



# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

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## Community Development

300 Sixth Street

605-394-4181

Fax: 605-394-2232

LF052803-03

TO: Jason Green, Assistant City Attorney

FROM: Trish Anderson *TA*  
Community Development

RE: Habitat for Humanity Contract Amendment

DATE: April 11, 2003

Habitat for Humanity was awarded \$30,000 in Community Development Block Grant funds from the Fiscal Year 2002 allocation. They applied for the funds to purchase lots and install the required infrastructure and engineering for those lots. However, the Statement of Work in the Contract states that the funds are to be used only for land acquisition. They would like to use the Block Grant funds for the infrastructure and engineering costs associated with the lots so the contract must be amended. Infrastructure and engineering costs are eligible for Block Grant funding.

I have attached a re-written Statement of Work for your review. You will notice that I removed the date for expenditure of funds by March 31, 2003. None of the CDBG recipients have spent their money by this time and I am not sure why it is in the contract. Please review the attached documents and let me know if the revised Statement of Work is okay. The next step would be to send this through the Legal and Finance Committee.



EQUAL OPPORTUNITY EMPLOYER

**SUBRECIPIENT CONTRACT FOR  
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDING**

**SECTION I.  
AGREEMENT**

THIS AGREEMENT, made and entered into this April 16, 2002, by and between the CITY OF RAPID CITY (hereinafter referred to as "City"), and BLACK HILLS AREA HABITAT FOR HUMANITY (hereinafter referred to as "Subrecipient"), Witnesseth:

WHEREAS, the City has, under date of April 1, 2002, entered into a contract with the Department of Housing & Urban Development providing for financial aid to the City under Title I of the Housing and Community Development Act of 1974, as amended to date; and

WHEREAS, pursuant to such contract, the City is undertaking certain activities necessary for the execution of a project situated in the project area described in the Statement of Work; and

WHEREAS, the City desires to disburse funds to the Subrecipient to execute certain projects in conjunction with such undertaking of the City;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

**SECTION II.  
STATEMENT OF WORK**

The Statement of Work is attached as Exhibit "A" hereto and made a part of this contract. Subrecipient agrees to perform the work described in Exhibit "A" in compliance with all provisions of this contract. Subrecipient warrants and represents that it has the requisite authority and capacity to perform all terms and conditions on Subrecipient's part to be performed hereunder.

**SECTION III.  
RESPONSIBILITY OF THE CITY**

City shall designate representatives of the City who will be authorized to make all necessary decisions required of the City on behalf of the City in connection with the execution of this contract and disbursing funds in connection with the program.

**SECTION IV.  
SUBRECIPIENT COMPENSATION AND METHOD OF PAYMENT**

If Subrecipient is not in default hereunder, and subject to City's receipt of the Department of Housing & Urban Development Community Development Block Grant funds, and provided that the contract and Statement of Work are eligible expenditures of Community Development Block Grant funds, the City agrees to pay the Subrecipient THIRTY THOUSAND DOLLARS (\$30,000.00). Payment shall be made upon presentation of invoices which Subrecipient certifies are true and correct copies of payments due on behalf of the Subrecipient, for an activity covered by this contract and made in accordance and compliance

with the Statement of Work. Payment may be suspended by the City in the event of nonperformance by Subrecipient.

#### **SECTION V. TERM OF CONTRACT**

Except as provided in Section VI below, this contract shall be in effect as long as the Subrecipient retains control over Community Development Block Grant funds, including income generated from the funds, or retains control over property purchased in whole or in part with Community Development Block Grant funds, or income generated from the property.

#### **SECTION VI. TERMINATION OF CONTRACT**

This contract may be terminated, in accordance with 24 C.F.R. 85.43, if the Subrecipient materially fails to comply with any term of the contract. The City may terminate the contract upon ten (10) days' written notice, together with documentation of the reasons thereof, and after an opportunity for a hearing is afforded. The determination of the City as to the cause of termination and the appropriateness thereof shall be final and binding upon both City and Subrecipient. In the event projects are delayed, the Subrecipient shall notify the City of Rapid City in writing informing the City of the issues surrounding the delay of the project, and in cases where the project is not moving forward, the City shall notify the subrecipient of termination of the funding, as per Section VI.

In the event of termination, all finished or unfinished documents, data, studies and reports prepared by the Subrecipient under this contract shall, at the option of the City, become its property and the Subrecipient shall be entitled to receive just and equitable compensation for satisfactory work completed on such materials for which work compensation has not previously been paid.

#### **SECTION VII. TERMINATION FOR CONVENIENCE**

This contract may be terminated for convenience in accordance with 24 C.F.R. 85.44.

#### **SECTION VIII. TERMINATION OF CITY'S OBLIGATIONS**

The City's obligations under this contract will terminate in the event of suspension or non-receipt of Community Development Block Grant funds by the City.

#### **SECTION IX. ASSIGNABILITY**

This contract shall not be assigned or transferred by the Subrecipient without the prior written consent of the City.

## **SECTION X. SUBRECIPIENT**

Records of the Subrecipient and reimbursable expenses pertaining to Statement of Work and records of accounts between the City and the Subrecipient shall be kept on a generally recognized accounting basis. The City, the U.S. Department of Housing & Urban Development, the Comptroller General of the U.S., or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Subrecipient which are directly pertinent to the contract for the purpose of making an audit, examination, excerpts and transcriptions. All financial records pertaining to this contract upon completion shall remain the property of the City of Rapid City.

## **SECTION XI. MONITORING AND EVALUATION**

The City reserves the right to monitor and evaluate the progress and performance of the Subrecipient to assure that the terms of this agreement are being satisfactorily met in accordance with City and other applicable monitoring and evaluating criteria and standards. Subrecipient shall cooperate with the City relating to such monitoring and evaluation.

## **SECTION XII. SUBRECIPIENT FILES AND INFORMATION REPORTS**

The Subrecipient shall retain information in its files which shall clearly document all activities performed in conjunction with this agreement, including, but not limited to, financial transactions, conformance with assurances, and Subrecipient activity reports. These records shall be retained by the Subrecipient for a period of three (3) years after the completion of the project. A Subrecipient report shall be submitted with all requests for reimbursement.

## **SECTION XIII. INDEPENDENCE OF SUBRECIPIENT**

Nothing herein contained nor the relationship of Subrecipient to the other parties hereto, which relationship is specifically declared to be that of an independent contractor, shall make or be construed to make Subrecipient, or any of the Subrecipient's agents or employees, the agents or employees of the City. Subrecipient shall be solely and entirely responsible for its acts and the acts of its agents, employees and subcontractors.

## **SECTION XIV. LIABILITY**

Subrecipient agrees to assume the risk of all personal injuries, including death resulting there from, to persons, and damage to and destruction of property, including loss of use there from, caused by or sustained, in whole or in part, in connection with or arising out of the performance or non-performance of this contract by Subrecipient, or by the conditions created thereby. Subrecipient further agrees to indemnify and save harmless the City, its

officers, agents and employees, from and against any and all claims, liabilities, costs, expenses, penalties or attorney fees, arising from such injuries to persons, or damages to property, or based upon or arising out of the performance or non-performance of this contract by Subrecipient, or out of any violation of Subrecipient of any statute, ordinance, rule or regulation.

#### **SECTION XV. ASSURANCES**

The Subrecipient agrees to use Community Development Block Grant funds for the purposes authorized by the Rapid City Common Council. The Subrecipient further agrees to comply with the assurances, (attached as Exhibit "B" hereto and made a part of this contract), which are required by the Department of Housing & Urban Development for all Community Development Block Grant projects. These include Federal Labor Standards requirements.

#### **SECTION XVI. PROGRAM INCOME**

Should program income be generated from the use of Community Development Block Grant funds, the subrecipient shall use that program income for the activity approved under this agreement. In the event the Subrecipient desires to use the program income for some other activity, they must request and receive permission from the City of Rapid City before undertaking such a use. The City of Rapid City will determine whether the proposed use meets the eligibility criteria of the regulations established for CDBG funds, and notify the Subrecipient of either approval or disapproval. In the case of disapproval, all program income will be returned to the City of Rapid City.

#### **SECTION XVII. PROPERTY ACQUIRED WITH PROGRAM FUNDS**

Subrecipient agrees to use all personal assets and all real property, acquired or improved, in whole or in part, with Community Development Block Grant funds, as set forth in Exhibit "A". In the event Subrecipient ceases to use a personal asset or real property acquired, or improved, with Community Development Block Grant funds, in accordance with Exhibit "A", the Subrecipient shall return the personal asset or real property to the City, or pay to the City, a sum equal to its fair market value, less any portion of the value attributable to expenditures of non-Community Development Block Grant funds for the acquisition of, or improvement to, the asset or property. The Subrecipient shall transfer to the City of Rapid City any Community Development Block Grant funds on hand at the time of expiration of this Contract and any accounts receivable of Community Development Block Grant funds.

#### **SECTION XVIII. CONFLICT OF INTEREST**


The Subrecipient covenants that neither it nor any member of its Board of Directors, officers, or employees presently have any interest in any project to be financed under the Statement of Work, and shall not acquire any interest therein which would conflict with the performance of the Statement of Work required under this Contract or applicable statute, rule or regulation.

**SECTION XIX.**  
**ENTIRE AGREEMENT**

The provisions set forth in Items I-XVIII, and all attachments of this agreement constitute, the entire agreement between the parties hereto and no statement, promise, conditions, understanding, inducement or representation, oral or written, express or implied, which is not contained herein shall be binding or valid.

**IN WITNESS WHEREOF**, the Subrecipient and the City have executed this agreement as of the date first above written and under the laws of the State of South Dakota.

**CITY OF RAPID CITY**


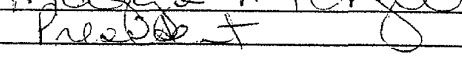
  
By: Jerry Munson  
Its: Mayor

**ATTEST:**

  
Jim Preston  
City Finance Officer

**SUBRECIPIENT**

BLACK HILLS AREA HABITAT FOR HUMANITY

By:   
Its: 

**ATTEST:**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED BY:**

\_\_\_\_\_  
City Attorney

## EXHIBIT "B"

### I. CERTIFICATIONS

- A. This contract will be conducted and administered in compliance with:
1. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and implementing regulations issued at 24 C.F.R. Part 1;
  2. Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), as amended; and the grantee will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;
  3. Section 109 of the Housing and Community Development Act of 1974, as amended, and the regulations issued pursuant thereto;
  4. Section 3 of the Housing and Urban Development Act of 1968, as amended;
  5. Executive Order 11246, as amended by Executive Order 11375 and 12086, and implementing regulations issued at 41 C.F.R. Chapter 60;
  6. Executive Order 11063, as amended by Executive Order 12259, and implementing regulations issued at 24 C.F.R. Part 107;
  7. Section 504 of the Rehabilitation Act of 1973, (Pub. L. 93-112), as amended, and implementing regulations when published for effect;
  8. The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect;
  9. The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the implementing regulations at 24 C.F.R. Part 42;
  10. Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution;
  11. The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234);
  12. The Uniform Administrative requirements, set forth in 24 C.F.R. Part 570.502, and 24 C.F.R. 85, and the requirements of OMB Circular Nos. A-87, A-128, A-122, A-21 and A-110 as they relate to the acceptance and use of Federal funds under this federally-assisted program, including but not limited to the regulations pertaining to inventions, reporting and patent rights, and copyrights;

13. The Clean Air Act (42 U.S.C. 7401 et.seq.);
14. HUD environmental standards [24 C.F.R. Part 51, Environmental Criteria and Standards (44 FR 40860-40866, July 12, 1979)];
15. The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et. seq., and 21 U.S.C. 349), as amended;
16. The Endangered Species Act of 1973 (16 U.S.C. 1531 et. seq.), as amended;
17. The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et. seq.), as amended;
18. The Reservoir Salvage Act of 1960 (16 U.S.C. 469 et. seq.), as amended by the Archeological and Historical Preservation Act of 1974;
19. Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et. seq.), as amended;
20. Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et. seq.);
21. The lead-based paint requirements of 24 C.F.R. Part 35 issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et. seq.);
22. The National Historic Preservation Act of 1966 (16 U.S.C. 470 et. seq.), as amended;
23. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 F.R. 8921 et. seq.);
24. The Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented in the Department of Labor regulations (29 C.F.R., Part 3);
25. The Davis-Bacon Act [40 U.S.C. 276(a) to (a-7)], as supplemented by the Department of Labor regulations (29 C.F.R., Part 5); Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330), as supplemented by the Department of Labor regulations (29 C.F.R., Part 5), and the attached Federal Labor Standards Provisions.
26. The State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Pub. L 94-163).



## **EXHIBIT "A"**

### **STATEMENT OF WORK**

#### **PURPOSE OF FUNDING AND DESCRIPTION OF WORK TO BE PERFORMED**

BLACK HILLS AREA HABITAT FOR HUMANITY shall use THIRTY THOUSAND DOLLARS (\$30,000.00) of Community Development Block Grant funds to purchase lots on which to construct affordable homes for low income occupants in accordance with the proposal submitted in the application for Community Development Block Grant funds received in November 2001.

#### **SCHEDULE FOR COMPLETION OF WORK**

BLACK HILLS AREA HABITAT FOR HUMANITY in Rapid City, SD shall perform the services set out above, and shall expend THIRTY THOUSAND DOLLARS (\$30,000.00) of Community Development Block Grant funding provided for above, by March 31, 2003.

#### **BUDGET**

BLACK HILLS AREA HABITAT FOR HUMANITY shall use THIRTY THOUSAND DOLLARS (\$30,000.00) of Community Development Block Grant funds provided for above as follows:

Program/Administrative Costs:	\$
Construction/Equipment:	\$
Engineering Costs:	\$
Land Acquisition:	\$30,000.00
Total Grant	\$30,000.00

- B. The Subrecipient certifies, to the best of his or her knowledge and belief, that:
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
  2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
  3. The Subrecipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **EXHIBIT "A"**

### **STATEMENT OF WORK**

#### **PURPOSE OF FUNDING AND DESCRIPTION OF WORK TO BE PERFORMED**

BLACK HILLS AREA HABITAT FOR HUMANITY shall use THIRTY THOUSAND DOLLARS (\$30,000.00) of Community Development Block Grant funds in the application for Community Development Block Grant funds received in November 2001.

#### **SCHEDULE FOR COMPLETION OF WORK**

BLACK HILLS AREA HABITAT FOR HUMANITY in Rapid City, SD shall perform the services set out above, and shall expend THIRTY THOUSAND DOLLARS (\$30,000.00) of Community Development Block Grant funding provided for above.

#### **BUDGET**

BLACK HILLS AREA HABITAT FOR HUMANITY shall use THIRTY THOUSAND DOLLARS (\$30,000.00) of Community Development Block Grant funds provided for above as follows:

Land Acquisition, Engineering, and Infrastructure Costs: \$30,000.00

Total Grant: \$30,000.00