

# CITY CLERK ORIGINAL

C-7206-3  
09/19/2012

## SIXTH AMENDMENT

### Agreement for NSP Acquisition, Rehabilitation and Resale Foreclosed Homes City of Glendale Solicitation No. RFP 10-10

This Sixth Amendment to the Agreement for NSP Acquisition, Rehabilitation and Resale Foreclosed Homes (City of Glendale Solicitation No RFP 10-10), recorded with the Glendale City Clerk's Office as Document No. C-7206 (the "Agreement"), is entered into this 19<sup>th</sup> day of September, 2012 by the parties to the Agreement.

#### RECITALS

- A. The Agreement has been previously amended by First Amendment, dated May 19, 2010 and recorded with the City Clerk as 7206-1; Contract Amendment No. 2, dated July 21, 2010, which was not recorded with the City Clerk; Contract Amendment No. 3, dated November 16, 2012, which was not recorded with the City Clerk; and Contract Amendment No. 4, dated January 5, 2011, which was not recorded with the City Clerk.
- B. The Agreement was further amended by two documents referred to as "Fifth Amendment," one dated December 6, 2011 and recorded with the City Clerk as C-7206-2, and another dated December 11, 2011, which was not recorded with the City Clerk.
- C. The parties desire to modify and amend the Agreement in accordance with the terms of this Sixth Amendment and to restate the prior amendments listed above, all of which shall be recorded with the City Clerk notwithstanding their being superseded by this Sixth Amendment.
- D. The parties acknowledge that this Sixth Amendment will be the last amendment to the Agreement and that any further agreement between the parties will require a new contract with appropriate contracting procedures.

#### AMENDMENTS

NOW, THEREFORE, the City and Contractor hereby agree as follows:

- 1. The Agreement is amended by striking in its entirety § 4.1 and restating that section as follows:
  - 4.1 Compensation.**
    - (A) Contractor's compensation for the Project—inclusive of all compensation due from Contractor to Sub-contractors and any brokerage or sales commissions, fees, or costs incurred by Contractor—shall not exceed \$2,670,000 ("Compensation").
    - (B) Compensation is not and shall not be a general obligation of the City and shall be obligated and payable only to the extent that money are available to be paid from segregated funds accumulated directly as a result of the Project or funds that have been provided by the federal government for the Project.

2. Exhibit B of the Agreement is amended by striking in its entirety the second paragraph entitled “NOT-TO-EXCEED AMOUNT” and restating that paragraph as follows:

**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 shall not exceed \$2,670,000, which shall not be a general obligation of the City and shall be obligated and payable only to the extent that money are available to be paid from segregated funds accumulated directly as a result of the Project or funds that have been provided by the federal government for the Project.

3. The Agreement is amended by adding a new § 3.6 as follows:

**3.6 Bonding.** Contractor will secure and maintain the performance and payment bonds in accordance with A.R.S. §§ 34-222, 34-223.

4. The Agreement is amended by adding a new § 3.7 as follows:

**3.7 Sale of Project Properties.**

- (A) Contractor shall sell homes it has acquired under the scope of the Project that have been renovated in accordance with the Project’s requirements (“Project Properties”).
- (B) Total commissions, fees, and costs paid to all brokers and real estate agents involved in the sale of each of the Project Properties shall be the lesser of \$2,000 or:
  - (1) 3% to the listing broker and agents and 3% to the selling broker and agent; or
  - (2) 5% if the broker and agent are the listing and selling broker or agent or if the broker and agent are affiliated in any manner.
- (C) Contractor must:
  - (1) Coordinate and prepare all documents necessary for closing and transfer of title to the sale of Project Properties and lending required therefor;
  - (2) Audit and prepare the loan files for the remittance to the designated loan servicing company;
  - (3) Provide to the City copies of all title and loan documentation;
  - (4) Provide to the City a copy of the buyer’s completed counseling certificate; and
  - (5) Prepare as directed and in the form required by the City an assignment to the City of a deed of trust on the Project Property and a note in an amount required by the City.

5. The Agreement is amended by adding a new § 4.3 as follows:

**4.3 Term.** This Agreement terminates on June 31, 2013 (“Termination Date”).

(A) Contractor will have concluded all work by the Termination Date and will have submitted all invoices to the City for payment of any and all amounts by that date.

(B) All broker agreements entered into by Contractor will terminate as of the Termination Date and Contractor will indemnify City, consistent with § 8.3, for any claims related to brokerage commissions, fees, and costs incurred after the Termination Date.

(B) Contractor will have no claim in law or equity for payments submitted after the Termination Date.

6. The Agreement is amended by striking in its entirety § 11.2(A) restating that section as follows:

(A) City. City’s representative (“City Representative”) for Notice delivery is:

Jacque F. Behrens  
Purchasing and Materials Control Manager  
City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301

7. This Sixth Amendment supersedes all prior amendments to the Agreement.

8. Except as specifically stated herein, no further amendments are intended to be made to the Agreement, and no interim warrantics, representations, oral agreements, understandings, or courses of conduct have altered the Agreement in any manner.

*[signatures to appear on following page]*

CITY OF GLENDALE, an Arizona  
municipal corporation

Horatio Skeete  
Horatio Skeete, Acting City Manager

ATTEST:

Pamela Hanna  
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

Craig Tindall  
Craig Tindall, City Attorney

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

Roger C. Schwierjohn  
By: ROGER C. SCHWIERJOHN  
Its: PRESIDENT

STATE OF ARIZONA )  
County of Maricopa ) ss.



THE FOREGOING AMENDMENT WAS ACKNOWLEDGED before me this 19<sup>th</sup> day of September, 2012, by Roger Schwierjohn in the capacity as PRESIDENT with Habitat for Humanity Central Arizona, an Arizona non-profit corporation.

Beth Coughenour  
Notary Public

My Commission Expires:  
April 4, 2016