



C-9132-5
10/01/2014

AMENDMENT TO
SUBRECIPIENT CONTRACT

This Amendment to Subrecipient Contract C-9132-~~4~~⁵ ("Amendment") is made this 1st day of October, 2014, by and between the 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 ("Agency").

RECITALS

- A. City and Agency previously entered into a Subrecipient Contract No. C-9132 ("Agreement"); and
- B. City and Agency wish to modify and amend the Agreement subject to and strictly in accordance with the terms of this Amendment.

AGREEMENT

1. **Recitals.** The recitals set forth above are not merely recitals, but form an integral part of this Amendment.
2. **Scope of Work.** The Scope of Work referenced as Exhibit A is amended by the addition of the following address: 6717 N 54th Drive, Glendale, AZ 85301.
3. **Ratification of Agreement.** City and Agency hereby agree that, except as expressly provided herein, the provisions of the Agreement will be and remain in full force and effect, and that if any provision of this Amendment conflicts with the Agreement, then the provisions of the Agreement will prevail.

[Signatures appear on the follow page.]

CITY OF GLENDALE, an Arizona
municipal corporation



Brenda S. Fischer
City Manager

ATTEST:


Pamela Hanna (SEAL)

APPROVED AS TO FORM:


Michael D. Bailey
City Attorney

Habitat for Humanity Central Arizona, an
Arizona non-profit corporation

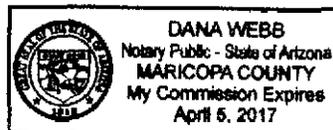

By: ROGER G. SCHWIERJOHN
Its: PRESIDENT / CEO

STATE OF ARIZONA)
County of Maricopa) ss.

THE FOREGOING AMENDMENT WAS ACKNOWLEDGED before me this 18
day of December, 2014, by Roger Schwierjohn in the capacity
as President/CEO with the Habitat for Humanity Central, an
Arizona non-profit corporation. AZ


Dana Webb
Notary Public

My Commission Expires:
April 5, 2017



CITY OF GLENDALE, ARIZONA

**DEVELOPMENT AGREEMENT
FOR INFILL HOUSING DEVELOPMENT
UNDER THE HOME INVESTMENT
PARTNERSHIP PROGRAM**

(Agreement C-9132)

(PLEASE DO NOT REMOVE ~ THIS IS PART OF THE OFFICIAL DOCUMENT)

WHEN RECORDED, RETURN TO:

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

DEVELOPMENT AGREEMENT FOR INFILL
HOUSING DEVELOPMENT
UNDER THE HOME INVESTMENT PARTNERSHIP PROGRAM

This Development Agreement for Infill Housing Development under the Home Investment Partnership Program ("Agreement") is entered into this 1st day of July 2014, by and between the City of Glendale, an Arizona municipal corporation ("City"), and Habitat for Humanity Central Arizona, an Arizona non-profit corporation ("Developer").

RECITALS

WHEREAS, the City has applied for and received federal funds pursuant to the HOME Investment Partnerships Act at title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701, *et seq.* ("HOME Program") to assist low-income persons and families in obtaining decent and affordable homeownership opportunities;

WHEREAS, the Maricopa County HOME Consortium administers the HOME Program in Maricopa County, Arizona;

WHEREAS, the City has received an allocation of \$487,282 from the Maricopa County HOME Consortium from a direct entitlement made by the U.S. Department of Housing and Urban Development ("HUD");

WHEREAS, Developer is a non-profit corporation that has applied for HOME Program funds from the City to be used to assist low-income persons and families in obtaining decent and affordable homeownership opportunities;

WHEREAS, the City believes that the activities of the Developer described in the Project comply with the requirements of the HOME Program regulations;

WHEREAS, it is necessary that the City and Developer to enter into an Agreement for the implementation of eligible activities; and

WHEREAS, the City desires to enter into this Agreement and provide Developer \$250,000 in HOME Program funds to pay for the costs the implementation of the Project.

AGREEMENT

- 1. HOME Program Activity.** Developer, in close coordination with the City, will perform all professional, technical and construction services necessary to purchase, rehabilitate or provide new construction of single family homes as detailed in **Exhibit A** ("Project").
- 2. Agreement Amount.** The City shall provide financial assistance in an amount not to exceed \$250,000 subject to the terms of this Agreement and availability of federal funds. Providing this Agreement amount constitutes the City's entire participation and obligation in the performance and completion of all work to be performed under this Agreement.
- 3. Commitment of Match.** Pursuant to 24 C.F.R. §§ 92.504 & 219, Developer agrees to make a match of 25% of the City's Agreement Amount. The commitment of match is for the amount of

\$62,500 as defined by the Match Letter attached as **Exhibit B** and the Memorandum of Agreement attached as **Exhibit C**.

4. **Duration of the Agreement.** This Agreement shall be effective for 18 months commencing on the date of this Agreement and expiring on December 1, 2015, unless sooner terminated pursuant to the provisions contained herein.
5. **Project Budget.** The City will pay Developer, as maximum compensation or fee in the amount contained in the Project Budget that is attached as **Exhibit D**.
6. **Eligibility of Homeowner.**
 - 6.1 In order to be eligible for HOME Program assistance, Homeowners must have a gross annual household income that does not exceed 80% percent of area median income ("AMI"), adjusted for household size. Verification of household income must be conducted by Developer in accordance with 24 C.F.R. § 92.203.
 - 6.2 Homeowners must produce documentation certifying to the Developer his or her lawful presence in the United States, as required by A.R.S. §§ 1-501 or 1-502, as applicable.
7. **Developer's Responsibilities.** Developer is responsible for performing those tasks defined in the Project for the purchase, rehabilitation or new construction of homes receiving HOME Program assistance and in the sale of homes in zip codes of 85301, 85302, & 85303, including:
 - 7.1 Enter into appropriate agreements with Homeowners.
 - a. That require the recapture of all or a portion of the Home Program funds if the housing does not continue to be the "Principle Residence" of the family for the duration of affordability in accordance with 24 C.F.R. § 92.254(a)(5)(ii). For this requirement, "Principal Residence" is defined as the homeowner occupying the home no less than nine (9) months in a year.
 - B. As required by 24 C.F.R. § 92.254, the loan documents necessary to recapture the Home Program funds are a Homeowner Deferred Loan Agreement for HOME Investment Partnership Funds ("Homeowner Deferred Loan Agreement") attached as **Exhibit E**, a Deed of Trust and Assignment of Rents ("Homeowner Deed of Trust") attached as **Exhibit F**, and a Promissory Note ("Homeowner Note") attached as **Exhibit G**.
 - 7.2 Enter into appropriate agreements with the City.
 - a. That require the recapture of all or a portion of the Home Program funds if the housing does not continue to be the "Principle Residence" of the family for the duration of affordability in accordance with 24 C.F.R. § 92.254(a)(5)(ii)
 - b. The HOME Program funds designated for the Project will be secured by a Deed of Trust and Assignment of Rents ("Developer Deed of Trust") attached as **Exhibit H** and a Promissory Note ("Developer Note") attached as **Exhibit I**, as required by 24 C.F.R. Part 92. These documents must be recorded with the County Recorder. Related documents, such as restrictive land covenants, must also be recorded, if applicable.
 - 7.3 Draft and enter into appropriate agreements with each entity being contracted to perform work. Oversee the performance of architects, engineers, attorneys, accountants, contractors and subcontractors and others that are constructing the housing to assure compliance with this Agreement and with all applicable federal, state and local laws and regulations.
 - 7.4 Assure that any payments made for professional and construction services to attorneys, consultants, developers, general contractors, subcontractors, architects, engineers and others

are reasonable, competitive and necessary to carry out the Project in accordance with federal OMB Circular A-122 and 24 C.F.R. § 84, *et seq.*

- 7.5 Assure that all HOME Program funds provided under this Agreement are used only for eligible Project expenses and that there is no misuse and/or mismanagement of HOME Program funds.
- 7.6 Maintain an accurate accounting of any "Program Income," which is defined as the gross income received by Developer directly generated from the use of HOME Program funds or matching contributions ("Program Income").
- 7.7 Report Program Income to the City quarterly. Any Program Income may be retained by Developer, but must be used on HOME Program eligible projects within City municipal boundaries.
- 7.8 Monitor and document affordability requirements, affordability period and affirmatively market assisted housing to protected classes of citizens as required in 24 C.F.R. § 92.254.
- 7.9 Submit support documents which demonstrate continued compliance with affordability requirements annually by June 30.
- 7.10 Review appropriate documents to verify household income, family size, sources of income, current address, location and condition of home to be acquired, appraised home values, completeness and accuracy of information provided by household members and determine the type and amount of assistance to be provided in accordance with 24 C.F.R. § 92.203.
- 7.11 Assure that all Homes purchased, rehabilitated or constructed with HOME Program funds meet HUD Section 8 Housing Quality Standards ("HQS") and local building codes in accordance with 24 C.F.R. § 92.251 upon completion and during the period of affordability.
- 7.12 Assure the legal sufficiency of loan instruments, attend loan closings and facilitate the filing and recordation of liens and/or deed restrictions required by the HOME Program in accordance with 24 C.F.R. § 92.254(a)(5)(i).
- 7.13 Assure that Homeowners are protected against fraudulent and predatory lending practices and that prudent business practices including underwriting standards reviewed by a licensed mortgage underwriter are followed that assure affordability and sustainability of the mortgage throughout the HOME Program affordability period and the mortgage term.
- 7.14 Maintain a complete file for each approved application for assistance and such additional records as may be required by law and/or regulation, and in accordance with applicable sections of 24 C.F.R. § 92.508.
- 7.15 Complete the Project as expeditiously as possible and undertake every effort to ensure that the Project will proceed and will not be delayed. Failure to adhere to the Project can result in cancellation of this Agreement and the revocation of HOME Program funds.
- 7.16 Assure that the amount of HOME Program funds invested in each Home is in compliance with the minimum and maximum subsidy requirements. Assure that a minimum of \$1,000 in assistance is invested per home in accordance with 24 C.F.R. § 92.205(c), and no more than the maximum per unit subsidy allowed in 24 C.F.R. § 92.250(a).
- 7.17 Collect and maintain Homeowner information pertaining to household size, income levels, racial characteristics, and the presence of Female Headed Households in order to determine low- and moderate income benefit in a cumulative and individual manner.
- 7.19 Execute and abide by Certifications mandated by federal grant requirements as listed in **Exhibit J**.
- 7.20 Carry out projects and perform services administered in compliance with all federal laws and regulations as further described in **Exhibit K**.

8. City Responsibilities.

- 8.1 City will provide Developer information regarding its requirements for the Project.
- 8.2 City will conduct progress inspections of work completed to ensure that the Project complies with federal regulations to protect its interests as lender.
- 8.3 City will provide information to the Developer regarding any progress inspections or monitoring to assist it in ensuring compliance.

9. Period of Affordability.

- 9.1. The Project is subject to ongoing compliance requirements of the HOME Program for the length of the affordability period identified in 24 C.F.R. § 92.254.
- 9.2 The affordability period begins once Maricopa County HOME Consortium records the close of the Project in the Integrated Disbursement Information System, a nationwide database providing HUD with current information regarding the Home Program activities underway across the nation, including funding data ("IDIS").
- 9.3 The affordability period is dependent upon expenditures provided in the table below:

HOME \$ Per Unit	Length of Affordability/Compliance
Less than \$15,000	5 Years
\$15,000 - \$40,000	10 Years
More than \$40,000	15 Years
New Construction of Rental Housing (regardless of the expenditure amount)	20 Years

10. Use of HOME Program Funds.

- 10.1 Developer will utilize the HOME Program funds awarded by this Agreement, solely for activities eligible under the provisions of the HOME Investment Partnerships Act, the Project application, this Agreement, and applicable federal laws, federal regulations and Executive Orders as well as HUD notifications and guidance that currently exist and that may be issued in the future, and will use said funds for no other purpose.
- 10.2 The amount of HOME Program direct Project costs spent will not exceed any line item as shown in the Project Budget by more than 10% percent without the expressed written approval of the City. Additionally, in no event will Developer exceed the total amount of HOME Program funds provided under the Project Budget.
- 10.3 The City will review and provide prompt approval for reasonable and unforeseen cost increases provided such cost increases do not exceed the statutory per unit cost limits in 24 C.F.R. § 92.250 or the amount of funds provided in the Project Budget.

11. Reimbursement of Expenses & Developer Fees.

- 11.1 Project expenses (excluding developer fees) will be paid based on invoices for actual expenses incurred or paid. All such expenses will be in conformance to the approved Project Budget. Developer will be responsible for any cost overruns.
- 11.2 The City will pay Developer, as maximum compensation or fee for the Developer services for the amount identified in the Project Budget.

- 11.3 Developer covenants that all expenditures will comply with OMB circular A-122, and will be allowable, allocable and reasonable. The City reserves the right to inspect records and Project sites to determine that reimbursement and compensation requests meet the terms of OMB circular A-122. The City also reserves the right to hold payment until adequate documentation has been provided and reviewed.
- 11.4 Developer may submit a final invoice upon completion of the Project. Final payment will be made after the City has determined that all services have been rendered, files and documentation delivered, and Homes have been acquired, rehabilitated or constructed in full compliance with HOME Program regulations, including submission of a completion report and documentation of eligible occupancy, property standards and long-term use restrictions.
- 11.5 Developer will be monitored by the City for compliance with the regulations of 24 C.F.R. § 92.254(a) (4) for the affordability period specified above. Developer will provide reports and access to Project files as requested by the City during the construction of the Project and for six (6) years after completion and closeout of the Agreement or during the affordability period, whichever is longer.

12. Project Requirements.

- 12.1 Environmental Review. No HOME Program funds may be encumbered until the City has completed an Environment Review pursuant to the provisions of the National Environmental Policy Act of 1969 ("NEPA") and the related authorities listed in HUD's implementing regulations at 24 C.F.R. § 50.1, *et seq.* and 24 C.R.F. § 58.1, *et seq.* Until the Environment Review is complete, Developer will not undertake or commit any HOME Program funds to physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to environmental clearance. The results of the Environmental Review may result in a decision to proceed with, modify or cancel the Project.
- 12.2 Non-Discrimination. In the selection of Homeowners, Developer will comply with all non-discrimination requirements of 24 C.F.R. § 92.350. Developer agrees to post notices containing this policy against discrimination in conspicuous places available to applicants for employment and employees. All solicitations or advertisements for employees, placed by or on the behalf of Developer, will state that all qualified applicants will receive consideration for employment without regard to race, color, religion, disability, sex, national origin, financial status, age, sexual orientation, gender identity, or marital status.
- 12.3 Relocation. No Project or activity that entails the relocation of occupants before, during or after the award of HOME Program funds under this Agreement will be conducted without the express written approval and coordination of the relocation activity with the City. The Project will not be approved where it is determined that any relocation of occupants has taken place prior to the submission of the Project Application.
- 12.5 Affordability Requirements.
 - a. Developer will adhere to the repayment of investment requirements set forth in 24 C.F.R. § 92.503. Any HOME Program funds invested in the Project that do not meet the affordability requirements for the period specified in 24 C.F.R. §§ 92.252 or 92.254, as applicable, must be repaid in accordance with 24 C.F.R. § 92.503(b) (3).
 - b. Housing assisted with HOME Program funds meet the affordability requirements of 24 C.F.R. §§ 92.252 or 92.254, as applicable. Repayment of the HOME Program funds will be required if the housing does not meet the affordability requirements for the specified time period. The affordability period must be enforced by means of liens on real property, deed restrictions or covenants running with the land.

Homeownership projects must set forth resale or recapture requirements as part of the enforcement.

- c. All HOME Program funds recaptured because the housing no longer meets affordability requirements, will be forwarded to the City in accordance with 24 C.F.R. § 92.503.

13. Repayment of HOME Program Funds.

- 13.1 All HOME Program funds are subject to repayment in the event that Developer does not complete all professional, technical and construction services necessary to complete the Project.
- 13.2 Items that trigger full repayment prior to property transfer include, but are not limited to, the following:
 - a. The Home does meet Property standards as adopted by the City in the 2012 IBC Building Code; or
 - b. The Home is not sold to an income-eligible homebuyer; or
 - c. Developer does not comply with the HOME Program federal regulations.
- 13.3 Items that trigger repayment based on Net Proceeds occur subsequent to a Property transfer, and include, but are not limited to, the following:
 - a. The Home owner does not maintain compliance during affordability period; or
 - b. The Home owner does not maintain principal residency requirements.
- 13.4 Upon completion of the Project, any HOME Program funds reserved but not expended under this Agreement will revert to the City.
- 13.5 Any repayment of HOME Program funds will be made out of Net Proceeds from the sale of the HOME Program assisted unit. "Net Proceeds" are defined as: Sales Price minus non-HOME debt minus closing cost.

14. Procurement Standards.

- 14.1 Developer will comply with local procurement requirements as listed in the Additional Requirements as further described in **Exhibit L**.
- 14.2 Developer will establish procurement procedures to ensure that materials and services are obtained in a cost-effective manner. When procuring services to be provided under this Agreement, Developer will comply, at a minimum, with the nonprofit procurement standards at 24 C.F.R. §§ 84.40-48.
- 14.3 Any Developer that can be considered to be a religious organization will abide by all portions of 24 C.F.R. § 92.257.

- 15. **Maximum Home Value.** Developer must assure that the value as well as the purchase price of any home assisted with HOME Program funds does not exceed 95% of the home value limits in the Metropolitan Statistical Area as defined in Federal Housing Administration Section 203(b) and 24 C.F.R. § 92.250.

- 16. **Uniform Administrative Requirements.** To the extent applicable to a nongovernmental recipient of federal funds, Developer will comply with OMB Circulars A-87, A-102, A-110, A-122, A-133, as amended, the Davis-Bacon Act (40 U.S.C. 276a *et seq.*), as amended, and as supplemented by Department of Labor regulations (29 C.F.R. Part 5, as amended), the Copeland Anti-Kickback Act (18 U.S.C. 874), as amended, and as supplemented by Department of Labor regulations (29 C.F.R. Part 3, as amended), the Agreement Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*), as amended, and as supplemented by Department of Labor regulations (29 C.F.R. Part 5, as amended);

Executive Order 11246 (Equal Opportunity), as amended, and as supplemented by Department of Labor regulations (41 C.F.R., chapter 60, as amended); and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*, as amended and Section 104(d) of the Act), and in accordance with 24 C.F.R. Part 42, as amended.

17. Other Federal Requirements.

17.1 Affirmative Marketing. Developer must adopt affirmative marketing procedures and requirements for HOME Program-assisted housing containing three (3) or more housing units. Affirmative marketing steps will consist of actions to provide information and otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market area to the available housing and will comply with the requirements and procedures of 24 C.F.R. § 92.351.

17.2 Displacement, Relocation, and Acquisition.

- a. Developer must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of the Project.
- b. Developer will consult the City prior to proceeding with any Project activity with HOME Program funds that may cause temporary or permanent displacement of the beneficiary of HOME Program investment. Such consultation shall assure compliance with appropriate relocation requirements of 24 C.F.R. § 92.353 in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“URA”) (42 U.S.C. §§ 4201-4655) and implementing regulations at 49 C.F.R. Part 24, as amended and the Fair Housing Act (42 U.S.C. §§ 3601-19).
- c. The Project is subject to the requirements of the Housing and Community Development Act of 1974, and implementing regulation at 24 C.F.R. § 570. This includes the section 104 (d) requirements to provide relocation assistance and replace low- and moderate-income housing as described at 24 C.F.R. § 570.606(c).
- d. The acquisition of the Homes is subject to the URA and the requirements of 49 C.F.R. Part 24.1, *et seq.*

17.3 Labor Requirements.

- a. Federal regulation 24 C.F.R. § 92.354 requires that any contract for the construction (rehabilitation or new construction) of affordable housing with 12 or more units assisted with funds made available under the HOME Program must contain a provision requiring that the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. §§ 276a-5), will be paid to all laborers and mechanics employed in the development of affordable housing involved. Such agreements must also be subject to the overtime provisions, as applicable, to the Work Hours and Safety Standards Act (40 U.S.C. §§ 327-332).
- b. Developer will comply with regulations issued under Federal Laws and Regulations pertaining to labor standards and HUD handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable.

17.4 Debarment and Suspension. As required by 24 C.F.R. Part 24.1, federal funds will not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any contractor, subcontractor, developer, business, consultant or any entity during any period of debarment, suspension, or placement in ineligibility status, including the beneficiary of HOME Program investment.

18. Immigration Law Compliance.

- 18.1 Contractor, and on behalf 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.
- 18.2 Any breach of warranty under subsection 18.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 18.3 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 18.1 above.
- 18.4 City may conduct random inspections, and upon request of City, Contractor will provide copies of papers and records of Contractor demonstrating continued compliance with the warranty under subsection 18.1 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.
- 18.5 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 accue those obligations to the benefit of the City.
- 18.6 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.
- 18.7 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.

19. Conditions of Religious Organizations.

- 19.1 Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the HOME Program. Neither the federal government nor a state or local government receiving funds under the HOME Program will discriminate against an organization on the basis of the organization's religious character or affiliation.
- 19.2 Organizations that are directly funded under the HOME Program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the assistance funded under this section.
- 19.3 If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under this part, and participation must be voluntary for the beneficiaries of the assistance provided.
- 19.4 The completed Project must be used exclusively by the owner entity for secular purposes, available to all persons regardless of religion. In particular, there must be no religious or membership criteria for tenants of the Property.
- 19.5 An organization that participates in the HOME Program will not, in providing HOME Program assistance, discriminate against a Program beneficiary or prospective Program beneficiary on the basis of religion, religious belief or lack thereof.

19.6 The City will assure that any use of HOME Program funds by a religious organization, when commingled with funds of the religious organization, meet the requirements of 24 C.F.R. § 92.257.

20. Insurance.

20.1 Requirements. Developer must obtain, maintain and provide evidence of the following insurance ("Required Insurance") consistent with **Exhibit M**, Insurance Certificate:

- a. Developer and Sub-contractors. Developer, and each Sub-contractor performing work or providing materials related to this Agreement must procure and maintain the insurance coverage's described below (collectively "Contractor's Policies"), until each Parties' obligations under this Agreement are completed.
- b. General Liability.
 - (1) Developer 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 \$2,000,000 annual aggregate.
 - (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, products and completed operations, 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 Developer 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. Equipment Insurance. Developer must secure, pay for, and maintain all-risk insurance as necessary to protect the City against loss of owned, non-owned, rented or leased capital equipment and tools, equipment and scaffolding, staging, towers and forms owned or rented by Developer or its Sub-contractors.
- f. Notice of Changes. Developer's Policies must provide for not less than 30 days' advance written notice to City Representative of:
 - (1) Cancellation or termination of Developer or Sub-contractor's Policies;
 - (2) Reduction of the coverage limits of any of Developer or and Sub-contractor's Policies; and
 - (3) Any other material modification of Developer or Sub-contractor's Policies related to this Agreement.
- g. Certificates of Insurance.
 - (1) Within 10 business days after the execution of the Agreement, Developer must deliver to City Representative certificates of insurance for each of Developer 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 Developer 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 Developer and Sub-contractor's Policies, or to examine Developer 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) Developer's failure to secure and maintain Developer Policies and to assure Sub-contractor policies as required will constitute a material default under this Agreement.

h. Other Contractors or Vendors.

- (1) Other contractors or vendors that may be contracted by Developer with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular agreement.
- (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).

i. Policies. Except with respect to workers' compensation and employer's liability coverage's, the City must be named and properly endorsed as additional insured's on all liability policies required by this section.

- (1) The coverage extended to additional insured's must be primary and must not contribute with any insurance or self-insurance policies or programs maintained by the additional insured's.
- (2) All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and acceptable to all parties.

20.2 Sub-contractors.

- a. Developer 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. Developer and Sub-contractors must provide to the City proof of Required Insurance whenever requested.

21. Bonds. Upon execution of this Agreement, and if applicable, Developer must furnish payment and performance bonds as required under A.R.S. § 34-608 and 24 C.F.R. Part 85.36(h).

22. Conflict.

22.1 Developer 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.

- 22.2 Developer agrees to abide by the provisions of 24 C.F.R. § 92.356 with respect to conflicts of interest, and covenants that no person who exercises or have exercised any functions or responsibilities with respect to activities assisted with HOME Program funds or who are in a position to participate in a decision making process or gain any inside information with regard to these activities, may obtain a financial interest or benefit from the Project, or have an interest in any contract, subcontract or agreement with respect thereto, or proceeds derived from the Project, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.
- 22.3 Developer covenants that no person on its Board of Directors or any member of its staff has an identity of interest with any person or entities that might benefit directly or indirectly financially from this Agreement.
- 22.4 Developer further covenants that in the performance of this Agreement no person, having such a financial interest and/or influence with regard to the Project, will be employed or retained by Developer.
- 22.5 No owner, developer or sponsor of a project assisted with HOME Program funds (or officer, employee, agent or consultant of the owner, developer or sponsor) whether private, for profit or nonprofit (when acting as an owner, developer or sponsor) may occupy a HOME Program-assisted affordable housing unit in the Project. This provision does not apply to an individual who receives HOME Program funds to acquire or rehabilitate his or her principle residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the Project manager or maintenance worker.
- 22.6 If such conflict as outlined above does exist, Developer is bound to disclose officially in writing, on Developer's letterhead, the nature and extent of that conflict prior to execution of this Agreement, or if discovered subsequently, to disclose such conflict as soon as it occurs or is known.
- 22.7 Exceptions to above requirements are allowed under certain circumstances in accordance with 24 C.F.R. §§ 92.356(d), (e) and (f)(2). Requests for exceptions must be made to the City who, after determination as to whether an exception request is warranted, will render a decision and/or seek the approval of HUD to render a decision.
- 22.8 Developer will exercise due diligence and take all necessary steps to assure compliance with the requirements of this Section.
- 23. Equal Employment Opportunity.**
- 23.1 Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, national origin, financial status, age, sexual orientation, gender identity, or marital status. Developer take affirmative action to ensure the applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin(s). Such action will include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City's Representative setting forth the provisions of this nondiscrimination clause.
- 23.2 Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, national origin, financial status, age, sexual orientation, gender identity, or marital status.
- 23.3 Developer will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided

by the City's Representative, advising the labor union or worker's representative of Developer's commitments under Executive Order No. 11246 of September 24, 1965, and will post copies of the notice in conspicuous places available to employees and applicants for employment.

- 23.4 Developer will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 23.5 Developer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the City and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and order.
- 23.6 In the event Developer is found to be in noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated or suspended in whole or in part and Developer may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulations, or order of the Secretary of Labor or as otherwise provided by law.
- 23.7 Developer will include the provisions of paragraphs this section of this Agreement in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.

24. Labor, Training & Business Opportunity.

- 24.1 It is agreed that performance under this Agreement is on a Project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. § 1701u), as well as any and all applicable amendments thereto. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be provided to low and moderate income residents of the Project area, and that contracts for work in connection with the Project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the Project area.
- 24.2 Developer will comply with the regulations issued pursuant thereto by HUD as set forth in 24 Code of Federal Regulations and all applicable rules and orders of HUD issued there under as well as any and all applicable amendments thereto prior to the execution of this Agreement as well as during the term of this Agreement. Developer certifies and agrees that it is under no contractual or other disability, which would prevent it from complying with these requirements as well as any and all applicable amendments thereto.
- 24.3 In construction contracts of \$100,000 or more, Developer will include a clause that in every subcontract performing work in connection with the Project and will, at the direction of the City, take appropriate action under 24 C.F.R. Part 135. Developer will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 code of Federal Regulations and will not enter into any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with these requirements as well as with any and all applicable amendments thereto.
- 24.4 Compliance with the provisions of Section 3, the regulations set forth in 24 Code of Federal Regulations and all applicable rules and orders of HUD issued thereunder is a condition precedent to federal financial assistance being provided to and continuing to be provided to the Developer. Such compliance will be binding upon the applicant or recipient for such

assistance, its successors, and assigns. Failure to fulfill these requirements will subject Developer or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by 24 Code of Federal Regulations, as amended, and may be cause to terminate this Agreement.

25. **Compliance with Federal, State & Local Laws.** Developer covenants and warrants that it will comply with all applicable laws, ordinances, codes, rules and regulations of the state local and federal governments, and all amendments thereto, including, but not limited to; Title 8 of the Civil Rights Act of 1968 PL.90-284; Executive Order 11063 on Equal Opportunity and Housing Section 3 of the Housing and Urban Development Act of 1968; Housing and Community Development Act of 1974, and all requirements of the Home Program as set forth in 24 C.F.R. 92.

26. **Suspension & Termination.**

26.1 In accordance with 24 C.F.R. § 85.43, suspension or termination may occur if Developer materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 C.F.R. § 85.44.

26.2 If Developer is unable to meet the approved timelines as required by HOME Program regulations or complete the Project because of delays resulting from Acts of God, untimely review and approval by the City and other governmental authorities having jurisdiction over the Project, or other delays that are not caused solely by Developer, the City will grant a reasonable extension of time for completion of the Project. It will be the responsibility of Developer to notify the City promptly in writing whenever a delay is anticipated or experienced, and to inform the City of all facts and details related to the delay. Developer will also inform the City when it expects the delay to end and when it expects the Project to be complete.

26.3 If Developer fails in any manner to fully perform and carry out any of the terms, covenants, and conditions of the Agreement, or if Developer refuses or fails to proceed with the Project with such diligence as will ensure its completion within the time fixed by HOME Program regulations, Developer will be in default and notice in writing will be given to Developer's Representative of such default by the City or an agent of the City. If Developer fails to cure such default within such time as may be required by such notice, the City may at its option terminate and cancel the Agreement at the expiration of the cure period.

26.4 In the event of such termination, all HOME Program funds awarded to Developer pursuant to this Agreement will be immediately revoked and any approvals related to the Project will immediately be deemed revoked and canceled. In such event, Developer will no longer be entitled to receive any compensation for work undertaken after the date of the termination of this Agreement, as the grant funds will no longer be available for this Project.

26.5 In the event of such termination, Developer will be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder prior to the date of said termination.

26.6 Notwithstanding the above, Developer will not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Developer. The City may withhold any payments to the Developer for the purpose of setoff against such damages until such time as the exact amount of damages due the City from Developer is determined whether by court of competent jurisdiction or otherwise.

26.7 The waiver or failure to enforce a breach of any term, covenant or condition hereof will not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition hereof.

27. **Default-Loss of HOME Program Funds.**

- 27.1 If Developer fails in any manner to fully perform and carry out any of the terms, covenants, and conditions of the Agreement, and more particularly if Developer refuses or fails to proceed with the work with such diligence as will ensure its completion within the time fixed by the schedule set forth in HOME Program regulations, Developer will be in default and notice in writing will be given to Developer of such default by the City or an agent of the City. If Developer fails to cure such default within such time as may be required by such notice, the City, may at its option terminate and cancel the Agreement.
- 27.2 In the event of such termination, all HOME Program funds awarded to Developer pursuant to this Agreement will be immediately revoked and any approvals related to the Project will immediately be deemed revoked and canceled. In such event, Developer will no longer be entitled to receive any compensation for work undertaken after the date of the termination of this Agreement, as the HOME Program funds will no longer be available for this Project.
- 27.3 Such termination will not affect or terminate any of the rights of the City as against Developer then existing, or which may thereafter accrue because of such default, and the foregoing provision will be in addition to all other rights and remedies available to the City under the law and the Note and Deed of Trust (if in effect), including but not limited to compelling Developer to complete the Project in accordance with the terms of this Agreement, in a court of equity.
- 27.4 The waiver of a breach of any term, covenant or condition hereof will not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition hereof.

28. **Inspection, Monitoring & Access to Records.**

- 28.1 The City reserves the right to inspect, monitor, and observe work and services performed by Developer at any and all reasonable times.
- 28.2 The City reserves the right to audit the records of Developer any time during the performance of this Agreement and for a period of six (6) years after the period of affordability has been satisfied under this Agreement.
- 28.3 Developer will provide the City with a copy of their single audit and management letter pursuant to the requirements of OMB Circular A-133 annually, but no later than 30 days after completion of single audit.
- 28.4 Access will be immediately granted to the City, HUD, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of Developer or its contractors which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

29. **Indemnification Agreement.** Developer will, during the term of this Agreement, indemnify, hold, protect, and save harmless the City and any and all of its officers, elected officials, agents, and employees from and against any all actions, audits, proceedings, claims and demands, loss, liens, costs, expenses and liability of any kind and nature whatsoever, for injury to or death of persons, or damage to property, including property owned by the City brought, made, filed against, imposed upon or sustained by the City, its officers, agents, or employees in and arising from attributable to or caused directly or indirectly by the negligence, wrongful acts, omissions or from operations conducted by the Developer, its officers, agents or employees, or by any person acting on behalf of Developer and with Developer's knowledge and consent, expressed or implied.

30. **Prohibited Lobbying Activities.** Developer, his/her agent or representative will not have any lobbying contact, as defined by the Lobbying Disclosure Act (2 U.S.C. 1602), orally or in any written form with any City elected official or any City employee other than the Planning and Community

Development Department, City Manager, Deputy City Manager or City Attorney's office (for legal issues only) regarding the contents of this Agreement.

31. **Prohibited Political Contribution.** Developer during the term of this Agreement will not make a contribution reportable under Title 16, Chapter 6, Article 1, Arizona Revised Statutes to a candidate or candidate committee for any City elective office during the term of this Agreement. The City reserves the right to terminate the Agreement without penalty for any violation of this provision.
32. **Contingent Fees.** Developer promises that it has not employed or retained any company or person, other than bona fide employees working solely for Developer, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than bona fide employees working solely for Developer, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach of this promise, the City may cancel this Agreement without liability or, at its discretion, deduct the full amount of the fee, commission, percentage, brokerage fee, gift or contingent fee from the compensation due Developer.
33. **Successors and Assigns.** This Agreement is binding on the City and Developer, and its successors and assigns. Neither the City nor Developer will assign or transfer its interest in this Agreement without the written consent of the other.
34. **Enforcement of the Agreement.**
 - 34.1 The City will enforce this Agreement in accordance with 24 C.F.R. § 85.43, by suspension or termination of the Agreement should Developer fail to comply with any term of the Agreement, or for convenience in accordance with 24 C.F.R. § 85.44.
 - 34.2 Developer acknowledges and agrees that it will be subject to sanctions set forth in HOME Program Regulation 24 C.F.R. Part 92, if determined to be applicable by the City.
 - 34.3 The parties hereto agree that this Agreement will be construed and enforced according to the laws of the State of Arizona and all applicable federal laws and regulations.
35. **Representatives.**
 - 35.1 Developer. Developer's representative ("Developer's Representative") authorized to act on Developer's behalf with respect to the Project, and his or her address for Notice delivery is:

Attn: Lisa Weide, Grant Administrator
Habitat for Humanity Central Arizona
9133 NW Grand Avenue Suite 1
Peoria, Arizona 85345

- 35.2 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
Attn: Gilbert Lopez
Community Revitalization Division
5850 West Glendale Avenue Suite 107
Glendale, Arizona 85301

With required copies to:

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

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

- 35.3 Concurrent Notices.
- a. All notices to City's Representative must be given concurrently to City Manager and City Attorney.
 - b. A notice will not be considered to have been received by City's Representative until the time that it has also been received by the City Manager and City Attorney.
 - c. 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.
- 35.4 Changes. Developer 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.

36. Other Provisions.

- 36.1 Developer is responsible for all applicable state and federal social security benefits and unemployment taxes and agrees to indemnify and protect the City against such liability.
- 36.2 Developer will maintain a procurement Code of Conduct for its organization, and ensure compliance by all employees.
- 36.3 Alternations to the Project and Budget must be mutually agreed upon by the City and Developer, and will be incorporated into this Agreement by written amendments signed by both parties.
- 36.4 This Agreement represents the entire agreement between the parties and supersedes all prior representations, negotiations or agreements whether written or oral.
- 36.5 Title and paragraph headings are for convenient reference and are not a part of this Agreement.
- 36.6 In the event of conflict between the terms of this Agreement and any terms or conditions contained in any attached documents, the terms in this Agreement will rule.
- 36.7 No waiver or breach of any provision of this Agreement will constitute a waiver of a subsequent breach of the same or any other provision hereof, and no waiver will be effective unless made in writing.
- 36.8 Should any provisions, paragraphs, sentences, words or phrases contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Arizona, such provisions, paragraphs, sentences, words or phrases will be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, then same will be deemed severable, and in either event, the remaining terms and provisions of this Agreement will remain unmodified and in full force and effect.
- 36.9 Developer and its employees and agents will be deemed to be independent contractors, and not agents or employees of the City, and will not attain any rights or benefits under the civil service or pension ordinances of the City, or any rights generally afforded classified or unclassified employee; further they will not be deemed entitled to state compensation benefits as an employee of the City.
- 36.10 Funding for this Agreement is contingent on the availability of funds and continued authorization for the Project and is subject to amendment or termination due to lack of funds, or authorization, reduction of funds, and/or change in regulations.

37. **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 Match Letter
- Exhibit C Memorandum of Agreement
- Exhibit D Project Budget

- Exhibit E Homeowner Deferred Loan Agreement for HOME Program Funds
- Exhibit F Homeowner Deed of Trust and Assignment of Rents
- Exhibit G Homeowner Promissory Note
- Exhibit H Developer Deed of Trust and Assignment of Rents
- Exhibit I Developer Promissory Note
- Exhibit J Certifications
- Exhibit K Federal Laws and Regulations
- Exhibit L Additional Requirements
- Exhibit M Insurance

(Signatures Appear on the Next Page)

Exhibit A
Project

EXHIBIT A

PROJECT

1. The City has awarded Developer \$250,000 in HOME Program funds to be for constructions cost associated with the renovation of four (4) homes to assist low-income persons and families in obtaining decent and affordable homeownership opportunities within the zip codes 85301, 85302, & 85303. The funds will be put into the following properties which Habitat Central Arizona hold title too an has site control::

6825 N 61st Ave Glendale AZ 85301

6829 N 61st Ave Glendale AZ 85301

5511 W Oranewood, Glendale AZ 85301

6746 N 54th Drive, Glendale AZ 85301

2. The total budget for the Project is \$447,000.
3. The average cost to renovate the homes is \$125,000 per home. The developer will be allowed a maximum of \$10,000 of the Home grant award for Developer Fees associated with this project. The developer will able to provide each homebuyer with \$5,000 in HOME for down payment and closing cost assistance.
4. The remaining balance of \$197,000 will be paid directly from the Developer, from sponsor funds, and from volunteer labor.
5. The Developer will match the HOME Program funds provided in the amount of \$62,500 from a Federal Home Loan.
6. Any cost overruns will be handled using Developer's general donations, Developer's fund for mortgages or Developer's line of credit.