

**PIMA COUNTY COMMUNITY DEVELOPMENT  
AND NEIGHBORHOOD CONSERVATION DEPT.**

**PROJECT NAME: Corazon Del Pueblo - Phase III**

**CONTRACTOR: Habitat For Humanity Tucson, Inc.**

**FUNDING: 2004 GENERAL OBLIGATION BOND  
FUNDS**

**AMOUNT: \$385,000.00**

**DISTRICT NO.: Two (2)**

**Contract Term: August 5, 2008 to August 4, 2009**

**GENERAL OBLIGATION HOUSING BOND FUND CONTRACT**

THIS CONTRACT, hereinafter called CONTRACT, is entered into between Pima County, a body politic and corporate of the State of Arizona, hereinafter called COUNTY; and Habitat For Humanity Tucson, Inc., hereinafter called CONTRACTOR.

RECITALS

- A. In an election held on May 18, 2004 (2004 Special Bond Election), Pima County voters authorized the sale of bonds and use of proceeds for, *inter alia*, acquiring, constructing, improving, renovating and equipping, new and existing public facilities of Pima County for health, safety, recreational and cultural purposes; and
- B. In compliance with Pima County Code Chapter 3.06, titled Bonding Disclosure, Accountability and Implementation, the Board of Supervisors adopted Ordinance No. 2004-18, The Bond Implementation Plan For The May 18, 2004 Special Election (the "Bond Ordinance"); and
- C. The Bond Ordinance (Section VII (B)(1.) (c.) (2.10)) allocates \$10,000,000.00 in bond proceeds to be issued for investment in projects that expand home ownership opportunities and provide access to affordable housing for low-income residents of Pima County.
- D. Pima County Community Development and Neighborhood Conservation Department, in conjunction with the Pima County Housing Commission, solicited applications and conducted an evaluation process to select a contractor to arrange for and oversee construction of off-site improvements located in the public right of way in conjunction with the construction or preservation of housing that is affordable to low-income households meeting U.S. Department of Housing and Urban Development (HUD) Income guidelines; and
- E. CONTRACTOR, submitted an application to install off-site improvements and infrastructure in the public right of way for a 20 unit homeownership development known as ***Corazon Del Pueblo - Phase III***, that meets COUNTY's specifications as stated above; and

- F. CONTRACTOR 's application has been determined to be advantageous to COUNTY; and
- G. COUNTY desires to support and allocate 2004 General Obligation Bonds for the public improvements in this project; and
- H. Projects constructed in whole or in part with bond proceeds are subject to the guidelines for bonding disclosure, accountability and implementation of COUNTY bond projects contained in Pima County Code Chapter 3.06 and in the Bond Ordinance.
- I. COUNTY will reimburse CONTRACTOR, in an amount not to exceed \$385,000.00, the Allocated Maximum Amount, for actual, documented Project-related expenses not reimbursed from other funding sources.
- J. Construction of the Project is currently scheduled to commence on or before August 7, 2008, subject to acquisition of all necessary permits, easements and environmental clearances, and is currently estimated to be completed approximately 12 months after the start of construction.

NOW, THEREFORE, COUNTY and CONTRACTOR, pursuant to the above, and in consideration of the matters and things hereinafter set forth, do mutually agree as follows:

#### **ARTICLE I - TERM AND EXTENSION/RENEWAL**

This CONTRACT shall commence on the 5th day of August, 2008, and shall terminate on the 4<sup>th</sup> day of August, 2009, unless sooner terminated or further extended pursuant to this CONTRACT. This CONTRACT may be extended for the purpose of project completion. Any modification, extension or substantial change, as defined in the attached Exhibit A, shall be made by a formal written amendment executed by the parties hereto.

#### **ARTICLE II - SCOPE**

**Purpose.** The purpose of this CONTRACT is to set forth the responsibilities of the parties for the provision of funds for off-site improvements in the public right of way for a 20 unit low-income housing development known as the *Corazon Del Pueblo - Phase III* (Project), located at the Corazon Del Pueblo Subdivision in the City of Tucson, and to address legal and administrative matters among the parties. The CONTRACTOR shall design and construct the Project in substantial accordance with plans and specifications which are listed in the attached Exhibit B and incorporated into and made a part of this Agreement as if set forth in full herein.

- A. All aspects of the Project shall comply with the provisions of Title 34 of the Arizona Revised Statutes and all applicable City and County building standards and codes.
- B. **Contractor's responsibilities.** CONTRACTOR shall:
  1. Build owner-occupied housing in the stress areas of Pima County as designated by the CONTRACTOR'S response to the application received on April 3, 2008 attached as Exhibit C.
  2. Design and build this infrastructure, following the estimated budget attached hereto as Exhibit D, providing all budgeted items are eligible under the U.S Federal Treasury Regulations Section 1.148 through 1.150 specifying the uses, investments and disbursement of Bond proceeds, and in compliance with the requirements of Title 34 of the Arizona Revised Statutes.

3. In accordance with ARS Title 34, provide for the design, construction and improvement of public infrastructure including, but not be limited to the following:
  - a. Grading and Mobilization
  - b. Drainage structures
  - c. Underground Utilities
  - d. Pavement, Sidewalks and curbs
  - e. Landscaping, Walls and Hardscape
  - f. Engineering and Construction Management
4. In consideration of receiving the funding provided under this CONTRACT, design, market, build, and sell the 20 units in the subdivision to qualified buyers meeting the low-income guidelines as determined by the U.S. Department of Housing and Urban Development (HUD). Any modifications or changes shall be by written amendment. CONTRACTOR shall make no commitments which utilize COUNTY funding or which change the number or type of units in the project, prior to execution of such amendment.
5. Assure that the 20 affordable homes constructed in conjunction with this contract will be 2 to 4 bedroom homes, ranging from 900 to 1450 square feet depending on the number of bedrooms, all with 2 bathrooms and a one car garage. All 20 homes will have the following minimum features:
  - a. Comply with Pima County Ordinance 2002-2, the Inclusive Home Design Ordinance, as adopted by the Pima County Board of Supervisors February 5, 2002 and as amended by Ordinance 2002-66, October 8, 2002.
  - b. Habitat floor plans and elevations will be designed to fit in with the look of the other privately constructed, non-Habitat homes in the subdivision.
  - c. Habitat homes will have exterior paint colors that comply with the greater subdivision color palette.
  - d. Meet Tucson Electric Power Company's Rate Guarantee Program standards for energy efficiency.
  - e. Habitat homes will have a combination of carpet and vinyl floor coverings, security doors, window blinds, ceiling fans, light fixtures, plumbing fixtures, and all other items required for the Certificate of Occupancy.
6. CONTRACTOR shall use the FHA occupancy guidelines that require home buyers to "occupy the property for one full year, except for cases of undue hardship or extenuating circumstances beyond the borrower's control" (Mortgage Credit Analysis of FHA Insured Mortgages 4155.1).
7. Provide construction management of the entire project.
8. Submit monthly invoices to COUNTY. Each invoice must be accompanied by supporting documentation that substantiates the cost of the infrastructure.
9. Upon request of a COUNTY's Project Manager, provide title reports, construction contracts and other documents or information reasonably related to the work performed under this Contract.

10. CONTRACTOR shall design and construct the Project in compliance with all applicable building standards and codes, in compliance with the A.R.S. Title 34, in compliance with additional terms set forth in this contract, and in a good and workmanlike manner.
  11. Administer the construction contracts for the Project in accordance with the requirements of A.R.S. Title 34, and A.R.S. § 35-460 if applicable, and in accordance with the Construction Schedule.
    - a. *Bid Notices & Contract Awards.* CONTRACTOR shall solicit competitive bids and award contracts, in accordance with A.R.S. Title 34, for all construction work performed for infrastructure improvements in the public right of way as outlined in this contract.
    - b. *Construction Schedule.* CONTRACTOR shall be responsible for preparing a construction schedule (the "Construction Schedule") showing the anticipated timing and duration of each stage of construction. CONTRACTOR shall provide a preliminary Construction Schedule to COUNTY within thirty days after execution of this CONTRACT. A final Construction Schedule shall be established and provided to COUNTY within thirty days after award of the construction contract(s) by CONTRACTOR. This Construction Schedule may be combined with the Reimbursement Schedule described later in this CONTRACT.
    - c. *Change Orders.* CONTRACTOR shall consult with COUNTY on any proposed change order requests and shall obtain prior written approval from COUNTY on all such requests prior to making any commitments for the expenditure of COUNTY bond funds on such changes.
    - d. *Legal Claims.* CONTRACTOR shall afford COUNTY the opportunity to review and comment on all legal claims prior to resolution thereof.
    - e. *Signage.* COUNTY shall have the right to install signage at the construction site in a location of its choosing, provided that the sign does not interfere with the construction, announcing that the Project is a COUNTY bond-funded project, and listing the names of the members of the Board of Supervisors.
  12. Coordinate all utility relocations for the Project.
  13. Obtain any approval, permission or permits necessary for the Project.
  14. Furnish a Project Manager to coordinate with COUNTY designated liaison during the construction of the Project.
  15. Acknowledge the COUNTY's contribution to the Project at any public participation event in a form approved by COUNTY. Examples of acceptable forms of recognition include but are not limited to, signs, permanent plaques, COUNTY participation in and /or acknowledgment at opening ceremonies and press releases.
- C. COUNTY shall reimburse CONTRACTOR for the actual costs of the public infrastructure, up to, but not in excess of, a total of \$385,000.00, upon receipt and processing of properly prepared invoices, along with supporting documentation, as provided herein.

### **ARTICLE III – FINANCE AND PAYMENT**

- A. **Reimbursement Schedule.** CONTRACTOR shall, within thirty (30) days after final execution of this CONTRACT, submit to COUNTY a schedule (the “Reimbursement Schedule”) showing the anticipated dates and amounts of requests from the CONTRACTOR for reimbursement of project expenses incurred and paid by the CONTRACTOR (“Reimbursement Requests”). A final reimbursement schedule shall be established and submitted within thirty (30) days after award of the construction contract. The Reimbursement Schedule may be combined with the Construction Schedule.
- B. **Request for Payment.** Within 10 days of the end of each month, starting on the date indicated in the Reimbursement Schedule, CONTRACTOR shall submit a "Request for Payment" form with invoice(s) and supporting documentation which must be signed by CONTRACTOR acknowledging the provision of the invoiced products or services for the bond-funded project. CONTRACTOR shall also certify, in writing, that the funds for which reimbursement is being sought were spent on the public infrastructure for which this grant was awarded. COUNTY’s Project Manager will perform inspections to ensure that the work has been completed prior to approving and releasing any payments to CONTRACTOR.
- C. **Withholding of Reimbursement.** Notwithstanding any other provision herein, no reimbursement will be made for any invoice until COUNTY is satisfied that the work for which the invoice was submitted has been done satisfactorily, the general contractors and subcontractors have been paid (less any retention held by CONTRACTOR), and the amounts requested have been verified and are in compliance with the budget attached as Exhibit D. Failure to pay the general contractor or any subcontractors for work contracted and performed may, in COUNTY’s sole discretion, result in the withholding of future reimbursements from the CONTRACTOR and direct payment by COUNTY to the unpaid general contractor or subcontractor.
- D. **County Review.** If COUNTY disapproves payment of the invoice, the COUNTY shall notify CONTRACTOR of this disapproval, and the reasons for it (orally or in writing) within 10 business days of receipt of the invoice and all supporting documentation from CONTRACTOR. If the COUNTY does not object to the invoice, it shall pay the invoice within 10 business days of receipt.
- E. **Monthly Progress Reports.** Within 10 days of the end of each month, CONTRACTOR shall submit a Monthly Progress Report (“Progress Report”) in the format set forth in Exhibit E, even if CONTRACTOR is not seeking reimbursement for the preceding month.
- F. **Submittal of Requests for Payments and Reports.** All Requests for Payment and Progress Reports shall be submitted to:  
*Marcos Ysmael, Housing Program Coordinator*  
*2797 East Ajo Way, 3<sup>rd</sup> Floor, Tucson, Arizona 85713*
- G. **Delays.** CONTRACTOR shall promptly notify the County at any time that CONTRACTOR becomes aware of a potential Project delay that may cause a deviation from the Reimbursement Schedule and/or the Construction Schedule. In the event of any deviation from the Reimbursement Schedule, COUNTY and CONTRACTOR shall establish a new Reimbursement Schedule, consistent with Federal Treasury Regulations.
- H. **Final Report & Accounting.** Within 90 days after completion and upon acceptance of the Project by CONTRACTOR, CONTRACTOR shall submit to COUNTY: (1) a final report describing the Project as constructed and summarizing its history (i.e., who designed, constructed, provided public

art, funding sources, description of public participation, purpose and public benefit of the Project, etc.), along with photographs and final as built drawings; (2) a detailed final accounting statement of the funds expended on the Project, along with a final Reimbursement Request if needed. Failure to provide this information within the established time period may result in denial of reimbursement.

- I. Amendment of the Bond Ordinance. The CONTRACTOR shall notify the County of any event that would require an amendment of the Bond Ordinance, and shall formally request the County Board of Supervisors to hold a public hearing on the requested amendment. The parties shall follow the procedures for amendment of the Bond Ordinance set forth in Chapter 3.06 of the Pima County Code, as it may be amended or renumbered from time to time, and relevant sections of the Bond Ordinance. In the event the Board of Supervisors does not approve the CONTRACTOR's request for a Bond Ordinance amendment, the CONTRACTOR shall complete the Project as defined by the Bond Ordinance and this CONTRACT.
- J. Federal Treasury Regulations. CONTRACTOR acknowledges that Pima County manages the expenditures of bond proceeds in order to qualify for a spending exception to the arbitrage rebate requirements of Sections 148 through 150 of the Internal Revenue Code of 1986 and the related regulations found in 26 CFR Part 1, §§1.148 through 1.150 as may be modified from time to time (such statutes and regulations hereinafter referred to as the "Tax Exempt Bond Rules"). CONTRACTOR acknowledges that arbitrage rebate is affected by both the use of bond proceeds and by the timing of bond related expenditures. Notwithstanding any other provision of this CONTRACT, County may, in County's sole discretion, either (i) reallocate Project funds to other projects funded with County bonds (which may, in some circumstances, result in a delay in payments under this CONTRACT), or (ii) terminate this CONTRACT as set forth in Article XVII below if the County, in its sole discretion, determines that such reallocation or termination is necessary or advantageous to the County under the Tax Exempt Bond Rules in order to (a) qualify for a spending exception to the arbitrage rebate requirements, or (b) reduce the amount of any potential arbitrage rebate or penalty, or (c) manage the County's bond proceeds.

#### **ARTICLE IV – OWNERSHIP**

The improvements and infrastructure constructed pursuant to this CONTRACT are considered to be public right-of-way. Ownership of same, therefore, shall automatically vest in the corresponding political subdivision. This Section shall survive termination, cancellation, expiration or revocation, whether in whole or in part, of this CONTRACT.

#### **ARTICLE V - INSURANCE AND BONDING REQUIREMENTS**

- A. CONTRACTOR shall obtain and maintain at its own expense, during the entire term of this Contract the following type(s) and amounts of insurance:
1. Commercial General Liability in the amount of \$1,000,000.00 combined, single limit Bodily Injury and Property Damage. Pima COUNTY is to be named as an additional insured for all operations performed within the scope of the Contract between Pima COUNTY and CONTRACTOR;
  2. Commercial or Business automobile liability coverage for owned, non-owned and hired vehicles used in the performance of this Contract with limits in the amount of \$1,000,000.00 combined single limit or \$1,000,000.00 Bodily Injury, \$1,000,000.00 Property Damage;

3. If this Contract involves professional services, professional liability insurance in the amount of \$1,000,000.00;
  4. If required by law, workers compensation coverage including employees liability coverage and,
  5. CONTRACTOR shall provide a Performance Bond for not less than one hundred percent (100%) of the Contract amount, or another method of assurance, approved by the Pima County Board of Supervisors, that the project will be completed.
- B. CONTRACTOR shall provide COUNTY with current certificates of insurance. All certificates of insurance must provide for guaranteed thirty (30) days written notice of cancellation, non-renewal or material change.

#### **ARTICLE VI – INDEMNIFICATION**

- A. CONTRACTOR shall indemnify, defend, and hold harmless COUNTY, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any act, omission, fault or negligence by CONTRACTOR, its agents, employees or anyone under its direction or control or on its behalf in connection with performance of this Contract.
- B. *Preexisting Conditions.* To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend and hold COUNTY, its boards, officers, departments, employees and agents, harmless from and against any claims and damages, as fully set out above, resulting from or arising out of the existence of any substance, material or waste, regulated pursuant to federal, state or local environmental laws, regulations or ordinances, that is present on, in or below or originated from property owned or controlled by the CONTRACTOR prior to the execution of this CONTRACT.
- C. *Notice.* Each party shall notify the other in writing within thirty (30) days of the receipt of any claim, demand, suit or judgment against the receiving party for which the receiving party intends to invoke the provisions of this Section. Each party shall keep the other party informed on a current basis of its defense of any claims, demands, suits, or judgments under this Section.
- D. *Survival of Termination.* This Article shall survive the termination, cancellation, expiration or revocation, whether in whole or in part, of this CONTRACT

#### **ARTICLE VII - COMPLIANCE WITH LAWS**

- A. CONTRACTOR shall comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract shall be brought in a court of the State of Arizona in Pima COUNTY. Any changes in the governing laws, rules, and regulations during the terms of this Contract shall apply, but do not require an amendment.
- B. *Compliance with Bond Requirements.* CONTRACTOR agrees to comply with all applicable provisions of Pima County Code Chapter 3.06, “Bonding Disclosure, Accountability, and Implementation” and of the Bond Ordinance, as they now exist or may hereafter be amended. Any reports to be submitted by CONTRACTOR to COUNTY in compliance with Pima County Code Chapter 3.06 or the Bond Ordinance shall be provided in a format and schedule determined by COUNTY.

C. For each sale of COUNTY bonds, the COUNTY issues a Tax Certificate and CONTRACT in compliance with Section 1.148 through 1.150 of the Federal Treasury Regulations specifying the uses, investments and disbursement of Bond proceeds. In the event COUNTY determines that a violation of Federal Treasury Regulations is likely to occur or COUNTY is notified by the CONTRACTOR of a potential delay in the project that will result in a delay in the expenditure of the COUNTY bond funds designated for this project, COUNTY may reallocate those funds to other projects. COUNTY will resume reimbursement payments when bond funds become available again.

### **ARTICLE VIII - INDEPENDENT CONTRACTOR**

The status of CONTRACTOR shall be that of an independent contractor. Neither CONTRACTOR, nor any of CONTRACTOR's officers, agents or employees, shall be considered an employee of Pima COUNTY or be entitled to receive any employment-related fringe benefits under the Pima COUNTY Merit System. CONTRACTOR shall be responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Contract and shall indemnify and hold COUNTY harmless from any and all liability which COUNTY may incur because of CONTRACTOR's failure to pay such taxes. CONTRACTOR shall be solely responsible for program development and operation.

### **ARTICLE IX - SUBCONTRACTOR**

CONTRACTOR will be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by any subcontractor and of persons for whose acts any of them may be liable to the same extent that CONTRACTOR is responsible for the acts and omissions of persons directly employed by it. Nothing in this Contract shall create any obligation on the part of COUNTY to pay or see to the payment of any money due any subcontractor, except as may be required by law.

### **ARTICLE X - ASSIGNMENT**

CONTRACTOR shall not assign its rights to this Contract, in whole or in part, without prior written approval of COUNTY. Approval may be withheld at the sole discretion of COUNTY, provided that such approval shall not be unreasonably withheld.

### **ARTICLE XI - NON-DISCRIMINATION**

CONTRACTOR shall not discriminate against any COUNTY employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out CONTRACTOR's duties pursuant to this Contract. CONTRACTOR shall comply with the provisions of Executive Orders 75-5, as amended by Executive Order 99-4, which are incorporated into this Contract by reference as if set forth in full herein.

### **ARTICLE XII - AMERICANS WITH DISABILITIES ACT**

A. CONTRACTOR shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

- B. If CONTRACTOR is carrying out a government program or service on behalf of COUNTY, then CONTRACTOR shall maintain accessibility to the program to the same extent and degree that would be required of COUNTY under 28 CFR Sections 35.130, 35.133, 35.149 through 35.151, 35.160, 35.161 and 35.163. Failure to do so could result in the termination of this CONTRACT.

### **ARTICLE XIII - AUTHORITY TO CONTRACT**

CONTRACTOR warrants its right and power to enter into this Contract. If any court or administrative agency determines that COUNTY does not have authority to enter into this Contract, COUNTY shall not be liable to CONTRACTOR or any third party by reason of such determination or by reason of this Contract.

### **ARTICLE XIV - MONITORING AND EVALUATION**

- A. Inspection. COUNTY may inspect any portion of the Project construction for substantial compliance with drawings and specifications. CONTRACTOR shall allow official COUNTY representatives reasonable access to the Project site during construction. The Project Manager and County Liaison will cooperate and consult with each other during Project construction.
- B. COUNTY shall have the right to monitor all activities and information sources in the management, fiscal and service systems of CONTRACTOR and any subcontracted parties, relating to performance of duties and obligations under this Contract, to assure that CONTRACTOR is maintaining adequate and acceptable progress and systems, and to ensure that the funds provided to CONTRACTOR by COUNTY are being used effectively and efficiently to accomplish the purposes for which the funds were made available. COUNTY shall have the right to review all contracts between CONTRACTOR and any subcontractors hired for the project. CONTRACTOR shall be responsible for delivering a copy of all contracts to the Pima COUNTY Project Manager named as the contact person in this Contract.

### **ARTICLE XV - FULL AND COMPLETE PERFORMANCE**

The failure of either party to insist on one or more instances upon the full and complete performance with any of the terms or conditions of this Contract to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time shall not be construed as an accord and satisfaction.

### **ARTICLE XVI - CANCELLATION FOR CONFLICT OF INTEREST**

This Contract is subject to cancellation for conflict of interest pursuant to ARS §38-511, the pertinent provisions of which are incorporated into this Contract by reference.

## **ARTICLE XVII - TERMINATION**

- A. COUNTY reserves the right to terminate this Contract at any time and without cause by serving upon CONTRACTOR 30 days advance written notice of such intent to terminate. In the event of such termination, the COUNTY'S only obligation to CONTRACTOR shall be payment for services rendered prior to the date of termination.
- B. Notwithstanding Paragraph A above, if any state or federal grant monies used to pay for performance under this Contract are either reduced or withdrawn, County shall have the right to either reduce the services to be provided and the total dollar amount payable under this Contract or terminate the Contract. To the extent possible, County will endeavor to provide fifteen (15) days written notice of such reduction or termination. In the event of a reduction in the amount payable, COUNTY shall not be liable to Contractor for more than the reduced amount. In the event of a termination under this paragraph, County's only obligation to CONTRACTOR shall be payment for services rendered prior to the date of termination to the extent that grant funds are available.
- C. This Contract may be terminated at any time without advance notice and without further obligation to the COUNTY when the CONTRACTOR is found by COUNTY to be in default of any provision of this Contract.
- D. Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining COUNTY or other public entity obligations under this Contract. In the event of such termination, COUNTY shall have no further obligation to CONTRACTOR, other than to pay for services rendered prior to termination.
- E. COUNTY reserves the right to suspend CONTRACTOR's performance and payments under this Contract immediately upon notice delivered to contractor's designated agent in order to investigate CONTRACTOR's activities and compliance with this Contract. In the event of an investigation by COUNTY, CONTRACTOR shall cooperate fully and provide all requested information and documentation. At the conclusion of the investigation, or within forty-five (45) days, whichever is sooner, CONTRACTOR will be notified in writing that the contract will be immediately terminated or that performance may be resumed.

## **ARTICLE XVIII – NO THIRD PARTY BENEFICIARIES**

Nothing in this CONTRACT is intended to create any duty or obligation to, or rights in, any person or entity that is not a party to this CONTRACT, including the subsequent Homeowners Association or the Community Group as applicable. Furthermore, this CONTRACT is not intended to affect the legal liability of any party to this CONTRACT by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

## ARTICLE XIX – NOTICE

Any notice required or permitted to be given under this Contract shall be in writing and shall be served by personal delivery or by certified mail upon the other party as follows:

### A. COUNTY

Betty Villegas, Housing Manager  
Pima County Community Development and Neighborhood Conservation Department  
2797 E. Ajo Way 3rd Floor, Tucson AZ 85713

### B. CONTRACTOR:

Michael McDonald, Executive Director  
Habitat For Humanity Tucson, Inc.  
621 W. Lester St., Tucson, AZ 85705

## ARTICLE XX - NON-EXCLUSIVE CONTRACT

CONTRACTOR understands that this Contract is nonexclusive and is for the sole convenience of COUNTY. COUNTY reserves the right to obtain like services from other sources for any reason.

## ARTICLE XXI - OTHER DOCUMENTS

CONTRACTOR and COUNTY in entering into this Contract have relied upon information provided in the Pima County General Obligation Housing Bond Fund Solicitation issued on February 28, 2006, on information provided in CONTRACTOR'S application, dated April 3, 2008, in response to said solicitation and the drawings and specifications prepared by The WLB Group, Inc. **These documents are hereby incorporated into and made a part of this Contract as if set forth in full herein, to the extent not inconsistent with the provisions of this Contract.**

## ARTICLE XXII – REMEDIES

Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

## ARTICLE XXIII – SEVERABILITY

If any provision of this CONTRACT, or any application thereof to the parties or any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this CONTRACT which can be given effect, without the invalid provision or application and to this end the provisions of this CONTRACT are declared to be severable.

## ARTICLE XXIV - BOOKS AND RECORDS

- A. CONTRACTOR shall keep and maintain proper and complete books, records and accounts of the Project. For bond purposes, the Project books and records must continue to be maintained for a period of three (3) years after final payment of the bonds issued for the Project, or, if later, until any related pending proceeding or litigation has been closed. The bonds funding the Project are expected to be fully paid by June 30, 2024, but may be subject to refunding. CONTRACTOR shall have the option of either (i) maintaining the Project books and records for the requisite number of years or (ii) conveying the Project books and records to County any time after the Project is completed. The books, records and accounts of the Project shall be available for inspection and audit by duly authorized representatives of County at all reasonable times during the period in which said books, records and accounts are maintained by the CONTRACTOR. Unless CONTRACTOR conveys all Project books, records and accounts to County, CONTRACTOR shall indemnify and hold the County harmless from and against any amount required to be paid to the Internal Revenue Service or any governmental City or agency arising out of the failure by CONTRACTOR to maintain such records.
- B. Inspection and Audit. The County may perform an inspection of the Project or an audit of CONTRACTOR's books and records at any time in order to verify that monies spent on the Project were expended in accordance with the terms of this CONTRACT.
- C. In the event COUNTY discovers that some funds were paid to CONTRACTOR by COUNTY to reimburse expenses that did not in fact occur or that were not for the construction of infrastructure, CONTRACTOR shall promptly repay such amounts to COUNTY with interest at the rate of 10% per annum from the time paid by COUNTY until repaid to COUNTY by CONTRACTOR.

## ARTICLE XXV – PUBLIC INFORMATION

- A. Pursuant to A.R.S. § 39-121 et seq., and A.R.S. § 34-603(G) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all information submitted in response to this solicitation, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes public information and upon request, is subject to release and/or review by the general public including competitors.
- B. Any records submitted in response to this solicitation that respondent believes constitute proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL by respondent prior to the close of the solicitation.
- C. Notwithstanding the above provisions, in the event records marked CONFIDENTIAL are requested for public release pursuant to A.R.S. § 39-121 et seq., County shall release records marked CONFIDENTIAL ten (10) business days after the date of notice to the respondent of the request for release, unless respondent has, within the ten day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release shall not be counted in the time calculation. Respondent shall be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

- D. County shall not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor shall County be in any way financially responsible for any costs associated with securing such an order.

### **Article XXVI - AUDIT REQUIREMENTS**

A. Contractor shall:

1. Establish and maintain a separate and identifiable account of all funds provided by County pursuant to this Contract.
2. Provide financial audits as required by law.
3. Upon written notice from County provide a program-specific audit. Such notice from County will specify the period to be covered by the audit and the deadline for completion and submission of the audit.
4. Assure that any audit conducted pursuant to this Contract is performed by an independent certified public accountant and submitted to County within nine (9) months of completion of Contractor's fiscal year, unless a different time is specified by County. The audit submitted must include Contractor responses, if any, concerning any audit findings.
5. Pay all costs for any audit required or requested pursuant to this Article, unless the cost was specifically included in the Contractor's budget approved by County and the cost is an allowable charge for payment under applicable law or regulation.
6. Timely submit the required or requested audit(s) to:

Margaret Kish, Director  
Community Development and Neighborhood Conservation Dept.  
2797 E. Ajo Way, 3<sup>rd</sup> Floor  
Tucson, AZ 85713

- B. If Contractor is a "nonprofit corporation" that meets the definition of "corporation" in A.R.S. §10-3140, Contractor shall comply with the applicable audit requirements set forth in A.R.S. § 11-624.
- C. If Contractor is receiving federal funds under this Contract, and Contractor is a state or local government or non-profit organization, Contractor shall provide an annual audit which complies with the requirements of the most recent version of OMB Circular A-133, "Audits of State and Local Governments and Non-Profit Organizations."

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**ARTICLE XXVII - ENTIRE AGREEMENT**

This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Contract may be modified, amended, altered or extended only by a written amendment signed by the parties.

IN WITNESS THEREOF, the parties have affixed their signatures to this Contract on the date written below.

**PIMA COUNTY:**

**CONTRACTOR:**

\_\_\_\_\_  
Chairman, Date  
Board of Supervisors

\_\_\_\_\_  
Authorized Signature Date

\_\_\_\_\_  
Print Name and Title

**ATTEST:**

\_\_\_\_\_  
Clerk of the Board Date

**APPROVED AS TO CONTENT:**

*152*  
Margaret Tan Kue 07/30/2008  
Director, Community Development and Neighborhood Conservation Department Date

\_\_\_\_\_  
Director, Finance Department Date

**APPROVED AS TO FORM:**

Karen J. Truitt 7-14-08  
Pima County Attorney Date

## Exhibit A

### SUBSTANTIAL CHANGE POLICY

#### BACKGROUND:

Pima County funds various Neighborhood Reinvestment and Affordable Housing Program projects with Pima County General Obligation Bond funds (“bond funds”). In order to receive funding, interested parties submit proposals or applications to either the Neighborhood Reinvestment Oversight Committee or the County Housing Commission (“recommending body”).

The Pima County Board of Supervisors (“Board”) reviews the recommendations and determines whether or not a particular project may be funded. Funding is awarded through the execution of a contract or intergovernmental agreement with the appropriate party or jurisdiction. Until such document is properly executed, no bond funds are committed to any particular project. Once a legally binding document is executed, County staff will manage the project to assure contractual compliance.

#### PURPOSE:

The contract or intergovernmental agreement sets forth the scope and design of the project. Allowances are made within the document for minor changes. However, at times, the contractor seeks to make *a substantial change* to the scope and design set forth either in the original proposal or application or in the executed document. The following procedures are established to direct the process for the approval of a *substantial change* to a project funded (or seeking funding) by Pima County General Obligation Bond monies.

#### PROCESS:

Once a project is approved by the recommending body, there are three points at which a *substantial change* might be requested: (1) prior to initial approval by the Board; (2) after Board approval, but before the execution of a legally binding document; or, (3) after the execution of a contract or intergovernmental agreement.

- 1) **Prior to initial approval by the Board or after Board approval, but before the execution of a legally binding document.**
  - a) The party or jurisdiction seeking bond funds, contacts Pima County Community Development & Neighborhood Conservation (CDNC) program manager regarding the requested change.
  - b) CDNC staff will determine if it is necessary to review documentation and, if so, what documentation the contractor or jurisdiction must provide for the review.
  - c) CDNC staff reviews the change and determines if the requested change is, in fact, substantial and if it is necessary to present the request to the recommending body.
  - d) The recommending body may ask the requesting party to:
    - i) Make a formal presentation regarding the specific changes to the recommending body at a public meeting;

- ii) Submit a written revision to the original proposal; or
- iii) Submit a new proposal.
- e) After review, the recommending body may choose to:
  - i) Recommend that the Board approve the project for funding as revised; or,
  - ii) Revoke the original recommendation for funding.

**2) After the execution of a legally binding document**

- a) The party or jurisdiction seeking bond funds, contacts Pima County Community Development & Neighborhood Conservation (CDNC) director regarding the requested change.
- b) CDNC staff will determine what documentation contractor or jurisdiction must provide for review.
- c) CDNC staff reviews the change, assesses the impact of the proposed change and, if necessary, discusses the proposed change with the Pima County Attorney's Office.
- d) CDNC staff will discuss the proposed change with the recommending body.
- e) After review, the recommending body may choose to:
  - i) Recommend that the Board of Supervisors (Board) approve the amended project for funding;
  - ii) Recommend that the Board not approve the amended project and continue to enforce the terms set forth in the initial contract or the IGA; or,
  - iii) Recommend that the Board consider termination of the contract or IGA, as allowed under the terms of the contract or IGA.
- f) If necessary, CDNC staff will prepare an amendment to the contract or IGA or the required termination documentation for the Board.
- g) The Board, in its sole discretion, may accept and execute the amendment or proceed with the termination of the contract or IGA.

**3) Program authority.**

The CDNC program manager or department director is charged with reviewing any of the changes proposed by the contractor or the jurisdiction to determine if the proposed changes are a significant deviation from the original approved proposal. In the event that the program manager or department director believe that the changes rise to the level of *substantial change* the process described in this document will be implemented.

**4) Substantial changes.** A *substantial change* includes, but is not limited to, any change in project concept, design or scope that would, by itself, or in combination with other factors do any of the following:

- a) Result in a significant escalation in project cost. This includes either a change in the amount of bond funding sought or a change in other funds dedicated to the project from other sources.
- b) Impact or revise the stated intent of the original proposal or application.
- c) Alter the number or type of specific units or amenities.

- d) Alter the construction schedule in such a manner that will delay the completion of the project.
- e) Alter the construction schedule in such a manner that will change the bond funding schedules.
- f) Result in non-compliance with the bond ordinance.
- g) Result in non-compliance with any federal or state law or regulation.

END OF EXHIBIT A

**Exhibit B**  
**HABITAT FOR HUMANITY TUCSON**  
**CORAZON DEL PUEBLO – PHASES I, II & III**  
**Drawings and Specifications prepared by The WLB Group, Inc.**  
**for Corazon Del Pueblo**  
**Lots 1 thru 393 & Common Areas ‘A’, ‘B’, ‘C’ AND ‘D’**

<b>Sheet No.</b>	<b>Description</b>	<b>Date</b>
<b>Grading Plans as prepared by The WLB Group</b>		
1 of 9	Grading Plan	AUG., 2004
2 of 9	Grading Plan	AUG., 2004
3 of 9	Grading Plan	AUG., 2004
4 of 9	Grading Plan	AUG., 2004
5 of 9	Grading Plan	AUG., 2004
6 of 9	Grading Plan	AUG., 2004
7 of 9	Grading Plan	AUG., 2004
8 of 9	Grading Plan	AUG., 2004
9 of 9	Grading Plan	AUG., 2004
<b>Sheet</b>	<b>Description</b>	<b>Date</b>
<b>Public Street and Public Sewer Plans prepared by The WLB Group</b>		
1 of 32	General Notes	1-27-2005
2 of 32	General Sewer Notes	09/04
3 of 32	Key Map	09/04
4 of 32	Calle de Humanidad (Public Street)	09/04
5 of 32	Calle de la Humanidad (Public Street)	09/04
6 of 32	Calle de la Humanidad (Public Street)	09/04
7 of 32	Elvira Road (Public Street)	09/04
8 of 32	Paseo de la Comunidad (Public Street)	09/04
9 of 32	Paseo de la Comunidad (Public Street)	09/04
10 of 32	Avenida de Justicia (Public Street)	09/04
11 of 32	Calle de Aventure (Public Street)	09/04
12 of 32	Calle de Anhelos (Public Street) Camino del Avanzo (Public Street) Calle de Abrazo (Public Street)	09/04

<b>Sheet</b>	<b>Description</b>	<b>Date</b>
13 of 32	Calle de Abrazo (Public Street) Camino Esperanza Eterna (Public Street)	09/04
14 of 32	Via de la Verdad (Public Street) Calle Miserecordia (Public Street) (Common Area C)	09/04
15 of 32	Calle Santa Carolina (Public Street)	09/04
16 of 32	Calle Santa Carolina (Public Street) Camino de Apadrina (Public Street) Calle de Apertura (Public Street)	09/04
17 of 32	Calle de Arrabal (Public Street)	09/04
18 of 32	Calle de Arrabal (Public Street) Camino Redencion (Public Street)	09/04
19 of 32	Calle de Apertura (Public Street) Calle de Carmencita (Public Street) Calle de Iguanas (Public Street)	09/04
20 of 32	Camino de Ayuda (Public Street) Calle de Azar (Public Street) Calle de Acuerdo (Public Street)	09/04
21 of 32	Camino del Animo (Public Street) Sewer Alignment « B » (C.A. A & C.A. C)	09/04
22 of 32	Calle de la Humanidad (Public Street) Camino de Azucar (Public Street)	09/04
23 of 32	Camino Redencion (Public Street) Camino del Agua (Public Street)	09/04
24 of 32	Vuelta de Nuestro Pueblo (Public Street)	09/04
25 of 32	Vuelta de Nuestro Pueblo (Public Street)	09/04
26 of 32	Camino de Ayuda (Public Street) Calle de Recuerdo (Public Street)	09/04
27 of 32	Calle de Recuerdo (Public Street)	09/04
28 of 32	Vuelta de Tranquilidad (Public Street)	09/04
29 of 32	Vuelta de Tranquilidad (Public Street)	09/04
30 of 32	Calle de Asperacion (Public Street) McKinley Road (Public Street)	09/04
31 of 32	Calle Alberque (Public Street)	09/04

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Sheet	Description	Date
32 of 32	<ul style="list-style-type: none"> <li>1 Typical Crown Section, Local Streets</li> <li>2 Typical Crown Section, Local Streets</li> <li>3 Typical Parking Lot Section</li> <li>4 View Wall Section</li> <li>5 Screen Wall Section</li> <li>6 Lot to Lot Grading Detail</li> <li>7 Transition Vertical Curb to Wedge Curb</li> <li>8 Cross Section</li> <li>9 Channel Detail</li> <li>10 Weir Detail (150')</li> <li>11 Weir Detail (300')</li> <li>12 Weir Detail (350')</li> <li>13 Section</li> <li>14 Detail</li> <li>15 Rear Lot Grading Detail</li> <li>16 8' x 3' RCBC</li> <li>17 Typical Lot Grading</li> <li>18 * Scupper Detail</li> <li>19 Scupper Section</li> <li>20 Common Area « D » Parking Detail</li> <li>21 Rear Lot Grading Detail</li> <li>22 Section</li> <li>23 Section</li> <li>24 Section</li> <li>25 Section</li> </ul>	09/04

**END OF EXHIBIT B**

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Exhibit C



Pima County Housing Commission  
c/o Betty Villegas  
2797 East Ajo Way, 3<sup>rd</sup> Floor  
Tucson, AZ 85713

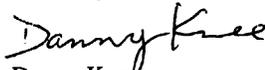
To the Pima County Housing Commission:

On behalf of Habitat for Humanity Tucson, I respectfully submit this application for 2004 General Obligation Housing Bond funding. Enclosed are three tabbed copies of our application and supporting documentation. Site and house plans were submitted previously in conjunction with successful funding applications for the same subdivision, Corazon del Pueblo. All of the additional homes, as with the original award, will all be affordable and reserved for families earning less than 80% area median income (AMI), with at least 10 of the overall 20 homes going to families earning less than 65% AMI.

We are requesting \$385,000 to fund infrastructure and off-site construction including streets, sidewalks, utilities, drainage, public right of way landscaping, and engineering expenses. All the homes in this request will be completed by June, 2011. Habitat is dedicated to keeping housing affordable in Pima County. To that end we invest heavily in our own projects raising the entire amount of the first mortgage in private donations in order to give our family no-interest loans. It should be noted that because of our no-interest loans homeowners' monthly payments are roughly one-half of what they would be for a 25 year loan at 6.5% interest. HFHT's loan terms will also save the family over \$100,000 in interest payments over the life of the loan.

HFHT thanks the Commission once again for its initial award of bond funds to our CDP project and hopes that your body will further its support of this successful development with additional funding. If you have any questions regarding this request, please don't hesitate to contact our Executive Director or me at (520) 326-1217.

Sincerely,

  
Danny Kneel  
Deputy Director

621 W. Lester Street  
Tucson, AZ 85705-6432  
phone (520) 326-1217  
fax (520) 326-5149  
www.habitattucson.org

 Printed on Recycled Paper.

## Project Narrative Summary

Habitat for Humanity Tucson (HFHT) has partnered with local builders, (Ducati, AmericaBuilt, Doucette, and TJ Bednar), a national builder (Richmond American), engineers, and bankers to create the largest non-profit/private Habitat for Humanity project for affordable housing in the country. The development features homes in the range of \$140,000 - \$230,000 and is called "Corazon del Pueblo," which means "heart of the people or heart of the town." This community will combine the homes of private, residential builders and those built by Habitat and will include parks and community areas.

The development will have 393 homes with two to four bedrooms ranging from 800 square feet to 1,600+ square feet. This development will provide for families at mixed income levels. Habitat will provide housing for those families between 50-80% of the AMI with an emphasis on those making between 50-65% AMI. Sixty (60) of the 393 homes will be affordable to these families. Potentially interested homeowners that don't qualify for a Habitat home will be referred to one of the other builders in the development. Affordable units have already been supported by Pima County, the City of Tucson, the Federal Home Loan Bank of San Francisco, HUD's Self-help Home Ownership Program (SHOP), and many corporate and individual donors.

This development has significant common areas to be used for pocket parks with barbecue equipment, playgrounds with equipment, a linear park along the Julian Wash with a walking trail, an additional walking trail from the Julian Wash to the freeway, and paths designated for bicycles. The roads are sufficient for Waste Management and the Fire Department. Trees and cactus have been relocated to preserve the natural habitat. CC&Rs for the development are already in place and won't allow for any rental homes in the neighborhood. Dues are set at \$25 per month.

Through this Bond Application, Habitat is requesting \$385,000 for infrastructure and off-site improvements for 20 homes. These 20 homes will be considered Phase 3 of a three-phase project. The provisions of Pima County Inclusive Design Ordinance shall be incorporated into all home plans.

A new Habitat floor plan with 4 different elevations has been designed to fit in with the look of the other homes. A second two-story floor plan is in the design phase. All homes will have a one-car garage, will be 100% electrical and will have the TEP guarantee. Habitat homes will have exterior paint colors that comply with the subdivision color palette. Homes will have two bathrooms, a combination of carpet and vinyl floor coverings, security doors, window blinds, ceiling fans, garbage disposals, light fixtures and most likely, dishwashers. Habitat is the mortgage lender for its own homes, and these homes will be sold with 25 year, no interest loans.

At Habitat, we know that a safe and decent home can change everything for a family. Children feel free to bring friends home to play. With a place to study, their grades improve and the opportunity for college becomes a reality. Homeowners gain equity that can be passed on to their children. Instead of worrying about housing, families become free to consider college education for their children, employment training for themselves, and have time to volunteer in their neighborhood organizations. Habitat families become taxpaying neighbors who value their homes and their neighborhoods.

End of Exhibit C

**Exhibit D**

<b>HABITAT FOR HUMANITY TUCSON CORAZON DEL PUEBLO – PHASE III (CDP III) OFF-SITE INFRASTRUCTURE COSTS for the common areas in public ROW</b>	
<b>DESCRIPTION</b>	<b>AMOUNT</b>
<b>GRADING &amp; EARTHWORK</b>	<b>58,000.00</b>
<b>STREETS, CURBS, SIDEWALKS</b>	<b>102,000.00</b>
<b>WATER, SEWER, UTILITIES (OFF SITE)</b>	<b>136,000.00</b>
<b>WALLS &amp; FENCES</b>	<b>4,440.00</b>
<b>STORM WATER DRAINAGE</b>	<b>55,060.00</b>
<b>ENGINEERING (OFF SITE)</b>	<b>29,500.00</b>
<b>TOTAL</b>	<b>385,000.00</b>

End of Exhibit D

**Exhibit E**

**Monthly Progress Report**

**CORAZON DEL PUEBLO - PHASE III**

For the Month of \_\_\_\_\_, 20\_\_

<b>DESCRIPTION</b>	<b>TOTAL AMOUNT BUDGETED</b>	<b>AMOUNT COMPLETED THIS MONTH</b>	<b>COMPLETED PRIOR MONTH(S)</b>	<b>AMOUNT EXPENDED TO DATE</b>
GRADING & EARTHWORK	<b>58,000.00</b>			
STREETS, CURBS, SIDEWALKS	<b>102,000.00</b>			
WATER, SEWER, UTILITIES (OFF SITE)	<b>136,000.00</b>			
WALLS & FENCES	<b>4,440.00</b>			
STORM WATER DRAINAGE	<b>55,060.00</b>			
ENGINEERING (OFF SITE)	<b>29,500.00</b>			
<b>TOTAL</b>	<b>385,000.00</b>			

**ADDITIONAL PROJECT INFORMATION FOR BILLING PERIOD:**

- Milestones completed:
  
- Problems encountered:
  
- Changes requested for Construction or Reimbursement Schedule: