CONTRACT BETWEEN
THE CITY OF BATTLE CREEK
AND
BATTLE CREEK AREA HABITAT FOR HUMANITY
FOR ACQUISITION, DEVELOPMENT, and RESALE
OF 273 W. SPAULDING AVENUE

THIS CONTRACT, entered into, and effective, this 3rd day of September, 2024, by and between the City of Battle Creek, a Michigan municipal corporation organized under the laws of the State of Michigan, (hereinafter called the "City"), and Battle Creek Area Habitat for Humanity, Inc., a Community Housing Development Organization (CHDO) and a nonprofit organization organized and existing under the laws of the State of Michigan (hereinafter called the "Developer") whose address is 595 North Avenue, Battle Creek, MI 49017.

WITNESSETH THAT:

Whereas, the federal HOME Investment Partnerships Program (HOME) was created by the Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA) to provide decent affordable housing to lower-income households, expand the capacity of nonprofit housing providers, strengthen the ability of state and local governments to provide housing and to leverage private-sector participation;

Whereas, City receives HOME Investment Partnership funds from the U.S. Department of Housing and Urban Development (HUD) and desires to engage Developer to perform certain services and activities consistent with the program; and

Whereas, City must reserve not less than 15 percent of each year's HOME allocation for investment in affordable housing be owned, developed or sponsored by a community housing development organizations (CHDO's) as required under 24 CFR Part 92; and

Whereas, Developer has been certified with City as a CHDO, and will maintain CHDO status for the term of this agreement in accordance with 24 CFR 92 and has submitted a proposal for use of CHDO funds for a CHDO-eligible project under HOME regulations; and

Whereas, Developer agrees to perform such services and activities in a lawful, satisfactory, and proper manner and in accordance with all policies, procedures, and requirements which have been or, from time to time, may be prescribed by City; and

Whereas, the services and activities which Developer agrees to perform under the HOME Program are subject to an environmental review as required under 24 CFR Part 58.

Notwithstanding any provision of this Contract, the parties hereto agree and acknowledge this Contract does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the City of a release of funds from HUD under 24 CFR Part 58.

Further, Developer will not undertake or commit any funds to physical or choice limiting actions, including property acquisition or construction prior to the environmental clearance, and acknowledge that the violation of this provision may result in the denial of any funds under the Contract.

NOW, THEREFORE, City and Developer do mutually agree as follows:

1. PROJECT OBJECTIVES

   A. To develop a single family home to foster and promote home ownership for families and individuals at, or below 80% of area median income adjusted for family size for the City of Battle Creek, with funding from the HOME Investment Partnership Program.

   B. This contract will fund the new construction of 273 W. Spaulding, Battle Creek, MI, 49037 with a HOME-funded development loan of $130,000. This agreement also will provide up to $13,000 in down payment assistance to a qualified homebuyer, the HOME program requires the provision of at least $1,000 in down payment assistance but will provide up to 10% of the purchase price, or up to $13,000 whichever is less.

2. TERM OF SERVICE

   A. Developer expressly agrees to complete all work required by this agreement in accordance with the timetable set forth.

      1. Ground Breaking/Excavation/Pour Foundation Walls - Week of September 9, 2024
      2. Plumber: Underground piping installed - September 16-20
      3. Underground Plumbing Inspection - September 20
      4. Floor Preparation and Install - September 21-25
      5. Wall raising, roof trusses - September 25-31
      6. Interior walls, roofing, exterior walls - October 1-15
      7. Trades rough installations - October 15-31
      8. Build porches November 1-8
      9. Siding, roofing, finish interior walls November 11-29
      10. Drywall, finish exterior siding, roofing December 1-27
      11. Painting January 2-10
      12. Trim, install doors, cabinets January 7-19
      13. Shelving, tile, countertops January 21-26
      14. Vanity install, flooring install January 28-31
      15. Driveway install February 4-8
      16. Landscaping February 11-15
      17. Final Touches/Touchups February 17-28
      18. Extra time March
      19. Home dedication April 7

B. This project is subject to ongoing compliance requirements of HOME for 5 years from the date of initial occupancy. During this compliance period, Developer will assure continued compliance with HOME requirements. For homebuyer units this includes monitoring units for principal residency and recapture of funds at time of resale.

C. Timely completion of the work specified in this agreement is an integral and essential part of performance. The expenditure of HOME funds is subject to Federal deadlines and could result in the loss of the Federal funds. By the acceptance and execution of this agreement, it is understood and agreed by Developer that the project will be competed as expeditiously as possible and that Developer will make every effort to ensure that the project will proceed and will not be delayed. Failure to meet these deadlines may result in cancellation of this contract and the revocation of HOME funds.

As time is of the essence as regards this agreement, Developer shall cause appropriate provisions to be inserted in all contracts or subcontracts relative to the work tasks required by this agreement, on order to ensure that the project will be completed according to the timetable set forth. It is intended that such provisions inserted in any subcontracts be, to the fullest extent permitted by law and equity, binding for the benefit of City and enforceable by City against Developer and its successors and assigns to the project or any part thereof or any interest therein.

It is agreed that if Developer shall be unavoidably delayed in beginning or fulfilling the timetable set forth by reasons of excessive storms or floods, or by acts of Providence, or by reasons of extra work ordered by City, or untimely review and approval by City and other governmental authorities having jurisdiction over the project, or other delays that not caused by Developer, City shall grant a reasonable extension of time for completion of the work. It shall be the responsibility of Developer to notify City promptly, within one week, in writing whenever a delay is anticipated or experienced, and to inform City of all facts and details related to the delay.

D. SCOPE OF SERVICE

Developer shall complete all activities for the Acquisition, Development and Resale, as described in the City's 2024 Annual Action Plan and the 2020-2025 Consolidated Plan, in compliance with this Agreement, and all applicable federal, state and local laws, ordinances, rules and regulations as they are now or may be enacted or amended in the future.

3. COMPLIANCE WITH HOME INVESTMENT PARTNERSHIP REGULATIONS

Developer agrees to comply with all requirements of the Cranston-Gonzalez National Affordable Housing Act of 1990 and regulations found at 24 CFR Part 92, and all federal regulations and policies issued pursuant to those regulations, whether included specifically in this Contract or included by reference.

A. Project Description

I. Developer shall build a residential property, within the City of Battle Creek, to be sold to a family or individual at or below 80% of Area Median Income for the City of Battle Creek.

II. The single family home developed under this agreement must be owner occupied upon completion and shall remain owner occupied for the duration of an affordability of five years.

B. Project Requirements

I. Developer shall provide verification that potential purchasers meet HUD's low- to moderate-income guideline criteria.

II. Developer will provide City with a purchaser profile for review. City will make final determination of purchaser eligibility and approval for program participation. Preference will be given to current City of Battle Creek residents.

III. Developer shall assure that the affordability periods of five years will be enforced on all loans through properly recorded liens and/or deed restrictions with appropriate language.

IV. Developer shall determine the feasibility of each project. Project feasibility will be determined through the development of a budget for each project which indicates the source of funds to complete the project and the specific use of those funds. Budgets will be submitted to the City for review and approval prior to project commencement and expenditure of funds.

V. Developer will own the property in fee simple, absolute title through development and will be in sole charge of the construction.

VI. Developer will establish the sales price of the home using an appraisal provided by an independent appraiser.

VII. Developer shall assure that construction work will be performed by appropriately licensed persons, or supervised volunteers, and shall assure that all permits required by the City of Battle Creek Inspections Division are obtained. Developer will have all completed work inspected and approved by the City of Battle Creek Inspections Division. Projects are subject to inspection by City of Battle Creek Community Development, Code Compliance and Inspection Divisions, as appropriate.

VIII. Developer shall assure that the new construction will meet the greater of the Stille-DeRossett-Hale Single State Construction Code Act, Public Act 230 of 1972, as amended, being MCL § 125.1501, and the Uniform Physical Condition Standards (UPCS) or the most current HUD required Inspection standard. The UPCS are uniform national standards established by HUD for housing that is decent, safe, sanitary, and in good repair, pursuant to 24 CFR 5.703 and at 24 CFR Part 92.25.

IX. Developer may include in the scope of work building and system improvements designed to extend the unit's useful life, cosmetic improvements consistent with other homes in the area to make the home marketable and accessibility modifications required for the home buyer. All improvements beyond those required by the Stille-DeRossett-Hale Single State Construction Code shall be clearly defined in the project budget submitted to the City for approval.

X. Developer shall design and implement a written policy to address displacement and relocation in all rehabilitation projects. This displacement and relocation policy will be submitted to City for review and approval and will adhere to all applicable regulations found in CFR24, Parts 92.504(c)(3)(v)(C) and 92.353.

XI. Demolition, or partial demolition, without subsequent unit replacement is prohibited under this Contract. Demolition when necessary for the production of new units and as part of an approved project is allowed.

XII. This program shall not involve any changes in land use from residential to nonresidential, or from nonresidential to residential use, or from one class of residential use to another. Homes which are located in flood plains are not eligible for rehabilitation.

XIII. Developer shall maintain client records and documentation pertaining to household size, income levels, race, female headed households, rehabilitation costs, after-rehabilitated value, and any other pertinent information in compliance with Section 12 of this Contract.

XIV. In the selection of occupants for the housing unit, Developer shall comply with all non-discrimination requirements of 24 CFR 92.350. Developer shall administer this program to affirmatively further fair housing and shall market this program to inform potential clients of this program.

XV. Developer shall request in writing, any changes in scope of service or budget to City. City will either approve or deny said request in writing.

XVI. Developer agrees that no HOME funds will be advanced, and no costs will be incurred, until City has conducted an environmental review of the proposed project site(s) as required under 24 CFR Part 58. The environmental review may result in a decision to proceed with, modify or cancel the project. Developer agrees that no choice limiting actions may be taken prior to environmental determination and clearance.

XVII. Projects will comply with all federal environmental laws and regulations insofar as they may apply to the performance of this Contract, including those related to flood disaster protection, lead-based paint and historic preservation.

XVIII. All units must comply with 24 CFR Part 92.254 requirements regarding after rehabilitation value/sale price limits. These value/sale price limits are updated on an annual basis. Developer is responsible for applying these limits to assisted properties.

XIX. The amount of HOME funds that Developer may invest on a per-unit basis in affordable housing may not exceed the per-unit dollar limit established under Section 221(d)(3)(ii) of the National Affordable Housing Act. These per-unit dollar limits are updated on an annual basis. Developer is responsible for applying these limits in this program.

XX. Developer will assure that a minimum of $1,000, and not to exceed 10 percent of the final loan amount, of down payment assistance will be provided to each homebuyer. This assistance will be subject to the recapture provisions referenced in Section 3 of this Contract and will be secured by the use of a note and mortgage required by 24 CFR Part 92.254, naming City as payee.

XXI. Developer shall assure that any notes and mortgages recorded for homebuyer shall be in compliance with 24 CFR 92.254 and that Developer will monitor each unit for principal residency (under 92.254(a)(3)) and resale/recapture (under 92.254 (a)(4) – (5)).

XXII. Developer will be monitored by City for compliance with the regulations of 24 CFR 92 for the compliance period specified. Developer will provide reports and access to project files as requested by City during the project and for five years after completion and closeout of the agreement.

C. City Responsibilities

I. City will be responsible for providing environmental clearance on all projects.

II. City will be responsible for doing an underwriting analysis and approving each project. Project approval, or denial, will include review of the site selection including market conditions and site control, proposed scope of work and cost estimate and comprehensive project budget information. Project budget includes soft costs.

III. City reserves the right to conduct a walk-through at the proposed project site prior to project approval.

IV. City reserves the right to review Developer's procurement methods and may, at its discretion, require that the project bid package and contractor selection documentation be submitted for City review.

V. City will disburse funds to Developer based on actual work and activities completed. Reimbursement is based on actual expenses incurred. Approval of requests will include a review of supporting documentation and may include a site visit to inspect completed work.

VI. City will review and approve all proposed home buyers to determine income eligibility.

VII. City will, for the purchase closing of the property, complete the following items:

(a) Conduct an inspection to verify project completion and to approve final disbursement.

(b) Provide Promissory Note and Mortgage documents, or review and approve said documents provided by the Developer, for the down payment assistance and any closing cost assistance to the buyer.

(c) Review a reconciliation, provided by Developer, of HOME funds invested to determine:

(1) Amount of sales price established by an appraisal;
(2) An estimate of proceeds amount;
(3) The development subsidy amount;
(4) The buyer subsidy amount;
(5) The developer fee, if any; and
(6) Program income to be repaid to City.

VIII. City is the payee on the Notes and Mortgages and will receive all funds from any subsequent sale of the property within the term of affordability referenced in Section 3.D. of this Contract.

IX. City reserves the right of access to all project records and access to units for inspection at any time with reasonable notice. City will at a minimum conduct project and program monitoring as required by the HOME regulation at 92.504(a), and (d).

D. Communication/Federal Award Information

Communication and details concerning this Contract shall be directed to the following contract representatives:

City Helen Guzzo, Community Development Manager
Community Development, City of Battle Creek
City Hall, Room 104
10 N. Division Street
Battle Creek, MI 49014
(269) 966-3315
hhguzzo@battlecreekmi.gov

Developer Michael King, Executive Director
Battle Creek Area Habitat for Humanity, Inc.
595 North Avenue
Battle Creek, MI 49017
(269) 966-2502
mking@habitatbc.org

3. PROJECT DESIGN

A. Developer agrees to build and sell a single family home at 273 W. Spaulding to a family or individual with household incomes at or below 80% of Area Median Income adjusted for family size for the City of Battle Creek. City holds the right to place a lien on each property to protect its investment in the development for the duration of the project.

B. City agrees to provide HOME funds, in the form of; (1) a development subsidy loan to Developer, and; (2) a direct subsidy loan to the homebuyer as follows:

I. Calculation of the development subsidy will be as follows:

The property acquisition price + carrying costs + building costs = total cost.

Total cost – the sales price (appraised value) – down payment assistance to the homebuyer (buyer subsidy) = the development subsidy.

II. The buyer subsidy will be established as follows:

A minimum of $1,000 in down payment assistance, and not to exceed 10 percent of the total loan amount or up to $13,000.00 whichever is less, will be made to the homebuyer as a zero percent (0%) interest rate, forgivable, deferred payment mortgage loan. Down payment and closing cost assistance will be considered a direct subsidy to the homebuyer and will be secured with a Promissory Note and a recorded Mortgage which stipulates City as Payee. This direct subsidy is subject to a five year affordability period.

III. This agreement prohibits Developer from charging servicing, origination, processing, inspection, or other fees for the costs of administering a HOME program, except as permitted by § 92.214(b)(1).

D. AFFORDABILITY

Federal HOME regulations require that a property purchased with HOME assistance remain affordable in accordance with 24 CFR Part 92.254(a)(4) of the HOME regulations. Terms of affordability periods are based on the amount of HOME funds invested in down payment and closing cost assistance, as follows:

HOME Investment	Affordability Period
$1,000 - $14,999	5 years
$15,000 - $40,000	10 years
$40,000 – maximum allowed	15 years

E. AFFORDABILITY PERIOD NON-COMPLIANCE PROCEDURES

I. Developer shall inform City as soon as it becomes aware that a HOME assisted project may fall out of regulatory compliance. If City receives notification of regulatory non-compliance before Developer, City will inform the Developer of the potential non-compliance situation.

II. Developer shall determine the dollar amount of funds which will be required to be repaid and the remaining term of affordability. The amount to be repaid is to be confirmed by City.

III. Developer shall contact their client to assess the situation and attempt to work out a repayment of HOME funds or resolve the issue causing non-compliance with the HOME Regulations.

IV. Developer shall contact their client's lender, or the foreclosing party, to see if arrangements for repayment can be worked out or, if the HOME Program Resale Option was used, attempt to work with the lender to identify a new low-mod income buyer for the home.

V. Developer shall document the above "good-faith efforts" to recover the required HOME funds. This documentation is to be provided to City. This documentation may consist of copies of letters sent, logs of phone conversations and a recap of all efforts made to recover the HOME funds. Developer will be required to repay the funds if good faith efforts to recover the funds, or resolve the issue, cannot be documented unless the parties agree on another remedy as provided in below.

VI. Developer will work with their attorney or work with City staff to explore any possible legal recourse to recover and repay the HOME funds.

VII. If Developer has provided City with documentation of its good faith efforts to recover the HOME funds or resolve the issue, City may ask the Developer to provide a letter to City indicating a repayment would represent a hardship to the agency. If City determines Developer's hardship meets HUD's definition of a "hardship," City will consult HUD on possible remedies and waivers and HUD will have final approval on any workout agreement.

VIII. GOOD FAITH EFFORTS INCLUDE:

(a) A phone and activity log containing the attempts made to contact the homeowner at various times and days. A minimum of four phone call attempts would be required. One visit to the property is required if phone calls do not reach the homeowner.

(b) The log should document any conversations that took place with the homeowner. The log should also contain a record of attempts to contact the foreclosing entity and the senior mortgage holder to see if a remedy to the situation is possible.

(c) Copies of letters sent to the homeowner requesting they contact Developer to discuss their situation. A minimum of two letters would be required.

(d) If it is possible to contact the homeowner by e-mail, such attempts should also be documented.

(e) Copies of any agreement arranged for repayment reached between the developer, the client, or the client's lender.

F. LOAN AND LOAN REPAYMENT REQUIREMENTS

I. Development Note and Mortgage.

If HOME funds are paid to Developer to cover development expenses, prior to the sale of the property to a new buyer, a development promissory note and mortgage shall be utilized as follows:

A development promissory note and mortgage shall be executed, and recorded, by Developer, during the development phase of the project. Full repayment of the HOME funds provided for development shall be required in the event of nonperformance during the acquisition and development phase or for non-completion of the project.

At the time of sale of the property to the buyer, the development note and mortgage will be released and discharged, with outstanding balances subject to disposition as follows:

(a) Development subsidy – Project costs in excess of the fair market value or gross proceeds of the sale (after payment of all closing costs) will be forgiven as a development subsidy under 24 CFR part 92.254.

(b) Net sale proceeds- All net sales proceeds from the sale after any third party construction loans, closing costs and developer fees are paid must first be used to repay any HOME construction period advances not forgiven as development subsidy and shall then be treated as program income and returned to City.

II. Buyer Note and Mortgage

A buyer promissory note and mortgage will be executed, and recorded, by the buyer, at the sale of the property. In the event of foreclosure, deed in lieu of foreclosure or noncompliance by the buyer, full payment of the home buyer subsidy will be required. In the event of foreclosure or deed on lieu of foreclosure, payment in full will be limited to the net proceeds the mortgagor receives, if any, from the foreclosure sale.

(a) Buyer subsidy – A promissory note and mortgage shall be executed and recorded, as required in 92.254(a)(5)(ii), by the buyer for any HOME funds that are provided to the buyer as down payment assistance, closing cost assistance or as a reduction in the effective amount of funds required from the buyer at closing below fair market value. The amount of said note and mortgage shall be equal to: Sales Price – Buyer Funds (buyer down payment and first mortgage) + Closing Cost Assistance (if any). A minimum of $1,000 in HOME funds will be provided from the Developer to the buyer for each project. The Developer must monitor the project to assure the buyer fulfills his/her requirements regarding the affordability period and occupancy clauses of this Contract.

(b) City will utilize HUD's recapture option in this Affordable Homeownership Program. Under the recapture option, City will require that the initial homebuyer repay the outstanding HOME buyer subsidy at the time of resale. The HOME subsidy will be forgiven on a pro rata basis of 1/5 or 1/10 or 1/15 per year, as applicable, or as a one-time lump sum at the end of the affordability period. If on a pro rata basis, the assistance will be fully forgiven after the term of affordability ends. The term of affordability will be ended at such time the HOME subsidy due is repaid, in whole, to City.

4. PERIOD OF PERFORMANCE

Developer agrees that the period of performance shall be equal to the period necessary to identify and acquire a property, build and sell a single family residential home and shall not exceed 18 months, commencing on September 3, 2024, the date of the execution of this contract. During the term of the Contract Developer will be expected to meet interim milestones and deadlines as indicated below.

A. Site selection. Within six (6) months from the date of this Contract, Developer shall:

   I. Secure site control of the property.
   II. Submit completed project budget and scope of work to the City for review and approval.

B. Construction. Upon approval by City of the project, Developer shall bid out and commence the construction. All construction is to be completed within nine (9) months of written project approval from City.

C. Sale to an eligible low income household. All homebuyers must receive housing counseling. Selection, and City approval, of an eligible homebuyer and the closing of the sale of the property must be completed within nine (9) months after the completion of construction.

D. Conversion to rental or repayment of funds. In accordance with 24 CFR 92.254 (a)(3), if there is no ratified sales contract with an eligible homebuyer for the housing within nine (9) months of the completion of construction or rehabilitation, the housing must be rented to an eligible tenant and must comply with all rental housing provisions of 24 CRR 92.252. If the property is not sold or rented within the nine (9) months' time limits, the developer must repay City the amount of HOME funds expended with other Developer funds.

E. Time is of the essence. Timely performance is essential and failure to meet milestones and deadlines as indicated may result in termination of this Contract and may adversely influence future City funding to the Developer.

F. The terms of performance in this Contract do not relieve Developer's responsibility to expend prior year HOME funding. Unexpended prior year funding will bear no impact on the Period of Performance and the expenditure of funds awarded under this Contract. Failure to expend prior year HOME funding may adversely influence future City funding to Developer.

G. Any requests for extensions to this Contract period of performance must be submitted in writing, providing the basis for the extension and evidence of sufficient effort on the part of the Developer to implement the project. City reserves the right to accept or reject extension requests, but will only consider extensions that are required for reasons that are beyond the control of the Developer.

5. COMPENSATION AND METHOD OF PAYMENT

Under this Contract, a cost incurred or expenditure made by or pursuant to this Contract shall be fully documented and shall be in conformance with any limitations or exclusions of applicable Federal, State and local laws, rules and regulations and conditions mandated by the City. The Developer will be reimbursed only for actual costs incurred and the City will only reimburse against line items in a City approved project budget prepared and submitted by the Developer.

A. Program Funds

City hereby agrees to provide construction period loans to Developer from City's HOME Program Funds for eligible development and construction expenses made against City approved project budgets to be prepared and submitted to City by Developer subject to the terms and conditions as set out herein. Disbursement on construction period loans will be made by City to Developer on a reimbursable basis, given that Developer has provided proper and complete source documentation. Each said loan will be made, through this Contract, in an amount up to $130,000.

City also agrees to provide down payment assistance loans to the homebuyers for a minimum amount of $1,000 per project and not to exceed 10 percent of the total loan amount.

Final draws to Developer are subject to project inspection(s) by City to verify project completion based on the approved scope of work and that the property meets the Stille-DeRossett-Hale Single State Construction Code. Developer will provide to City lien release waivers or other evidence of payment to all contractors, sub-contractors and suppliers.

For final draws, Developer shall submit a project completion report and reconciliation of HOME funds invested. Final draws will be equal to the developer fee and any remaining development costs and project carrying cost outstanding at the time of the closing of the sale of the property to a HOME Program eligible homebuyer.

Developer shall, after the sale of the property, submit to City a final reconciliation of final expenses and closing showing any proceeds as program income. Should the proceeds from the sale of the property be insufficient to cover the development fee and other expenses owed to Developer, Developer shall submit a final draw request to City with appropriate supporting documentation for City to review and approve.

It is understood that upon completion of the project, any HOME funds reserved but not expended under this agreement will revert to City.

Program Budget:

	Amount
Service Contracts/Carrying Costs	Up to $130,000.00
Down Payment Costs	At least $1,000.00, up to $13,000.00

TOTAL	Up to $143,000.00

B. Total Compensation

It is expressly understood by and between City and Developer that in no event shall the total compensation and reimbursements, if any to be advanced to Developer pursuant to this Contract, exceed the sum of $130,000.

C. Additional Funds

Developer agrees to provide any additional money, services and/or physical resources which may be required to complete its performance under this Contract.

D. Developer Fee

Upon sale of each property Developer will be allowed to retain a Developer Fee in the amount equal to 15% of the total development costs as stipulated in the proforma worksheet for each project. Changes in proforma worksheet project costs must be approved by City. Payment of a Developer Fee is subject to the availability of net settlement proceeds from the sale of the property.

E. Program Income and CHDO Proceeds

All net sales proceeds from the sale of units are considered to be either Program Income and must be returned to City as repayment of the Developer loan OR as CHDO proceeds that may be retained by Developer and used in conformance with 24 CFR 92.300(a)(2). Unless otherwise agreed to in writing by City and Developer, any and all program income or CHDO proceeds may be retained by Developer. CHDO proceeds are to be used for HOME-eligible activities or other housing activities to benefit low-income families.

F. Recaptured Funds

All resale proceeds that are received from buyers as they resell the units during the compliance period to other buyers shall be considered “Recaptured Funds” under 24 CFR 92.254(a)(5)(ii)A(5) and must be repaid to City for use in eligible HOME project as required by 24 CFR 92.503. Developer shall promptly notify City of such transactions and will promptly convey any Recaptured Funds to City.

G. Pre-development Loans (City Option)

Technical assistance and site control pre-development loans are permitted under 24 CFR Part 92.300. Pre-development loans are subject to City approval, and will only be provided if determined to be necessary to enable Developer to perform on schedule.

G. Finance Procedures

I. City will provide reimbursements to the Developer for expenses incurred only upon receipt and approval of appropriate payment vouchers and supporting documentation of all costs. Documentation submitted to City must be satisfactory to meet HUD requirements and allow City to make necessary data entry into HUD's Integrated Disbursement and Information System.

II. City shall have the right to review and audit all records of Developer pertaining to any payment by City. Said records shall be maintained for a period of five years after completion.

III. Suspension of Funding.

City's Community Development Manager, in his or her sole discretion, has the authority to suspend, reduce or disallow any payment(s) of funds to Developer under Section 5 herein, notwithstanding any other provision of this Contract, upon written notice to Developer when the internal fiscal controls and records established pursuant to Section 13 are changed without the Community Development Manager's approval, or when, in the opinion of the Community Development Manager, there is a reasonable likelihood that funds may be misused, misappropriated or spent for an ineligible purpose as defined within this Contract and 24 CFR Part 92.

(a) Any unearned payments under this Contract may be suspended by the Community Development Manager upon Developer's refusal to accept and comply with any additional conditions or requirements of City.

(b) Any unearned payments under this Contract may be suspended or reduced if the funding sources for this Contract are reduced, suspended or terminated for any reason.

6. CONTINUED FUNDING

City makes no implied or explicit guarantee, offer or representation of future funding from City beyond the termination of this Contract. City further makes no implied or expressed guarantee that it will not eliminate this Contract and the funding supplied with this Contract pursuant to the terms and conditions of Section 2. Potential future contracts awarded to Developer will be contingent upon timely and full performance of the terms of this and prior Contracts.

7. INDEPENDENT CONTRACTOR

Nothing contained in this Contract is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. Developer shall at all times remain an independent Contractor with respect to the services to be performed under this Contract. The City shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Worker's Compensation Insurance except as specified in this Contract.

8. CONTRACT MODIFICATION

The City may, from time to time, expand, diminish or otherwise modify the Contract objectives, scope of service or any other Contract provision related thereto, which the Developer is required to perform pursuant to Sections 1 and 2 of this Contract; provided, however that such modifications are mutually agreed upon by the parties, and incorporated into written amendments to this Contract after approval by the City.

9. DEVELOPER'S FAILURE OF PERFORMANCE

A. The failure of the Developer to provide any work or services required by this Contract in a satisfactory and timely manner shall be material breach of this Contract.

   Determination that work is, or is not, being performed in a timely manner, as referenced in this section and in Section 10, will be based on the Developer meeting, or exceeding, or failing to meet or exceed the milestones and deadlines delineated in Section 4 of this Contract.

   I. The City, in its sole discretion, shall determine whether the work is satisfactorily completed.

   II. In the event the City determines the work or services provided pursuant to this Contract has not been performed in a timely or satisfactory manner, the City shall notify the Developer and allow the Developer ten (10) days to cure any such failure to perform work or services in timely manner.

   III. In the event the Developer fails to cure the unsatisfactory or untimely work or performance pursuant to the requirement of Subsection 2 above, the City may take any other action permitted by law or this Contract, including but not limited to termination or reduction in compensation to the Developer.

B. In the event the Developer fails to perform, in a timely and proper manner, any of the services or activities required under this Contract, the City may, in its sole discretion, reduce or modify the compensation payable hereunder to the Developer in a manner which appropriately reflects such reduction or diminution of services or activities.

10. TERMINATION BY THE CITY FOR NONCOMPLIANCE OR CONVENIENCE.

A. In the event the Developer fails to fulfill in a timely and proper manner, any of the terms, conditions or obligations of this Contract, or if the Developer violates any of the covenants, agreements or stipulations of this Contract, the City Manager, in his/her sole discretion and without notice, may terminate this Contract with no further liability to the Developer beyond that expressly provided for within Section 9 hereof.

B. The City may also upon thirty (30) days written notice to the Developer, terminate this Contract for convenience, and all of the City's obligations hereunder, including any obligations to provide financial assistance. The City may exercise its rights pursuant to this provision regardless of whether the Developer is in default of any condition or obligation under this Contract. Once the City has provided written notice to the Developer, the City shall not be obligated to supply financial assistance in an amount greater than the average monthly payment to the Developer over the proceeding months of the Contract. Average monthly payment, for the purpose of this Section, shall be determined by the total payments made by the City since inception of the Contract to the date of the notice, divided by the total number of months since inception of the Contract to the date of the notice (or any fraction thereof). The City shall also compensate the Developer for any documented (e.g. invoiced) expenses in excess of the average monthly payment; however, in no event shall additional compensation be paid to Developer that would result in an aggregate payment for all components provided herein that exceeds $130,000.

C. In the event this Contract is terminated:

   I. All data, documents, drawings, maps, models, photographs, reports, studies and surveys which have been or were prepared by the Developer with funds under this contract, become the property of the City, and

   II. Developer shall receive just and equitable compensation for any work which the Developer satisfactorily completed pursuant to this Contract, subject to Subsection D (2) below.

D. It is agreed that nothing contained herein shall:

   I. Deprive the City of any additional rights or remedies, either at law or equity of under the terms, conditions, obligations, covenants, agreements and stipulations of this Contract, which they may respectively assert against the Developer upon failure to fulfill any of the terms, conditions, obligations, covenants, agreements or stipulations of this Contract; or

   II. Relieve the Developer of any liability to the City for any damages sustained by the City as a result of any breach of this Contract by the Developer; and if it sustains such damages, the City may withhold as a set off any payments due the Developer, until such time as an exact amount of damages sustained by the City is properly and legally determined unless otherwise terminated pursuant to the terms of this Contract.

11. REPORTS AND INFORMATION

Financial Records and Reports. Developer agrees to make and maintain adequate financial records in a form satisfactory to City. Such financial records and reports shall reflect all costs and expenses incurred in performing this Contract and records of the use of all consideration received pursuant to this Contract.

12. RECORDS AND DOCUMENTATION RETENTION

A. Establishment and Maintenance of Records

The Developer shall establish and maintain all records required by the Federal regulations at 24 CFR part 92.508(a) (3) concerning any matter covered by this Contract which, from time to time, may be required by the City.

B. Retention of Records

I. Unless otherwise expressly authorized by the City, the Developer shall maintain all records related to this Contract, including financial records and accounts, for a period of five (5) years after receipt of final payment under this Contract.

II. If HOME Program funds are extended to program participants as loans, the Developer shall maintain all project related records for no less than five (5) years past the expiration date of said loans.

III. If any litigation, claim or audit is started before the expiration of the terms indicated in Subsections 1 and 2 above, the records shall be retained by Developer for a period of no less than five (5) years after all litigation, claims or audit findings involving the records have been resolved.

13. AUDITS AND INSPECTIONS

At any time during normal business hours and as often as City may deem necessary to ensure proper accounting for all project funds, Developer shall:

A. Make available to City all checks, payrolls, time records, invoices, contracts, vouchers, orders and other data, information and materials concerning any matter covered by this Contract; and

B. Permit City to audit, examine, excerpt or transcribe all checks, payrolls, time records, invoices, contracts, vouchers, orders or other data, information and material concerning any matter covered by this Contract; and

C. Allow City to review such documents that are considered as backup to the operation of Developer, regardless of funding source, to verify all costs listed in the "Amount" column of Section 5 of this Contract; and

D. Allow independent auditors to have access to Developer's records and financial statements as necessary to facilitate City's requirement to comply with 2 CFR Part 200, as applicable, or City's annual audit requirement.

14. FINANCIAL MANAGEMENT

A. Accounting Standards. Developer agrees to comply with 2 CFR 200, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls and maintain necessary source documentation for all costs incurred under this Contract.

B. Annual Audit. Developer agrees to have an annual audit in accordance with current City policy and, as applicable, 2 CFR Part 200. This completed audit report will be provided to City for review as soon as reasonably possible.

C. Cost Principles. Developer shall administer the program in conformance with 2 CRF Part 200, as applicable for all costs incurred under this Contract.

D. Procurement Requirements. Developer shall comply with 2 CFR 200.318 General procurement standards when procuring materials pursuant to this Contract.

15. CONFLICT OF INTEREST

Developer warrants and covenants that it presently has no interest and shall not acquire any interest, directly or indirectly, which could conflict in any manner or degree with the performance of its services under this Contract. Developer further warrants and covenants that in the performance of this Contract, no person having such interest shall be employed.

HOME conflict of interest provisions, as stated in CFR 24, part 92.356, apply to the award of any contracts under the agreement and the selection of households to occupy HOME-assisted units.

No employee, agent, consultant, elected official, or appointed official of Developer may obtain a financial interest or unit benefits from a HOME-assisted activity, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. This prohibition includes the following:

A. Any interest in any contract, subcontract or agreement with respect to a HOME-assisted project or program administered by the Developer, or the proceeds thereunder; or

B. Any unit benefits or financial assistance associated with HOME projects or programs administered by the Developer, including:

I. Occupancy of a rental housing unit in a HOME-assisted rental project;
II. Receipt of HOME tenant-based rental assistance;
III. Purchase or occupancy of a homebuyer unit in a HOME-assisted project;
IV. Receipt of HOME homebuyer acquisition assistance; or
V. Receipt of HOME owner-occupied rehabilitation assistance.

This prohibition does not apply to an employee or agent of Developer who occupies a HOME-assisted unit as the on-site project manager or maintenance worker.

In addition, no member of Congress of the United States, official or employee of HUD, or official or employee of City shall be permitted to receive or share any financial or unit benefits arising from the HOME-assisted project or program.

Prior to the implementation of the HOME-assisted activity, exceptions to these provisions may be requested by Developer in writing to City. Developer must demonstrate and certify that the policies and procedures adopted for the activity will ensure fair treatment of all parties, and that the covered persons referenced in this policy will have no inside information or undue influence regarding the award of contracts or benefits of the HOME assistance. City may grant exceptions or forward the requests to HUD as permitted by 24 CFR parts 92.356, 85.36 and 84.42, as they apply.

16. SUBCONTRACTING

Developer shall not assign or transfer, whether by assignment or novation, any interest in this Contract, or subcontract any performance of portion hereof pursuant to this Contract without the prior written consent of City; provided, however, that claims for money due or to become due Developer from City pursuant to this Contract may be assigned or transferred to a bank, trust company or other financial institution without such consent, and Developer shall promptly notify City of any such assignment or transfer. Developer will include Section 19, Civil Rights and Section 20, Labor Law, of this Contract, in any subcontract or purchase order specifically or by so that such Sections will be binding upon Developer or assignee/transferee.

17. PROHIBITED ACTIVITIES

None of the money, compensation, reimbursement, funds, property or services provided, directly or indirectly, under, by or pursuant to this Contract shall be used for any partisan political activity or to further the election or defeat of any candidate for any public office, or for the propaganda designed to support or defeat any legislation pending before the Congress of the United States, the Michigan State Legislature or the Battle Creek City Commission.

18. “HOLD HARMLESS” CLAUSE

Developer shall, to extent permitted by law, Developer defend, indemnify and save harmless City from any and all claims, demands, suits, liabilities and/or payments, actions or proceedings of any kind or nature, including worker’s compensation claims, of or by anyone whomsoever, in any way resulting from or arising out of the operations of Developer in connection with this Contract, including the operations of subcontractors, and the acts or omissions of employees or agents of Developer or its subcontractors. The insurance coverage specified herein and in the special conditions constitutes the minimum requirements and said requirements shall in no way lessen or limit the liability of Developer under the terms and conditions of this Contract. Developer shall procure and maintain, at its own cost and expense, any additional kinds and amount of insurance that, in its own judgment, may be necessary for its proper protection in performing its obligations under this Contract.

19. CIVIL RIGHTS

A. Developer agrees to comply with Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended and all other federal laws, rules and regulations related to civil rights in carrying out this Contract.

B. Developer agrees that it will not discriminate as to provision of services pursuant to this Contract or as to hiring or terms or conditions of employment based on race, creed, color, religion, national origin, sex, weight, age, familial status, disability, gender identity, or sexual orientation. Developer will comply with Chapter 214, *Prohibited Discrimination*, of the Battle Creek Code of Ordinances. A violation of this section of this Contract shall be a material breach of this Contract.

C. Developer shall, 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, creed, color, religion, height, weight, marital or familial status, sex, gender identity, sexual orientation, age, handicap or national origin.

D. Developer shall send to each labor union or representative of workers with which Developer has a collective bargaining agreement or other contract or understanding, a notice, to be provided by City, advising the labor union or workers' representative of Developer's commitments under this Contract and shall post copies of this notice in conspicuous places available to the employees and prospective employees under this Contract.

E. In the event of Developer's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or part.

F. Developer shall use its best efforts to afford women- and minority-owned enterprises (W/MBE) the maximum practicable opportunity to participate in the performance of this Contract.

G. Developer shall in all solicitations or advertisements for employees placed by or on behalf of Developer state that it is an Equal Opportunity Employer.

20. COMPLIANCE WITH LABOR LAW

In performing the services and activities required under this Contract and in fulfilling the terms, conditions, obligations, covenants, agreements and stipulations of this Contract, Developer shall comply with all applicable federal, state and local labor laws including the Davis-Bacon Act, as amended (40 USC 874, as supplemented by 24 CFR part3) and Federal Fair Labor Standards provisions, as amended (52 Stat. 1060; 29 USCA 201 et. seq., 40 USC 3145, 5 USC 1332-15).

21. CITY CHARTER

It is clearly understood that nothing contained in this Contract shall deprive City of any rights that it may exercise by virtue of the provisions of the Charter of the City of Battle Creek, Michigan.

22. SEVERABLITY OF PROVISIONS

If any clauses, sections, provisions or parts of this Contract are held invalid, or if any portion of any clause, section, provision or part of this Contract is held invalid, the remainder of this Contract shall not be affected thereby, if such remainder of this Contract would then continue to conform to the terms and requirements of applicable law. Unless otherwise specified in this Contract, all notices, duties or rights of City shall be exercised by and through this Contract as specified herein.

23. WAIVER

The failure of City to demand compliance with any term of this Contract or to take action when this Contract is breached in any way shall not be considered a waiver of that contractual requirement thereafter nor of City’s right of action for the breach of that term.

24. INSURANCE AND BONDS

A. In addition to any other insurance and bonding requirement of this Contract, Developer shall maintain at least the following insurance coverage:

   I. Developer shall maintain workers’ compensation coverage that meets at least the minimal State of Michigan statutory requirement.

   II. Developer shall comply with the bonding and insurance requirements of 2 CFR Part 200, as they may apply.

   III. Developer shall insure all projects for property damage at a minimum amount which is equal to the estimated value of the newly constructed property.

   IV. Developer shall maintain general liability and casualty insurance in connection with all activities involving each project location.

   V. Developer shall verify and maintain file documentation of insurance coverage for all contractors involved with the construction and rehabilitation of each project in the same amount and under the same terms required of Developer.

B. Developer shall at the time of execution of this contract, file with City a Certificate of Insurance, which shall cover all of its insurance required herein, including evidence of payment of premiums thereon, and the policy or policies of insurance covering said City, its officers, agents and employees. Each such policy and certificate shall be satisfactory to City. Nothing contained in these insurance requirements is to be construed as limiting the extent of Developer's responsibility for payment of damages resulting from its operations under this Contract.

C. Developer shall maintain insurances in force at all times during the term of this agreement through insurance companies licensed to do business in Michigan at the minimum amounts and types as indicated.

Coverage Afforded		**Limits of Liability**
Workers' Compensation		$ 100,000 or statutory limit
Commercial General Liability:	Bodily Injury	$1,000,000 each occurrence
(including XCU if appropriate)	Property Damage	$1,000,000 each occurrence
	Or Combined Single Limit	$1,000,000
Automobile Liability:	Bodily Injury	$ 300,000 each person
	Liability	$ 500,000 each occurrence
	Property Damage	$ 500,000
	Or combined Single Limit	$ 500,000

D. The City of Battle Creek shall be listed as an additional insured on general liability coverage, and shall be provided with a Certificate of Insurance that reflects this additional insured status. A 30-day notice of cancellation or material change shall be provided to the City and so noted on the Certificate of Insurance. All certificates and notices shall be sent to Community Development Division, City of Battle Creek, 10 N. Division Street, Suite 104, Battle Creek, MI 49014.

E. Information and documentation of all required insurances is subject to review by City and City reserves the right, at its discretion to require increases in coverage amounts.

25. DISCLOSURE OF CONFIDENTIAL MATERIAL

All reports, data, information, forecasts, records and so forth assembled, constructed or prepared pursuant to or as a consequence of this Contract are subject to all federal and Michigan laws and regulations governing the disclosure of public records, subject to certain exemptions from disclosure under the circumstances expressly authorized by the above laws and regulations.

26. ROYALTIES, PATENTS, NOTICES AND FEES

Developer shall give all notices and pay all royalties and fees if applicable to carrying out the provisions of this Contract. Developer shall defend all suits or clauses for infringement or any patent rights and shall save City harmless from loss on account thereof.

27. COPYRIGHT

If this Contract results in any copyrightable material, City reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work for governmental purposes.

28. CITY DEPARTMENT OR OFFICE

It is agreed by the parties hereto that the City of Battle Creek Community Development Division shall be responsible for the administration of this Contract on behalf of City; provided, however, that authority and responsibility for the administration of this Contract may be transferred to any other office or department of the City, by the City in its sole discretion.

IN WITNESS WHEREOF, City and Developer have executed this Contract as of the date first above written:

Developer	City
________________________________	________________________________
Michael King Executive Director Battle Creek Area Habitat for Humanity, Inc.	Rebecca L. Fleury City Manager City of Battle Creek
________________________________	________________________________
Date	Date
________________________________	________________________________
Witness	Witness

Fed. ID#: 38-2846821

Approved as to form and legal sufficiency:

____
Deputy City Attorney: C. Marcel Stoetzel, III