hiring Data.
16. Contractor agrees to enforce the occupancy requirements as outlined in this document and additional federal and state requirements as applicable. Contractor is required to manage and maintain occupancy requirements during the affordability period as shown in the Long Term Affordability Table. The recipient and owner will agree that should occupancy requirements not be met, corrective actions will be enforced. Occupancy requirements will be enforced by a recorded covenant running with the property. A yearly report shall be submitted to the City documenting the occupancy status, date of verification, and action taken as necessary to maintain occupancy during the affordability period.

EXHIBIT B

NSP 3 ACQUISITION, REHABILITATION AND RESALE OF FORECLOSED HOMES

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

Contractor will be reimbursed for properly invoiced services and upon approval of the City.

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project during the entire term of the Project must not exceed \$2,500,000.

DETAILED PROJECT COMPENSATION

See Attached

EXHIBIT B
NSP 3 ACQUISITION, REHABILITATION AND RESALE OF FORECLOSED HOMES
COMPENSATION

1. The City of Glendale ("City") agrees to pay Habitat for Humanity Central Arizona ("Contractor") on a reimbursement basis, in an amount not to exceed Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000) for the performance of all services to be provided under this Agreement.
2. Contractor will submit an invoice to the City upon the purchase of a Neighborhood Stabilization Program 3 ("NSP 3")-assisted property for acquisition and related closing costs as reflected on U.S. Department of Housing and Urban Development ("HUD") HUD-1 Settlement Statement.
3. The City shall also pay Contractor for indirect costs up to 10% of the direct cost for administrative services provided for each unit in a NSP 3-assisted project. Administrative services shall include, but not be limited to, property acquisition, housing rehabilitation, and resale activities. These resale activities include, but are not limited to, conducting individual site project management, making on-site visits, handling dispute resolutions and lien matters, obtaining and maintaining NSP3 program documentation as required under this Agreement.
4. Notwithstanding the above, Contractor's indirect compensation above shall not exceed the fee set forth herein.
5. Contractor will invoice the City as defined below:
 - 5.1 Contractor will submit to the City for approval an original Request for Payment Form accompanied by proper documentation. For purposes of this section, copies of invoices, receipts, or other evidence of indebtedness and releases and/or waivers of subcontractors and material persons shall be considered proper documentation.
 - 5.2 If Contractor awards a contract to a subcontractor, Contractor shall submit a copy of the subcontractor's invoice stating the services which were rendered and the date upon which the services were rendered. Upon receiving properly formatted invoices, reports and other materials, the project manager will audit such invoices and reports to determine whether the services invoiced have been completed and that the invoiced services are proper for payment. Upon determination by the City that the services invoiced have been received or completed and are proper, payment will be processed. In the event that any of Contractor subcontractors have not been paid for their work on the project or waivers of lien have not been obtained from the subcontractors, the City reserves the right to pay subcontractors from funds awarded through this Agreement.

| PROJECT COST AND BUDGET | | | | |
|--|-------------|------------|-----------|-------------|
| Itemized Costs | NSP 3 | Contractor | In Kind | Total Costs |
| Acquisition costs, including, the cost of property, appraisal, title and recording, real estate attorney, inspections, and other closing costs | \$1,576,540 | \$0 | \$0 | \$1,576,540 |
| Rehabilitation costs including contractor's costs for site work/landscaping, building permits/inspections, tap fees, and other costs such as hard cost contingency | \$887,560 | \$151,624 | \$0 | \$1,039,184 |
| Indirect costs and direct personal salary costs | \$0 | \$68,000 | \$188,988 | \$256,988 |

| | | | | |
|--|--------------------|------------------|------------------|--------------------|
| Other owner costs and holding costs, including hiring a real estate attorney, accounting fees, property maintenance/security, property insurance/builders risk, pest control, HOA fees, utilities, property taxes, and other costs associated with maintenance and ownership | \$35,900 | \$0 | \$0 | \$25,900 |
| Marketing/community outreach, and education and counseling | \$0 | \$0 | 0 | \$0 |
| Total | \$2,500,000 | \$219,624 | \$188,988 | \$2,898,612 |

EXHIBIT C

NSP 3 ACQUISITION, REHABILITATION AND RESALE OF FORECLOSED HOMES DISPUTE RESOLUTION

1. Disputes.

- 1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.
- 1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.
- 1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- 1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
 - a. The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
 - b. The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
 - c. The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

2. Arbitration.

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the parties may agree, in writing, that the Dispute will be decided by binding arbitration in accordance with Commercial Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
 - a. The parties will exercise best efforts to select an arbitrator within 5 business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - b. The arbitrator selected must be an attorney with at least 10 years experience, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within ten (10) days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.
- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.

2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.

2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.

2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party shall pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.

3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Contractor must continue to perform and maintain progress of required services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Contractor in accordance with this Agreement.

4. **Exceptions.**

4.1 Third Party Claims. City and Contractor are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third-party who is not obligated by contract to arbitrate disputes with City and Contractor.

4.2 Liens. City or Contractor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.

4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.